

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.**

FERGUSON ENTERPRISES, INC.

Respondent

CASE 07-CA-052306

and

JOSEPH LAPHAM, An Individual

Charging Party

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S
MOTIONS TO TRANSFER CASE TO AND CONTINUE PROCEEDINGS
BEFORE THE BOARD AND FOR DEFAULT JUDGMENT**

Now comes Rana Roumayah and Robert M. Buzaitis, Counsel for the Acting General Counsel in this matter, and pursuant to Sections 102.24 and 102.50 of the Board's Rules and Regulations, Series 8, as amended, files these Motions to Transfer Case to and Continue Proceedings Before the Board and for Default Judgment, and in support of the Motions, states as follows:

1. On September 22, 2010, the Board issued its Decision and Order in this case and directed Respondent to take certain actions, including offering reinstatement and making whole various employees, herein called discriminatees, for any loss of earnings and benefits suffered as a result of the discrimination against them. A copy of the Board's Decision and Order is attached as Exhibit A.

2. On May 16, 2011, the United States Court of Appeals for the Sixth Circuit entered its judgment in Case No. 11-1086, enforcing the Board's Decision and Order against Respondent. A copy of the Judgment is attached as Exhibit B.

3. On October 31, 2011, the Regional Director for the Seventh Region issued and served upon Respondent by certified mail a Compliance Specification and Notice of Hearing. Copies of the Compliance Specification and the affidavit of service are attached as Exhibits C and D, respectively.

4. On November 21, 2011, Respondent filed an answer to the Compliance Specification. A copy of the Respondent's answer is attached as Exhibit E.

5. On December 29, 2011, the Regional Director for the Seventh Region issued and served upon Respondent by certified mail an Amended Compliance Specification and Notice of Hearing. Copies of the Amended Compliance Specification and affidavit of service are attached as Exhibits F and G, respectively.

6. By letter dated January 13, 2012, Counsel for Respondent informed the Region that he had been directed by Respondent not to file an answer to the Amended Compliance Specification or to appear at the February 8 scheduled hearing. A copy of Respondent's January 13 letter is attached as Exhibit H.

7. By letter dated January 18, 2012, Counsel for Respondent withdrew Respondent's November 21 answer to the Compliance Specification (Exhibit E). A copy of the Respondent's January 18, 2012, letter is attached as Exhibit I.

8. Based on Respondent's January 13 and 18, 2012, letters, no answer to the Compliance Specification and Amended Compliance Specification has been filed, nor has Respondent filed to date any document purporting to be an appropriate answer. An Affidavit executed by the Acting Regional Director for the Seventh Region attesting to these facts is attached as Exhibit J.

9. In the Compliance Specification and Amended Compliance Specification served upon Respondent, as noted above, Respondent was advised as follows:

Respondent is notified that, pursuant to Section 102.56 of the Board's Rules and Regulations, it must file an answer to this compliance specification. . . . If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the compliance specification are true.

10. Section 102.56(c) of the Board's Rules and Regulations, Series 8, as amended, provides *inter alia*: "If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate." *Falcon Wheel Division, LLC*, 341 NLRB No. 127 (2004)(not reported in Board volumes).

11. The Amended Compliance Specification, issued pursuant to Section 102.55(c) of the Board's Rules and Regulations, should be considered the operative compliance specification as to the appropriate remedy for the named discriminatees.

12. In view of the fact that Respondent has been notified of Section 102.56 of the Board's Rules and Regulations, that Respondent has withdrawn its Answer to the Compliance Specification, and expressly stated it would not be filing an Answer to the Amended Compliance Specification, and filed no answer, the Board should find and conclude that Respondent's failure to file an Answer was not due to innocence or lack of knowledge of the Board's Rules and Regulations, but was deliberate. As no answer has been filed, all allegations of the Amended Compliance Specification should be found to be true. *Mays Electric Co., Inc.*, 352 NLRB No. 49 (2008)(not reported in Board volumes); *Cattleman's Meat Company*, 351 NLRB No. 83 (2007)(not reported in Board volumes).

WHEREFORE, Counsel for the General Counsel respectfully moves:

1. That this Case and Motions be transferred to the Board and ruled on immediately so that, in the event they are granted, the necessity and expense of a hearing involving Respondent will be obviated. As such, the hearing scheduled for February 8, 2012, has been postponed indefinitely.

2. That pursuant to Section 102.56(c) of the Board's Rules and Regulations, all allegations of the Amended Compliance Specification be deemed to be admitted to be true, and so found by the Board, without taking evidence in support of the Amended Compliance Specification.

3. That the Board issue a Decision containing findings of fact, conclusions of law, and an Order, consistent with the allegations in the Amended Compliance Specification and the prayer for relief set forth therein.

Respectfully submitted this 30th day of January, 2012.

/s/ Rana Roumayah

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I certify that on the 30th day of January, 2012, I e-mailed copies of the Counsel for the Acting General Counsel's Motions to Transfer Case to and Continue Proceeding Before the Board and for Default Judgment to the following parties of record:

Ferguson Enterprises, Inc.

Stanley C. Moore, III

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Joseph Lapham

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/s/ Robert Buzaitis

Robert Buzaitis

Counsel for the General Counsel

NOTICE This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Ferguson Enterprises, Inc. and Joseph Lapham. Case 7-CA-52306

September 22, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS PEARCE AND HAYES

On March 3, 2010, Administrative Law Judge Mark Carissimi issued the attached decision. The Respondent filed exceptions¹ and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

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,² and conclusions³ and to adopt the recommended Order.

¹ The Respondent did not except to the judge's finding that employees Joseph Lapham and David Hall were engaged in protected activity under Sec. 7 of the Act when they filed prevailing wage claims.

² The Respondent excepts 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), enfd 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent also argues that Lapham's testimony regarding Miles Reynolds Sr.'s statement that the Lapham/Hall crew suspensions were motivated by the filing of the prevailing wage claims, was uncorroborated, and that "[t]he uncorroborated testimony of an interested party does not amount to substantial evidence of an unfair labor practice," quoting *NLRB v. Container Corp. of America*, 649 F.2d 1213, 1216 (6th Cir. 1981). As the Sixth Circuit has itself explained, "Taken out of context, this language suggests that the uncorroborated testimony of an interested charging party may never amount to substantial evidence . . . [H]owever, our case law makes it clear that the uncorroborated and self-serving statements of a party who stands to benefit from an award of back pay may, standing alone, constitute substantial evidence where such testimony is reasonably deemed to be credible and trustworthy, and where it is not undermined by evidence to the contrary." *Sam's Club v. NLRB*, 141 F.3d 653, 658 (6th Cir. 1998). We find that Lapham's testimony met this standard.

We also reject the Respondent's argument that Lapham's testimony was inadmissible as hearsay. Reynolds Sr.'s statements to Lapham were admissions by an admitted supervisor against a party-opponent, and thus, were not hearsay under Rule 801(d)(2) of the Federal Rules of Evidence. See *U.S. Ecology Corp.*, 331 NLRB 223, 225 (2000), enfd mem. 26 Fed. Appx. 435 (6th Cir. 2001).

Finally, we find no merit in the Respondent's allegation of prejudice on the part of the judge. On review of the entire record, we perceive no evidence that the judge prejudged the case, made prejudicial rulings, or otherwise demonstrated prejudice against the Respondent in his analy-

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Ferguson Enterprises, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. September 22, 2010

Wilma B. Liebman, Chairman

Mark Gaston Pearce, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Darlene Haas Awada, Esq., for the General Counsel.
Stanley C. Moore III and Gary W. Francis, Esqs. (Plunkett Cooney), of Bloomfield Hills, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

MARK CARISSIMI, Administrative Law Judge. This case was tried in Detroit, Michigan, on December 7-10, 2009. The charge was filed on August 10, 2009,¹ an amended charge was filed on September 29, 2009, and the complaint was issued September 30, 2009.

The complaint alleges that Respondent on May 26, 2009, suspended employees Joseph Lapham, David Hall, William Lewis, George Cook, and Miles Reynolds Jr. and on June 5, 2009, indefinitely laid off the above-named employees in violation of Section 8(a)(1) of the Act.

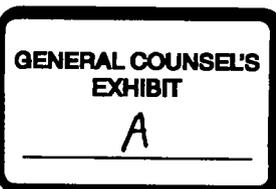
On the entire record, including my observation of the demeanor of the witnesses,² and after considering the briefs filed by the parties, I make the following

sis or discussion of the evidence, findings and conclusions. Similarly, there is no basis for finding that bias and prejudice exist merely because the judge resolved important factual conflicts in favor of the General Counsel's witnesses. *NLRB v. Pittsburgh Steamship Co.*, 337 U.S. 656, 659 (1949).

¹ In affirming the judge's application of *Wright Line*, 251 NLRB 1083 (1980), enfd 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Mgmt. Corp.*, 462 U.S. 393 (1983), to these facts, we do not rely on *Benjamin Franklin Plumbing*, 352 NLRB 525 (2008), which was cited by the judge.

² All dates are in 2009, unless otherwise indicated.

³ In making my findings regarding the credibility of witnesses, I have considered their demeanor, the content of their testimony and the inherent probabilities, based on the record as a whole. In certain instances, I have credited some, but not all, of what a witness said. I note, in this regard, that "[N]othing is more common in all kinds of judicial decisions than [sic] to believe some and not all" of a witness' testimony. *Jerry Ryce Builders*, 352 NLRB 1262, 1262 fn. 2 (2008),



FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Detroit, Michigan, has been engaged in providing nonresidential building and construction services, including demolition services and replacement of underground water and sewer lines for commercial and governmental entities. Annually, the Respondent derives gross revenues in excess of \$100,000 and provides services valued in excess of \$50,000 for the city of Detroit, Michigan, an enterprise directly engaged in interstate commerce. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Respondent performs underground utility work, demolition work, and provides water meter reading services. Its largest customer is the City of Detroit. This case involves employees who worked in the underground utility division. The record establishes that the Respondent, when repairing or replacing water lines or other underground utilities in the City of Detroit, often has to excavate a portion of the roadway, replace or repair water pipes, and restore the road to its original condition. When performing work on public roadways, the Respondent is responsible for controlling traffic. In May 2009, the Respondent employed a total of approximately 100 employees in all of its divisions.

At the times material to this case, Bobby Ferguson was Respondent's president and Al White was the project executive, reporting directly to the president. The field superintendents were Miles Reynolds Sr., Fred Erdman, and Cara Woods. Sherrie Kay Bonds was the Respondent's accounting/office manager and Gwendolyn Young was the human resources director.³

The Respondent performs its underground utility work through the use of crews numbering approximately five to six employees. The field superintendents assign and responsibly direct the work of the various crews. A nonsupervisory foreman is a conduit between the field superintendent and the remaining members of the crew. The foreman also has responsibility for preparing production reports on a daily basis reflecting the type of work a crew performed and what was accomplished. While the record establishes that several of the Respondent's employees are members of various unions, there is no evidence that the employees involved in this case performed

their work under the terms of a collective-bargaining agreement between the Respondent and a union.

B. The Prevailing Wage Claim

Charging Party Lapham testified that he began working for the Respondent in January 2007, as an operating engineer in the underground utilities division repairing and replacing water mains. After approximately 3 weeks, Lapham was assigned to the crew of Foreman Miles Reynolds Jr. The other members of this crew in May 2009, were William Lewis, David Hall, and George Cook.⁴ Hall became a member of this crew in approximately May 2008, and Cook joined the crew in December 2008.

When Lapham was first hired his pay stubs reflected that he was being paid vacation and holiday pay. After being employed approximately 3 months, Lapham received a phone call from Reynolds Senior who told him that because he was not in a union, holiday and vacation pay would no longer be reflected in his check. Thereafter, Lapham's checks no longer reflected that he was receiving vacation or holiday pay. According to Lapham, before these payments stopped, his paychecks reflected approximately \$1700 in such payments.

While the record does not indicate Lapham ever worked under the provisions of a collective-bargaining agreement while he was working for the Respondent, the Respondent apparently paid holiday, vacation pay, and health insurance and pension benefits to employees who were members of a union. Lapham testified he was not a member of a union. Hall was also a non-union employee, while Reynolds Junior, Lewis, and Cook were union members.

Lapham testified that since 2007, he had discussed on numerous occasions whether he was being paid correctly and the fact that he was not receiving payments for fringe benefits with other employees of the Respondent, including Reynolds Junior, Lewis, and Hall.⁵

At the end of February 2009, Lapham undertook a Google search regarding whether there was a prevailing wage for work performed for the Detroit water department. On the department's website he saw information that appeared to him to indicate that work performed under contracts with the City of Detroit was to be paid in accordance with the Davis-Bacon Act prevailing wage provisions. Lapham called the Detroit water department and was directed to the contracts and grants department. Lapham was informed that employees working on jobs performed for the Detroit water department were to be paid the prevailing wage by their employer.

After obtaining this information, Lapham spoke to Hall. Lapham knew from previous discussions with Hall that he was

citing *NLRB v Universal Camera Corp*, 179 F 2d 749, 754 (2d Cir 1950), rev'd on other grounds 340 U S 474 (1951)

³ I find that all of the individuals named above are supervisors of the Respondent within the meaning of Sec. 2(11) of the Act and agents of Respondent within the meaning of Sec. 2(13) of the Act. The complaint alleges, and the answer admits, that Ferguson, White, Reynolds Sr., Erdman, and Young are supervisors and agents of the Respondent within the meaning of the Act. The record establishes the supervisory authority of Woods and Bonds

⁴ Miles Reynolds Sr is the father of Miles Reynolds Jr and the step-father of David Hall

⁵ Lapham's testimony on this point is corroborated by Lewis. Lewis testified that he is a member of a Laborers Union and that the Respondent paid him fringe benefits, including health insurance and pension benefits through the Union's plan. Lewis testified that in late 2007 or early 2008, Lapham began to have numerous conversations with him, Hall, and Reynolds Junior regarding the fact that Lapham felt that nonunion employees like himself should be receiving a specified wage rate (Tr 100-103)

also not a union member and was also not being paid wages and benefits that employees who were union members were receiving. Lapham asked Hall if he was interested in filing a prevailing wage claim against the Respondent and Hall indicated that he was. Lapham and Hall then called the Detroit water department and were told that in order to start an investigation they needed to come to the office with pay stubs and the names of the streets that they had worked on. The individual they spoke to indicated that after obtaining this information, the water department would then start an investigation.

That same day, Lapham had a phone conversation with Reynolds Senior and informed him of "my intentions to pursue prevailing wage claims" (Tr. 26). Reynolds Senior asked him to hold off filing a claim. Reynolds Senior told Lapham that he wanted to see if there was a way a representative of the water department could independently come to a jobsite and investigate how employees were being paid so that "no one would have to stick their necks [sic] out to start a claim" (Tr. 25). Lapham did not accede to this request⁶

On March 2, 2009, Lapham and Hall met with Daniel Edwards, the construction contracts manager for the Detroit water and sewage department, and Gerald Moore, an analyst in charge of construction contracts. Lapham and Hall brought paycheck stubs and the name of the streets that they had worked on for the Respondent.⁷

At the hearing, Edwards testified that he handles all prevailing wage claims for the Detroit water and sewage department. He indicated that Detroit has a prevailing wage ordinance covering all public projects. He explained that the prevailing wage ordinance requires that an employer working on a public project must pay both a specified hourly rate and fringe benefit payments established by the State of Michigan. There is a schedule prepared by the State indicating the wage rate for numerous job classifications. The employer must pay the specified rates regardless of whether the employees are represented by a union. Edwards indicated that as part of the prevailing wage the employer must pay a specified amount of money attributable to fringe benefits such as retirement, health insurance, and vacation pay. While the employer does not have to provide a retirement plan or health benefits, it must pay the specified amounts for fringe benefit payments to the employees. Edwards indicated that the underlying premise behind such a program is that an employee can then purchase such benefits as an individual.

Edwards testified that when he met with Lapham and Hall on March 2, 2009, they had the pay stubs that they had been requested to bring. He explained to them that he would obtain certified payroll records from the Respondent and undertake an investigation to determine whether they had been properly paid. He indicated that after the investigation was complete, letters would be sent to Lapham, Hall, and the Respondent notifying

them of the results of the investigation. Lapham and Hall expressed concern about their jobs being jeopardized because they were filing a claim. Edwards indicated to them that their identity would not be disclosed to the Respondent until a letter was issued to explain the results of the investigation.

After meeting with Lapham and Hall, Edwards obtained certified payroll records from the Respondent in late March. A review of the payroll records established that both Lapham and Hall were underpaid pursuant to the provisions of the prevailing wage ordinance.

Lapham testified that on May 15, 2009, he received a phone call from an individual at the Detroit water and sewer department. Lapham was informed that the director of the water and sewer department had signed a letter regarding his prevailing wage claim and that he could come to pick it up. Lapham met Hall at the water and sewer department office. A former employee of the Respondent, John Laginess, who independently filed a prevailing wage claim was also present. At the meeting, Lapham was given a letter dated May 13, 2009, signed by the interim director of the Detroit water and sewage department, regarding the investigation into his claim. The letter indicated that the investigation revealed that, using the correct prevailing wage rate for 2007 and 2008, Lapham was owed \$71,490.28 (GC Exh. 4). On the same date Hall was also given a similar letter dated May 13, 2009, informing him that using the correct prevailing wage rates for 2005, 2006, 2007, and 2008, he was owed \$56,235.93 (GC Exh. 5). The individual that Lapham and Hall met with informed them that the Respondent would be called on Monday, May 18, to pick up its letter.

On May 14, 2009, the interim director of the Detroit water and sewer department signed a letter addressed to Bobby Ferguson, the Respondent's president, and Nafa Khalaf, Detroit Program Management JV Team, LLC.⁸ The letter indicated in relevant part:

The Detroit Water and Sewerage Department (DWSD) has completed an investigation into claims that Ferguson Enterprises, Inc. (FEI) is not paying three (3) employees prevailing wage rates as required in the above mentioned construction contracts. DWSD has determined that the assertion is correct based on the information submitted with the claims. A copy of the prevailing wage breakdown spreadsheets and pay stubs in question for David Hall, John Laginess, and Joseph Lapham, employees for FEI, are attached for your information and review.

The attached spread sheets reconcile the paystub hours for regular and overtime (time and a half). Using the correct prevailing wage rate for 2005, 2006 2007 and 2008 yields a total prior to deductions and taxes of \$56,235.93 for David Hall. Using the correct prevailing wage rate for 2006, 2007 and 2008 yields a total amount owed prior to deductions and taxes of \$ 33,607.80 for John Laginess. Last, utilizing the correct prevailing wage rate for 2007 and 2008 yields a total amount owed prior to deduction and taxes of \$71,490.28 for Joseph Lapham.

⁶ Lapham's testimony regarding this conversation is uncontroverted as Reynolds Senior was not called as a witness by the Respondent

⁷ I credit the uncontradicted testimony of Lapham with respect to his discussions with other employees about the issue of prevailing wages and the filing of the prevailing wage claim. His demeanor and the record as a whole convince me he was truthful. David Hall was not called as a witness by the General Counsel

⁸ The record does not indicate Khalaf's role with the Respondent

DWSD will be withholding further payments on all of the above-mentioned contracts until FEI and DPM come into compliance with the terms and conditions of the contract by paying the employees in question, all other laborers, and all other classifications of laborers the correct prevailing wage rates and retroactive pay for previous years when FEI and DPM and/or its subcontractors did not fulfill its obligations.

DWSD anticipates that all wages paid from this date forward will be the Prevailing Wage Rates. Please provide DWSD with a signed waiver and copies of checks and related check stubs issued to all affected employees demonstrating payment of previous (retroactive) prevailing rates of, and copies of current checks and related check stubs with the correct hourly wage rate shall. When this document is received and verified, payments(s) will be released. (Jt. Exh. 1.)

Edwards testified that the Respondent received this letter on May 18, 2009, when it was picked up from him by Bernard Parker, the Respondent's business development person.⁹

C. The Accident on May 15, 2009

On May 15, 2009, a crew composed of Foreman Miles Reynolds Jr., Lapham, Hall, Lewis, and Cook (herein referred to as the Reynolds Junior's crew) was working at a jobsite on Livernois Avenue in Detroit. According to Lapham's credible testimony, the Reynolds Junior's crew had been working on that site for approximately 2 weeks. On May 15, there was also a concrete crew assigned to this project whose foreman was James Lauderdale. According to the production sheet signed by Lauderdale on that date, the other members of his crew were J. Herrod, W. Chastang, A. Robinson, and David Robinson (GC Exh. 17).

Livernois Avenue runs in a north and south direction. In the area where the work was being performed, there are three lanes in each direction with a middle turning lane (Jt. Exh. 14). Prior to May 15, the Respondent's employees had dug three trenches (sometimes referred to as cuts) across Livernois Avenue, replaced water pipes and placed backfill into the cut so that traffic flow could be restored. The cuts were approximately 10 inches deep and 5 to 6 feet wide. The length of the cuts varied.

The work that was to be performed on May 15 involved first removing backfill from the three cuts that had previously been dug across Livernois Avenue. Steel rebar was then to be inserted into the trenches to give the cement the necessary strength and the trenches would then be filled with concrete. Finally, metal plates would be placed over the trenches. The metal plates allow traffic flow to be restored and protect the concrete until it cures.

At approximately 7 a.m. on the morning of May 15, Superintendent Fred Erdman met with Foremen Reynolds Junior and Lauderdale to discuss how traffic control was to be set up that day. According to the credited testimony of Reynolds Junior, Erdman was sitting in his truck and Reynolds and Lauderdale were standing next to it. Erdman directed Reynolds Junior and Lauderdale as to how he wanted the traffic barrels set up.

⁹ Lapham testified that he received a phone call from the water department on May 18 informing him that a representative from Ferguson had picked up the "paperwork" on the prevailing wage claims

Erdman directed them to place directional signs at each end of the approximately 2000 foot-long project. He indicated that the traffic barrels were to be placed in such a way as to "taper" the traffic into the lane closest to the curb in each direction. In this way the two crews could work on the middle section of the road first.¹⁰

Reynolds Junior testified that he told Erdman that there were not enough barrels to set up the traffic flow. Erdman replied that there were enough and this is how he wanted to do it (Tr. 233). Reynolds Junior then gave directions to the crews as to how the barrels were to be placed. Lapham, Reynolds Junior, and Lewis all testified without contradiction that the concrete crew worked together with their crew in setting up the barrels.

Respondent's safety representative, Boyer, testified that he was involved in setting up the traffic control on May 15 at the Livernois jobsite. He testified that Andre Robinson and David Robinson were the two "flaggers"¹¹ assigned to the jobsite that day. Boyer testified that he placed David Robinson at an intersection of Livernois and a side street where a substantial amount of truck traffic was located. The other flagger, Andre Robinson, was not given a specific assignment by him.

After the barrels were set up both crews started working at the north end of the jobsite. They finished filling in the two cuts in the middle of the road. It is undisputed that later in the morning Erdman and Boyer returned to the jobsite. After reviewing the traffic flow set up, Erdman told Reynolds Junior that it looked good.

After lunch, the third cut had been partially filled in but one more cement pour was necessary in order to complete the work in filling up the cut. While waiting for the cement truck to arrive to pour the remainder of the cement in the cut on the south side of the project, Lauderdale and Reynolds Junior decided that the barrels should be moved in a manner to allow work on the project to continue. They decided that the Reynolds Junior's crew should move to the middle cut of the project and began to excavate the backfill in the far western lane. (Traveling south this was the far right-hand lane by the curb.)

According to Reynolds Junior, he and Lauderdale decided to move the barrels in the following manner in order to keep both crews working. As traffic entered the construction zone from

¹⁰ I do not credit Erdman's testimony that he gave directions only to Reynolds Junior on the morning of May 15. I find Reynolds Junior's version of this conversation to be the more credible one. The testimony of Reynolds Junior that Erdman gave directions regarding the traffic control to both himself and Lauderdale is corroborated by the testimony of William Lewis and George Cook. Both Lewis (Tr. 112) and Cook (Tr. 146) testified that they saw Erdman speaking to both Reynolds Junior and Lauderdale early in the morning before the job started. Lauderdale did not testify at the trial. I note that throughout his testimony, Erdman appeared to overstate the involvement of Reynolds Junior and his crew and diminish the involvement of Lauderdale and his crew in the accident that occurred on May 15. In addition, Erdman's claim that he gave a sketch of the traffic control pattern he wished to establish that day to Reynolds Junior is contrary to the testimony of Isaac Boyer, the Respondent's safety representative. Boyer testified that he was present when Erdman met with the crews and that Erdman did not give a sketch to them (Tr. 579).

¹¹ As the title denotes, flaggers are employees whose primary duty is to direct traffic.

the north an arrow board directed it into the center lanes. This was necessary because the Reynolds Junior's crew was going to be preparing the portion of the middle cut in the western most lane for concrete. Before traffic reached the southern most cut where Lauderdale's crew was working, the barrels were placed to direct traffic back over to the right-hand curb lane to go past the area where Lauderdale's crew was working.¹²

According to Reynolds, he called Erdman to tell him that the barrels were being moved but did not reach him and left a message (Tr. 239–241). Reynolds Junior indicated that when he was not able to reach his superintendent on a previous job on 8 Mile Road in Detroit to notify him that he wanted to rearrange the barrels, he used his discretion to determine the placement.

Lapham testified that later in the day on May 15, the cement work had not been completed in the southern most cut. He was told by one of the foreman that the concrete crew had run out of cement. Reynolds Junior instructed Lapham to block traffic with his front-end loader at the north end of the jobsite. From there Lapham observed Reynolds Junior direct members of his crew and the cement crew to move some barrels so that the traffic was shifted in a manner that would allow the Reynolds Junior's crew to begin excavating the right curb lane (heading south) of the middle cut in the project.¹³

After the barrels had been rearranged, a car drove into the unfilled portion of the southern most cut. The driver was heading south when the accident occurred. The mutually corroborative testimony of Reynolds Junior, Lapham, Cook, and Lewis establishes that at the time of the accident the Reynolds Junior's crew was working in the right curb lane of the middle cut in the project, north of the accident.¹⁴

Cook first observed that a car had driven into the southern most cut. Both he and Reynolds Junior called Erdman and informed him of the accident. Consistent with the Respondent's policy, as a foreman on the job, Reynolds Junior took pictures of the accident scene with a company issued camera (Jt. Exhs. 7–14). After taking the photographs, Reynolds Junior testified he was securing his machine off the road when one of the employees informed him that White wanted to see him at the accident scene. According to Reynolds Junior, by the time he arrived at the accident scene, White had left. Reynolds Junior testified he spoke to Erdman. Erdman stated that he had never seen anything like this "and somebody is going to get fired for it." Erdman said there were cars parked in the middle of the road confusing people as to which way to go (Tr. 254). Erdman asked Reynolds Junior what happened. Reynolds Junior responded that the car drove into the cut where employees were working. Erdman stated that "somebody is going to go down for this." Reynolds Junior testified he felt Erdman was being accusatory and responded that "We're down here, working. I ain't down there, so I don't know what's going on down

there and can't control what's going on down there. It's another crew down there." Erdman responded "well, somebody is going down for this. Somebody is going to get fired for this." (Tr. 250–252.)¹⁵ The record establishes that two of the vehicles parked by the accident scene belonged to Lauderdale's crew and none belong to the Reynolds Junior's crew (Tr. 256–257).

Erdman testified that he approached the accident scene on May 15 traveling south on Livernois. In his view, the lane closure was established in a way in which drivers could not be certain where to go (Tr. 450). Erdman testified that "30 seconds" after arriving on the jobsite he determined that Reynolds Junior and his crew had engaged in unsafe working practices. He testified he placed Reynolds Junior in charge of traffic control and he did not follow his instructions. Erdman indicated he held the remainder of the crew responsible because they participated in setting up a negligent and unsafe situation. He testified he did not hold Lauderdale or his crew responsible because they were working in the area that they should have been. Erdman testified that he told White at the accident scene that he had not seen such negligence in all his years in the business and "as far as I'm concerned, if I had my way, I'd fire them all right now" (Tr. 480). Erdman testified that White told him to calm down and that they would talk about it after the weekend (Tr. 547–548).

Boyer testified that he received a phone call from White telling him there had been an accident on the Livernois Avenue job and he returned to the site. When he arrived, he observed that the accident was at the southern most cut on the jobsite. Boyer spoke to employee Andre Robinson and asked him what had happened. Robinson indicated that the car had come between the barrels that had been set up and was coming toward him. Robinson said he moved out of the way after almost being hit and the car then went into the cut. Robinson had been trying to stop the car from coming through the barrels by waving his hands and yelling. (Tr. 566–567.) Boyer took a series of photographs of the scene after the accident. (R. Exhs. 1–4.) Before leaving the accident scene Boyer spoke briefly to Don Spencer, a project manager for the Respondent, who was present at the accident scene and reminded him to get witness statements.

D. The Investigation into the Accident

Consistent with Respondent's policy that foremen write a report of an accident, Reynolds Junior prepared a report regarding the accident of May 15 over the weekend. The following Monday, May 18, he submitted his statement to Tanisha Gibbs, a project assistant for the Respondent. Because he wrote his report on an older form, Gibbs rewrote it on the current "Employee Report of Incident" form which Reynolds then signed. (GC Exh. 3.) Reynolds Junior's report indicates:

¹² Reynolds Junior's testimony regarding his discussion with Lauderdale is uncontroverted and I credit it.

¹³ The testimony of Lewis corroborates this fact.

¹⁴ There is a discrepancy in the estimated distance between the two cuts. Lewis estimated the distance to be about 200 yards (Tr. 111). Reynolds estimated the distance to be approximately 250 to 300 feet (Tr. 246). It appears that the accident occurred 100 to 200 yards away from where the Reynolds Jr. crew was working.

¹⁵ I credit Reynolds Junior's version of this conversation over that of Erdman. Reynolds Junior's testimony was consistent on both direct and cross-examination (Tr. 374–375). Erdman testified that he spoke to Reynolds on his cell phone. He did not relay any details about the conversation (Tr. 447). Because of its detailed nature and its consistency, I find Reynolds Junior's version of the conversation to be more credible.

Traffic was running in the far right lane, and the car went out of lane around the line of barrels and into the construction area where we were working, car drove into the trench. The driver was not paying attention when he drove around the barrels into the area where we were working. He could have injured worker or aorse [sic].

Paragraph 4 of the form asked "How could the incident been avoided? What could you have done differently? Reynolds Junior's report indicated "Put more barrels out, that's it. Could have put caution tape from barrel to barrel. But that's not a requirement."

Safety representative Boyer¹⁶ submitted the photographs he took at the accident scene and an "Employee Report of Incident" dated May 18 to Gwen Young, the human resources director. His report noted the time of the incident as 2:40 p.m. and indicated:

Ferguson concrete crew were pouring road cut on Livernois, the crew had the road barricade [sic] from north to south one lane each way, a driver in a car Road [sic] between the barrels [sic] going south and ran in an open hole that were [sic] barricaded off. Ferguson concret [sic] crew had a traffic control person posted by the barricans [sic] he tried to stop the car.

With respect to the questions asked in paragraph 4 as noted above, Boyer responded "Add more barriers [sic] and one more flag person." (GC Exh. 8.)¹⁷

Young directed Boyer to obtain a statement from Lauderdale and his crew regarding the accident. At the hearing Boyer identified (GC Exh. 9) as the statement he took from Lauderdale's crew. This document is dated May 18, 2009, and indicates "concrete crew" next to "witness name." Under the provision that asks the witness to fully explain how the accident occurred, it merely states "same." Boyer explained that the reference to "same" referred to the report that Boyer had written (GC Exh. 8).

Young testified that Project Manager Donald Spencer submitted statements to her from two nonemployee witnesses (Tr. 634). These statements are titled "Witness Statement of Incident." The first one is an unsigned statement from Angel Ortiz dated May 15, stating in relevant part:

Mr. Ortiz seen [sic] the car in the trench after (unintelligible) the accident. Witness stated that the driver drove the car inside the construction barrels. There were 2 trucks parked on

¹⁶ Boyer testified at the hearing that he is the only person at the Respondent who is responsible for conducting investigations of accidents that occur on a jobsite. In his approximately 10-year career he has investigated 12 or 13 accidents. Boyer indicated that if he finds a safety violation resulted in an accident, he writes a safety violation report to Respondent's human resources department, which would then decide if discipline was warranted. Boyer did not report a safety violation regarding the accident on May 15 (Tr. 579-580). He also indicated that individuals at the foreman level or above can also report safety violations (Tr. 584-585).

¹⁷ Boyer testified at the hearing that he answered in that fashion because that is what the crew on the site indicated to him. In his opinion, there were a sufficient number of barrels present at the jobsite (Tr. 581).

the inside of the barrels one was brown and the other white Somat truck. [sic]

Paragraph 4 in the statement asks "How could the incident been avoided? [sic] What could have done differently? [sic] The statement indicated "FEI could have added more barrels and additional flag person." Under additional comments or observations the report indicated "He stated the incident look (sic) like it was driver's fault." (GC Exh. 6.)

The second statement is also an unsigned statement taken from Bob Allor which indicates, in relevant part:

I was on site to test the concrete for DWSD while I was waiting for the load of concrete to arrive on site. I was sitting in my vehicle inside the construction barrels half between the light and end of the construction zone with my hazard lights on my truck. When I noticed a car driving from the far right lane (which was the detour lane) in between the barrels disregarding the lane closure and drive [sic] into the trench. He was clearly in the wrong for his action by drive [sic] between the barrels (GC Exh.13).

Erdman testified that he had a meeting with White on May 19 or 20 in White's office regarding the accident. At that meeting Erdman again recommended that Reynolds and his crew be fired. According to Erdman, White replied that he did not really know what had gone on and that he did not know what would be done regarding discipline. White told Erdman that they were going to investigate the matter. (Tr. 547-548.) Erdman testified that when he left the meeting he did not know what decision was going to be made with respect to discipline. After the meeting, Erdman read the incident reports that had been filed by Respondent's employees but did not see the third party witness reports. He did not give White a summary of the incident reports.

After being contacted by a representative of the insurance company of the driver who had been involved in the May 15 accident, Young asked Lauderdale to complete a witness statement. In a report dated October 9, 2009, Lauderdale's statement indicates that he had David Robinson "flagging" and all cars went into the right lane as ordered. The statement further indicated that one car went left into the barrels for no reason and drove into the hole where his crew was working. (GC Exh. 12.)

Young testified that she maintained the incident reports and witness statements and file (Tr. 634). She had no personal knowledge as to whether White or Bobby Ferguson ever reviewed the file. There is also no evidence that anyone in Respondent's management ever reviewed the photographs taken by Reynolds Junior and Boyer.

E. The Meeting of May 26

White assigned the Reynolds Junior's crew to work on a job on Nevada Street in Detroit the entire week of May 18 to 22. By the end of the week the crew had not completed its work on that job. Over the weekend of May 23 to 25 (Memorial Day weekend), White called Reynolds Junior and told him to contact his crew and have them come to the office on Tuesday, May 26. White informed Reynolds Junior that his crew was being suspended because of the accident. Reynolds Junior con-

tacted his crew, with the exception of George Cook, who was on vacation and informed them they were being suspended because of the accident and were to report to a meeting at Respondent's office on May 26.

Lapham testified that he met with Lewis Hall and Reynolds Junior at the office at approximately 1 p.m. The employees were directed to a conference room. Reynolds Senior and Young were present in the conference room. Lapham testified that Reynolds Senior commented "You guys know this has nothing to do with a safety violation. This has to do with you guys filing prevailing wage against Ferguson." (Tr. 51-52, 85.) The employees expressed agreement with that statement. Reynolds Senior then stated that "stick to your story, you know, you guys didn't do anything wrong out there that day." Young was present but did not say anything during this exchange.

Young then showed that the employees who were present individual identical forms (Jt. Exhs. 3, A, C, D, and E).¹⁸ The form was entitled "Notice of Safety Violation" and indicated:

On May 15, 2009, the driver drove his vehicle into an unattended open trench that [sic] was not sufficiently barricaded. Reasonable precautions were not made to eliminate any recognized safety hazards that existed as a result of leaving the open trench unattended and protect the open trench from accidental entry. This is a violation of the company's safety policies and procedures.

The form indicated that the named employee was suspended until further notice. Young indicated that the employees did not have to sign them if they chose not to.

After Young showed the employees the form, Erdman and Boyer walked in and Reynolds Senior left the conference room. When Erdman walked in he said he just found out about the meeting that morning from Young. He said that a big mistake had been made the day of the accident. He stated that he told the two foremen that morning how to set up the job and could not understand why the barrels had been set up differently. Reynolds Junior responded by saying that he had told Erdman there were not enough barrels to set up in the proper way. Erdman responded to Reynolds but Lapham did not recall the response. Erdman stated he had not seen anything so bad during his entire career as superintendent. Lapham indicated that if the meeting was about the accident, why wasn't Lauderdale's crew present. Boyer indicated that they were calling them in the next day. (Tr. 55-57.)¹⁹ The safety violations were then presented to the four employees. They were all signed by Erdman and Young, but the employees refused to sign them.

Before the end of the meeting, Erdman drew a diagram for the employees and said he specifically had indicated to set traffic control in that way, but that it was switched and set up another way. Erdman repeated that the two foremen were at fault. Reynolds Junior asked how long they were suspended for. Erdman replied that it was up to White. Reynolds asked Erdman if they could speak to White. Erdman said he would see if White would speak to them. When White arrived, Rey-

nolds asked him how long the suspension was for. White replied indefinitely and then told the employees to get off the property.

Lewis testified differently than Lapham with respect to portions of the meeting. On direct examination, Lewis testified that when the employees arrived at the conference room, Reynolds Senior and Young were present. On direct examination, Lewis testified that he asked "Why are we here over this accident when we know it's not. It's over the prevailing wage that Joe and David Hall signed up for. According to Lewis, Reynolds Senior said that he knew that and Young also stated that she understood that but "they had to do this under the safety violation" (Tr. 118).

Lewis testified that after Reynolds Senior left the room, Erdman and Boyer entered. Lewis told Erdman that "This isn't about the safety incident. It's over prevailing wage and two guys signing up for the union" (Tr. 119).²⁰ Erdman responded that we have to record this as a safety violation. Erdman then indicated that the safety violation was that he told both of the foremen to set up the barrels in a specified manner and they did not follow his directions.

On cross-examination, Lewis testified that, in responding to the statement that Lewis made about the prevailing wage claim, Reynolds Senior stated "you have to go through it as a safety violation" (Tr. 133). Lewis testified on cross-examination that Young merely responded by saying that White wanted her to proceed with this as a safety violation. When I questioned Lewis about what Reynolds Senior said, he responded that Reynolds Senior stated "you guys got to go through with this way. Just follow the channels." (Tr. 138.) Finally, on recross-examination Lewis testified as follows:

Q. BY MR. MOORE: Did Miles Reynolds Senior say "You're right" or, "That's exactly what this is" I mean again as best you can recall of his words.

A. Yeah, I don't recall him making any comment other than "Follow this is the way it's going" (Tr. 139).

Reynolds Junior testified that after he and the other employees were in the conference room, Reynolds Senior came into the room. He did not recall anything specific about what Reynolds Senior said, but he did indicate that Reynolds Senior did not say anything about the reason they were there. (Tr. 299-300.)

To the extent that the testimony of the three General Counsel witnesses conflicts, particularly with respect to the portion of the meeting involving Reynolds Senior, I credit the testimony of Lapham. In addition to his forthright demeanor, he testified consistently on both direct and cross-examination. He also recalled with specificity details of the meeting such as exactly where individuals were seated.

On the other hand, the testimony of Lewis substantially varied between direct and cross-examination. As noted above, on direct examination Lewis testified that both Reynolds Senior and Young indicated assent with the statement that Lewis testified he made regarding the underlying purpose of the meeting

¹⁸ Cook was mailed his suspension notice (Jt. Exh 3B)

¹⁹ There is no evidence in the record indicating that anyone from Lauderdale's crew was disciplined for the accident

²⁰ Lewis testified that Lapham and Hall told him that they had signed up for the union the week of May 15

being the prevailing wage claim. On cross-examination a fair reading of his testimony does not indicate anything that would establish that Reynolds Senior specifically agreed with his alleged statement. The testimony of Lewis, however, is consistent with that of Lapham with regard to the participants who were present and the order in which topics were discussed. I credit his testimony only to that extent.

As noted above, Reynolds Junior did not recall any details of the discussion when Miles Reynolds Senior was present. He also did not recall Boyer being present at the meeting or meeting with White at the end. Because of the lack of detail in his testimony regarding this meeting, I do not credit it. In this portion of his testimony, he appeared to testify in a way that would limit the involvement of Reynolds Senior in this matter. In sum, I credit Lapham's testimony with respect to what happened at this meeting, including the portion attended by Erdman and Boyer as I consider it to be the most reliable version.²¹

Young testified that White instructed her to prepare the suspension notices on May 22. (Tr. 637–638.)²² White gave Young a description of what occurred but the actual language on the notice was written by her. Young testified that she met with Boyer before drafting the notice, but she did not indicate what input he had regarding the language. Finally, Young testified that she was not present when the decision to discipline the Reynolds Junior's crew was made (Tr. 639).

Erdman testified on direct examination that the purpose of the meeting on May 26, was to suspend the Reynolds Junior's crew because of unsafe working practices (Tr. 467). As noted above, he indicated he made the decision that they had engaged in unsafe working conditions "30 seconds" after he arrived on the scene on May 15. With respect to the meeting on May 26, he testified he spoke only to Young and Reynolds Junior at the meeting and that he had very little to say.²³ Erdman testified that at this time he did not know that any of the crew members had filed a prevailing wage claim with the City of Detroit.²⁴

On cross-examination, Erdman testified that he was not involved in the preparation of the suspension notices dated May 22, and did not know specifically who had made the decision regarding the suspensions. He was told by Young on the morn-

ing of May 26, that he was to give the suspension notices to the Reynolds crew (Tr. 491).

F. The Layoffs of June 4

On June 4, 2009, identical letters signed by Young were sent to Reynolds Junior, Lapham, Hall, Lewis, and Cook stating:

Because of lack of work, it will be necessary for the Underground Earth Work, Underground Utilities Division to reduce the number of its employees. Therefore, this is to notify you that you were laid off effective June 5, 2009. (Jt. Exhs. 5A–E.)

Sherry K. Bonds, the Respondent's accounting manager/office manager, testified that the Respondent employed a total of approximately 100 employees in May 2009, but by December 2009, this number had been reduced to approximately 50 through layoffs. In May 2009, the Respondent had approximately three contracts with the City of Detroit, its largest customer, but by December 2009, this had been reduced to one contract. Bonds testified that she was not involved in any of the layoff decisions.

Erdman was the only witness called by the Respondent to testify regarding the reasons for the lay off of the Reynolds Junior's crew Erdman testified that the Reynolds Junior's crew was laid off due to a lack of work. The decision to lay them off was made by a group composed of White, Erdman, Reynolds Senior, and Cara Woods, but that White made the final decision. Erdman indicated that this group meets every Wednesday to discuss projects. He further testified that the decision to lay off the Reynolds Junior's crew was made at one of the weekly meetings a couple of days before the layoff notices were issued.²⁵ Because of a shortage of work, a decision was made to lay off an entire crew. At the time of the layoff decision there were eight different utility crews. The group knew that they would be cutting a utility crew because 95 percent of the work was utility work. According to Erdman, the group reviewed production records in determining which crew to lay off. The Reynolds Junior's crew was the only entire crew to be laid off at that time. While five other employees were laid off at the same time, Erdman indicated that the group looked at the "work ethic" of the other individuals in determining who to lay off. Erdman testified that the May 15 accident was not discussed at the time of the layoff of the Reynolds Junior's crew. He further indicated that there was no discussion of their prevailing wage claim at that time and that he was not even aware of the filing of such a claim.

Erdman's testimony was inconsistent regarding the time-frame that was considered when selecting Reynolds Junior's crew for layoff. He first testified that their productivity was considered since approximately June 15, 2008 (Tr. 532–533). Thereafter, he testified that production records were considered from the beginning of 2009, "or even farther than that" (Tr. 540–541). Finally, Erdman indicated that the only production records actually reviewed at the meeting where the layoff decision was made were those for the preceding week. He admitted

²¹ In determining what occurred at this meeting, I note that Reynolds Senior was not called as a witness by the Respondent. While Young testified in the Respondent's case in chief, she was not asked any questions about the specific statements that were made at this meeting.

²² White was not called as a witness by the Respondent.

²³ To the extent that Lapham's testimony conflicts with Erdman's, I credit Lapham. As noted above his testimony was both detailed and consistent. Erdman's testimony regarding the meeting was very brief and lacking in detail.

²⁴ Erdman testified inconsistently with respect to his knowledge of the filing of a prevailing wage claim. On direct examination Erdman testified that he had no knowledge of any employees of the Respondent filing a claim for prevailing wages (Tr. 472). On cross-examination, he admitted that he knew of the prevailing wage claims that Lapham, Hall, and former employee Laginess had filed but claimed he did not know about their existence until approximately November 2009 (Tr. 494). Because of his inconsistent testimony on this critical matter, I do not credit his denial that he was unaware of the filing of the prevailing wage claims of Hall and Lapham at the time of the May 26 meeting.

²⁵ The two Wednesdays preceding the layoff notices were June 3, 2009, and May 27, 2009.

that the Reynolds Junior's crew was suspended during this period and did no work (Tr. 543). Erdman claimed, however, that the group knew what the production rates were from their previous meetings.

Erdman testified that, depending on the work assigned, the weekly production records measured the amount of footage of pipe installed, or the linear footage of trenches that were dug or the square footage of concrete poured. (Tr. 523–525.) These records are compiled by the Respondent's project assistant from the daily timesheets of utility crew foremen. The record indicates, however, that foremen do not always enter complete information on the timesheets. Erdman testified that Respondent can obtain such information from reports prepared by an inspector from the Detroit water department. The records from the water department are obtained only when requested by the Respondent and Erdman did not know how often they were requested. Importantly the Respondent did not introduce any weekly production records to support Erdman's testimony.

Respondent did introduce letters establishing that it laid off seven utility employees on May 26, 2009, for lack of work. On June 4, 2009, in addition to Reynolds Junior's crew, the Respondent laid off another five utility crew employees for lack of work. On September 28, 2009, another five utility crew employees were sent layoff notices indicating they were laid off for lack of work. (R. Exh. 5.)

The record also indicates, however that after the Reynolds Junior's crew was laid off, some utility crews worked some overtime. (GC Exhs. 20, 21, 27, 29, 31–45.) One utility employee, T. Levi was recalled from layoff after May 2009.

G. *The Resolution of Lapham's Prevailing Wage Claim*

On June 9, White called Lapham and said that he would like to meet with him to try and resolve the prevailing wage claim. Lapham met with White who offered \$15,000 to resolve the claim. Lapham rejected the offer. There was no discussion of Lapham's layoff for suspension at this meeting. On June 11, Lapham and White again spoke by phone. White said that the Respondent needed to get the case resolved that day. Lapham said he was willing to settle for \$68,000. White called back later and agreed to pay that amount. Lapham met White at Respondent's office and received a check in that amount. Again, there was no discussion of Lapham's suspension or layoff. The record does not indicate the resolution of Hall's prevailing wage claim.

III. ANALYSIS AND CONCLUSIONS

A. *The May 22 Suspensions*

Section 8(a)(1) of the Act indicates that it is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7 of the Act. Rights guaranteed by Section 7 of the Act include the right to engage in concerted activities for the purpose of mutual aid or protection.

In *Benjamin Franklin Plumbing*, 352 NLRB 525, 536–537 (2008), the Board approved the use of a *Wright Line* analysis for 8(a)(1) allegations that turn on motive, in finding the discharge of two employees violated Section 8(a)(1) of the Act. See also *TLT Babcock Inc.*, 293 NLRB 163, 167 (1989). In

Wright Line, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 395 (1983), the Board established a framework for deciding cases turning on employer motivation. To prove an employer's action is discriminatorily motivated and violative of the Act, the General Counsel must first establish, by preponderance of the evidence, and employee's protected conduct was a motivating factor in the employer's decision. The elements commonly required to support such showing are union activity by the employee, employer knowledge of the activity, and, at times, anti-union animus on the part of the employer. If the General Counsel is able to establish a prima facie case of discriminatory motivation, the burden of persuasion shifts "to the employer to demonstrate the same action would have taken place even in the absence of the protected conduct." *Wright Line*, supra at 1089. Accord: *Cibao Meat Products*, 338 NLRB 934 (2003).

In the instant case, the General Counsel contends that the Respondent violated Section 8(a)(1) of the Act by first suspending, and then laying off, Lapham, Hall, Cook, Lewis, and Reynolds Junior (the Reynolds Junior's crew) because of the protected concerted activity of Lapham and Hall in filing a prevailing wage claim against the Respondent.

The Respondent contends, in essence, that (1) the evidence does not establish that Lapham and Hall were engaged in protected concerted activity and (2) even if the conduct of Lapham and Hall was concerted, there was no knowledge of the concerted nature of their conduct in filing prevailing wage claims. The Respondent also argues that if I should find that the General Counsel has established a prima facie case, the Respondent has established a valid *Wright Line* defense. In this regard, the Respondent contends that it would have suspended and laid off the Reynolds Junior's crew regardless of any protected concerted activity that Lapham and Hall may have engaged in.

The Board's present definition of protected concerted activities is set forth in *Meyers Industries*, 268 NLRB 493, 497 (1984) (*Myers I*), remanded sub. nom. *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), reaffirmed on remand 281 NLRB 862 (1986) (*Myers II*) affirmed sub. nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Circuit. 1987). Accord: *NLRB v. City Disposal Systems, Inc.*, 465 U.S. 822, 835 (1984). In *Meyers*, the Board stated that concerted actions of employees are protected under Section 7 if they might reasonably be expected to affect terms or conditions of employment. The Board further indicated that concerted activities encompassed those activities that are "engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself." *Myers I*, supra at 497. In addition, in *Benjamin Franklin Plumbing*, supra at 538, the Board noted that employee conversations about wages are at the core of activity protected by Section 7 of the Act.

As set forth above, an employee acting solely on his own behalf is not engaged in concerted activity. However, "[i]t is well settled that the activity of a single employee in enlisting the support of his fellow employees for their mutual aid and protection is as much concerted activity as is ordinary group activity. Such individual action is concerted as long as it engaged him with the object of initiating or inducing . . . group action."

Benjamin Franklin Plumbing, supra at 538, and cases cited therein.

It is clear that discussion between employees regarding whether they are receiving prevailing wages as required by law amounts to mutual aid and protection. See *Walter Bruckner & Co.*, 273 NLRB 1306, 1306 fn. 6 (1984). The Board has also held that the protection of the Act extends to employees who, in a concerted fashion, seek to improve working conditions by enlisting the efforts of other administrative bodies. *Francis House, Inc.*, 322 NLRB 516, 522 (1996); *Delta Health Center*, 310 NLRB 26, 43 (1993).

Applying these principles to the instant case, it is clear that Lapham and Hall engaged in protected concerted activities as defined by the Board. Lapham's discussions with the other employees, including Hall regarding what wages and benefits other employees received and whether he was being paid correctly was clearly within the ambit of Section 7 protection. Lapham's concern regarding whether he was being paid the proper wage rate may have started out as an individual concern, but thereafter he had numerous conversations with his fellow employees about the wages being paid by the Respondent to nonunion employees.

As indicated above, seeking to enlist the assistance of the Detroit water department is a protected activity as long as it was engaged in a concerted manner. The uncontroverted evidence establishes that Lapham first contacted the Detroit water department and found out that prevailing wage law did, in fact, apply to Respondent's employees when they were working on jobs for the City of Detroit. After obtaining this information, Lapham spoke to Hall as he knew from their previous conversations that Hall was not a union member and, like Lapham, was not receiving the same wages and benefits as the employees who were members of a union. When Lapham asked Hall if he was interested in filing a prevailing wage claim against the Respondent, Hall indicated that he was. To that end, Lapham and Hall called the water department together and were told what information was needed in order to start an investigation into whether they were being properly paid under the prevailing wage ordinance.

The credited and uncontroverted testimony of Lapham establishes that he and Hall were acting in concert in their phone conversation with a representative of the water department with respect to the information necessary to begin an investigation under the prevailing wage ordinance. On March 2, 2009, Lapham and Hall jointly met with Edwards and Moore from the water department and formally initiated an investigation into whether the Respondent was paying them appropriately under the prevailing wage ordinance. I therefore find that the evidence establishes that Hall and Lapham acted in concert in pursuing their prevailing wage claim against the Respondent.

Under the circumstances, I do not agree with the Respondent's contention that the fact that Hall did not testify is a critical detriment to finding that Lapham and Hall engaged in concerted activity. The testimony of Lewis corroborates Lapham's regarding the many discussions that Lapham had with fellow employees, including Hall, regarding the issue of wages. The testimony of Edwards corroborates that of Lapham in establishing that the pursuit of the prevailing wage claim was done in a

concerted manner. I note that the Board has held that where allegations are sustained by the record, the testimony of an alleged discriminatee is not a necessary requirement. *Southern Maryland Hospital*, 276 NLRB 1349, 1359 fn. 9 (1985). Accordingly, I do not draw an adverse inference from Hall's failure to testify at the hearing.

The record establishes that the Respondent was notified of the results of the prevailing wage claim investigation regarding Lapham and Hall by the Detroit water department on May 18. Since it is clear that such a claim is protected activity, the only question is whether the Respondent knew of the concerted nature of the action of Lapham and Hall.

The water department letter notified the Respondent of its obligation to make whole Hall, Lapham and John Laginess. In May 2009, Laginess was no longer working for the Respondent. Lapham and Hall worked side-by-side as the only nonunion employees on the Reynolds Junior's crew. After calling the water department, Lapham informed Reynolds Senior of his intention to pursue "prevailing wage claims" against Respondent. In addition, on May 26, when the Reynolds Junior's crew was assembled at the Respondent's facility to receive their suspension notices for the accident, Reynolds Senior admitted that the suspensions had "nothing to do with a safety violation" but rather it had to do with "you guys filing prevailing wage against Ferguson."

When these facts are viewed collectively, I conclude that the Respondent knew of the concerted nature of the prevailing wage claims of Lapham and Hall before the suspension notices were prepared on May 22. Lapham informed Reynolds Senior that he was going to file prevailing wage claims. Thereafter, he filed such a claim in concert with Hall. Thus, when Respondent was notified by letter that both Hall and Lapham had filed prevailing wage claims it was clear that the filing of Hall's claim arose from Lapham's announced efforts to initiate such conduct. To find otherwise, would strain credulity in my view. I would have to find that Hall and Lapham, even though similarly situated as the only nonunion employees working daily on the same crew, independently filed prevailing wage claims at the same time. In reaching my conclusion, I note that there is no evidence whatsoever to controvert the testimony of Lapham regarding what he stated to Reynolds Senior regarding his intention to file prevailing wage claims and Reynolds Senior's admissions that the suspensions were motivated because "you guys" filed prevailing wage claims. As I have noted previously, Reynolds Senior did not testify at the hearing. Young, who was present at the May 26 meeting, testified but did not say anything to controvert Lapham's testimony regarding that meeting. Moreover, there is no credible evidence to controvert the facts regarding the Respondent's knowledge of the concerted nature of the filing of the prevailing wage claims. As noted previously, I do not credit Erdman's denials that he did not know anything about the filing of prevailing wage claims until a month before the hearing and neither White nor Ferguson testified at the hearing.

I do not agree with Respondent's argument that the required element of knowledge of the concerted nature of the activity of Lapham and Hall was not proven and therefore the General Counsel has not established a prima facie case. In support of its

argument. the Respondent relies on the Board's decision in *Reynolds Electric Inc.*, 342 NLRB 16 (2004).

In *Reynolds Electric*, the critical issue in the case was whether the employer knew when it laid off employee Gabriel Rice, that his individual efforts to secure the state-required prevailing wage was an outgrowth of concerted activity involving other employees. In that case, employee Rice had approximately 12 conversations with Edward Whitcher, one of the employer's supervisors. Price told Whitcher that the other subcontractor's employees told him that the project they were working on was a prevailing wage job. Whitcher told Rice that the job was not a prevailing wage job. After talking to the general contractor's superintendent, Price told Whitcher that the superintendent said the job was a prevailing wage job. Richard told Rice that he would get back to him but did not. Thereafter, Rice was laid off, allegedly for lack of work. The General Counsel alleged, inter alia, that Rice's layoff was a violation of Section 8(a)(1) of the Act. A Board panel majority (then Member Liebman dissenting) dismissed the complaint regarding Rice, finding that there was no evidence that Whitcher knew that Rice, in raising the prevailing wage issue, was acting for others as well as himself. Accordingly, the Board found that the General Counsel did not establish that the employer knew of the concerted nature of Rice's discussion with other employees before he was laid off.

As noted above, in the instant case the evidence establishes that before the date of the suspension notices (May 22), Lapham told Reynolds Senior that he was filing prevailing wage claims and the Respondent was formally served with the notice of the wage delinquency from the Detroit water and sewer Department naming both Lapham and Hall. Finally, on May 26, Reynolds Senior acknowledged that the suspensions were because "you guys" filed prevailing wage claims. Because the evidence establishes that the Respondent knew that the filing of the claims of Hall and Lapham were due to Lapham's initiation of those claims, I find the *Reynolds Electric* case distinguishable.

In considering the evidence that supports the protected concerted nature of Lapham and Hall's filing of prevailing wage claims as a motivating factor in the decision to suspend the Reynolds Junior's crew, I rely on the credited testimony of Lapham that Reynolds Senior acknowledged on May 26 that the suspension of the Reynolds Junior's crew was in retaliation for the filing of the prevailing wage claims.

There is obviously an issue as to whether, if the protected concerted activity of Lapham and Hall is found to be the reason for their suspensions, are Lewis, Cook, and Reynolds Junior, alleged as discriminatees in the complaint, also entitled to a remedy. Neither Lewis, Cook, nor Reynolds Junior were involved in the filing of the prevailing wage claims by Lapham and Hall. The Board has held, however, with court approval, that when an employer discharges an employee as part of a plan to establish a defense to the discharge of a known union activist, the discharge of the other employee also violates the Act. *Jack August Enterprises Inc.*, 232 NLRB 881, 900 (1977), enfd. 583 F.2d 575 (1st Cir. 1978); *Greenfield Die & Mfg. Corp.*, 327 NLRB 237, 247 (1998). Accordingly, Board law supports the proposition that, if Cook, Lewis, and Reynolds Junior were

suspended to mask a discriminatory motive for the suspensions of Lapham and Hall, their suspensions also violate Section 8(a)(1) of the Act.

Based on the foregoing, I find that the General Counsel has met the initial burden of persuasion as required under *Wright Line* with regard to the suspensions of Lapham, Hall, Lewis Cook, and Reynolds Junior. I now turn to consider whether the Respondent has met its burden to establish that it would have taken the same action in the absence of protected concerted activity.

The Respondent contends that the accident of May 15, was the reason for the suspension of Reynolds Junior and his entire crew. It argues that the actions of Reynolds Junior and his crew in deviating from Erdman's instructions as to how traffic control was to be conducted that day resulted in an egregious safety violation warranting suspension.

I find that the timing of the suspensions coupled with the lack of an investigation into the underlying accident, cast substantial doubt on the validity of Respondent's argument. It is clear that Erdman was upset by the accident that occurred on May 15, and attributed it to the manner in which the traffic barrels had been moved during the day. On the day of the accident he told Reynolds Junior that someone would be fired for the accident. He testified that he made his decision "30 seconds" after arriving on the scene that day that Reynolds Junior and his crew were at fault. I credit Erdman's testimony that he recommended to White on May 15, that the entire Reynolds crew be fired, but that White told Erdman to calm down and they would talk about it after the weekend.²⁶

On Monday, May 18, when it received the letter from the Detroit water and sewer department, the Respondent was made aware of the prevailing wage claims filed by Lapham and Hall and that it owed a substantial amount of backpay to each of them. Importantly, the letter also indicated that the Respondent would not receive further payments from the city until the matter was rectified. On May 19 or 20, Erdman met with White and again recommended that Reynolds Junior and his crew be fired. White told Erdman that he (White) did not really know what had gone on and that "they were going to investigate the matter." Abruptly, however, on May 22, White told Young to prepare suspension notices for all the members of the Reynolds Junior's crew.

It is unclear who actually made the decision to suspend the Reynolds Junior's crew. While Erdman made a recommendation regarding discipline, he admitted that he did not know who made the decision to suspend the crew. Young prepared the suspension notices pursuant to White's direction, but she had no role in the decision. Erdman was instructed by Young to give the suspension notices to the crew on the morning of May 26, but that was the first time that he learned of the decision. As noted earlier, White did not testify. Thus, no Respondent witnesses testified that they were responsible for making the suspension decision and to explain why they made it. In addition, no one who did testify could even identify with specificity

²⁶ Erdman appeared to me to have a somewhat volatile personality and it seems likely that he would react emotionally and prematurely to the occurrence of an accident on a job that he was responsible for

the management personnel who made the decision. The Board has noted that the lack of such evidence casts doubt on the veracity of a respondent's explanation for disciplinary action. See *Louis A. Weiss Memorial Hospital*, 324 NLRB 946, 957 (1997), enf. denied in relevant part 172 F.3d 432 (7th Cir. (1999).

The record does not contain any indication as to what occurred from May 19 or 20 to May 22 to give Respondent a legitimate reason to suspend the entire Reynolds Junior's crew. Certainly, the record does not show any investigation into the facts of what occurred on May 15. In this regard, as described earlier, there was, in fact, a substantial amount of evidence available to the Respondent, including the photographs of Boyer and Reynolds, employee incident reports of the accident and third-party witness statements. I note in particular that safety representative Boyer, the individual Respondent has designated to investigate accidents, wrote a report that apparently nobody bothered to read before suspending the Reynolds Junior's crew. In addition, Boyer interviewed Lauderdale's crew, who confirmed Boyer's description of what had occurred. While Young gathered the results of the investigation into a file, neither White nor Ferguson ever reviewed the evidence.²⁷ Other than Erdman's angry brief questions of Reynolds Junior at the accident scene, Reynolds Junior and his crew were never given an opportunity to explain what happened on May 15 before they were suspended. There is no evidence that Erdman ever spoke to Lauderdale about his role in the events of May 15. After the Respondent received notice of the meritorious prevailing wage claims on May 18, and without any further investigation into the events surrounding the accident, Young was ordered to prepare suspension notices by White on May 22. In my view the timing of the suspensions, coming shortly after the Respondent learned of the results of the prevailing wage claims filed by Lapham and Hall, is highly suspect. My suspicion is heightened by the fact that the Respondent made no effort to determine what happened on the day of the accident before it suspended the entire Reynolds Junior's crew. The Board has held that suspicious timing coupled with the lack of an investigation into an incident supports a finding of discriminatory motivation. *La Gloria Oil & Gas Co.*, 337 NLRB 1120 (2002). See also *Washington Nursing Home Inc.*, 321 NLRB 366, 375 (1996), regarding the lack of an adequate investigation as supporting a discriminatory motivation.

Since there was no real investigation into the events of May 15, there was no consideration of the role of Foreman Lauderdale and his crew regarding the circumstances of the accident on that date. The credible testimony of Reynolds Junior establishes that he and Lauderdale decided to move the barrels from their original location that day. It is clear that Lauderdale and his crew were the employees working around the cut that the car went into. The record reveals that Lauderdale and one of his crew members had parked their vehicles near the cut, an issue that Erdman appeared to consider important in his discussion with Reynolds Junior at the scene. According to credited testimony of safety representative of Boyer, flagger Andre Rob-

²⁷ Erdman testified that he read the employee incident report forms after his meeting with White on May 19 or 20, but did not inform him of the content of those reports

inson, a member of Lauderdale's crew, was stationed by the cut and observed a car come between the barrels. Robinson tried to stop the car but the driver failed to follow its directions and went to the cut. Surely, finding out what happened from the employees closest to the incident would have been warranted if the Respondent was attempting to determine how to legitimately apply its safety policy.

Respondent's safety disciplinary program is contained within its safety program policy statement dated November 21, 2007. (Jt. Exh. 6.) It provides for progressive disciplinary policy, however, it indicates the severity of the violation will determine the level of disciplinary action administered. The policy emphasizes however that the enforcement of the rules should be done in a fair and consistent manner. Importantly, the Respondent did not introduce any evidence regarding discipline imposed on any employees for safety violations prior to May 15, 2009. The record does indicate however that in November 2008, Reynolds Junior, while operating his excavator, accidentally struck a light pole next to a car dealership. The pole fell and caused approximately \$1500 in damages to a car on a lot. Reynolds Junior immediately informed his superintendent of the accident and was never disciplined for it. There is no indication in the record as to what financial liability, if any, was imposed upon the Respondent by virtue of the accident of May 15. The Respondent's unprecedented and sweeping suspension of the entire Reynolds Junior's crew was an extraordinary event since there is no evidence that it ever disciplined employees previously for a safety violation.

In my view, to suspend the entire Reynolds Junior's crew, when only Reynolds Junior was involved in the decision to move the traffic barrels, establishes clearly that Respondent's action was a pretext and designed to disguise the fact that the motivation behind its action was the protected concerted activity of Lapham and Hall. Accordingly, I find that Respondent has not rebutted the General Counsel's prima facie case and I therefore find that its suspension of Lapham, Hall, Lewis, Reynolds Junior, and Cook to be in violation of Section 8 (a)(1) of the Act.

B The Layoffs of June 4

As set forth in the previous section, I find that the General Counsel has established a prima facie case with respect to the suspension of the Reynolds Junior's crew. The same facts support the existence of a prima facie case regarding the layoffs. Accordingly I will examine the Respondent's defense to the allegation that the layoffs of Reynolds Junior, Lapham, Hall, Lewis, and Cook are violative of Section 8(a)(1) of the Act to determine if the prima facie case is rebutted. To rebut a prima facie case under *Wright Line*, the Board has held that "An employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected activity." *W. F. Bolin Co.*, 311 NLRB 1118, 1119 (1993), enf. 99 F.3d 1139 (6th Cir. 1996). Accord: *Coastal Insulation Corp.*, 354 NLRB No. 70, slip op. at 20 (2009).

The Respondent argues that the discriminatees were laid off for legitimate business due to a lack of work. In support of this argument it relies on the fact that the Respondent had three jobs

with the City of Detroit in May of 2009, but by December 2009, was only one such job. Respondent also notes that from May to December 2009, it reduced its entire work force, encompassing all its divisions, from approximately 100 employees to approximate 50. In particular the Respondent relies on the layoff of 23 underground utility employees from May to September 2009, including the five members of the Reynolds Junior's crew, as supporting its legitimate business reasons for their layoff. Finally, Respondent contends the decision to lay off the Reynolds Junior's crew was based on their relative lack of productivity.

Counsel for the General Counsel argues that the Respondent's contention regarding the reasons for the layoff of the Reynolds Junior's crew is pretextual. She bases this argument on what she claims is Erdman's inconsistent testimony regarding the reasons for the layoff and the lack of any productivity records to support his testimony. In addition, counsel for the General Counsel relies on the fact that there were some overtime hours worked by utility crews after the layoff and one employee was recalled to work.

I find that the evidence supports a finding that the Respondent may have had legitimate business reasons to lay off some employees on June 4, 2009, but that the Respondent chose to layoff Lapham, Hall, Lewis, Reynolds Junior, and Cook for discriminatory reasons and that the layoffs violated Section 8(a)(1) of the Act. The Board has held that even if there may be legitimate reasons for a layoff generally, if the selection of employees for layoff is based on a discriminatory motive, those layoffs are violative of the Act. *W. F. Bolin Co.*, supra; *Knoxville Distribution Co.*, 298 NLRB 688 (1990).

The evidence establishes that the Respondent began to experience a decline in business in May 2009. Specifically with regard to the underground utilities division, on May 26, the Respondent laid off seven utility employees for lack of work. On June 4, in addition to the Reynolds Junior's crew to another five utility employees were laid off, another employee was laid off on June 11, and five more on September 28. It is true that some overtime hours were worked by underground utility crews after June 4, and that one employee was recalled, but I find that such evidence is insufficient to establish that the Respondent had no basis to layoff any employees in June 2009. However, I find that the Respondent had a discriminatory motive in selecting the Reynolds Junior's crew for layoff for the following reasons.

As indicated above, Erdman was the only witness who testified for Respondent regarding the reasons for the layoff of the Reynolds Junior's crew. He testified that the decision was made by a group composed of himself, White, Reynolds Senior, and Woods, but that the final decision was made by White. He further testified that this decision was made at a regular weekly Wednesday production meeting shortly before the layoff notices were issued. According to Erdman, because of a shortage of work, a decision was made to layoff an entire utility crew. At the time there were eight different utility crews. Erdman indicated that the decision to layoff the Reynolds Junior's crew was based on their productivity and that production records were reviewed in determining which crew to layoff. He testified inconsistently, however, regarding the timeframe that

was considered when selecting the Reynolds Junior's crew for layoff. He first testified that their productivity had been considered since approximately June 15, 2008. Later he testified that production records were considered from the beginning of 2009, "or even farther than that." Finally, he admitted that the only production records actually reviewed at the meeting where the layoff decision was made were those for the week preceding the meeting. This was during the period of time that the Reynolds Junior's crew was laid off. Erdman tried to explain, however that the group making the layoff decision knew what the production rates were from their previous weekly meetings.

Erdman described the weekly production records as being compiled by Respondent's project assistant from the daily timesheets of utility crew foremen. These records reflect productivity depending upon the work assigned. The record demonstrates, however, that foremen do not always fill in the time sheets appropriately. When foremen do not indicate complete information on the timesheet, the Respondent can obtain such information, upon request, from reports prepared by a Detroit water department inspector. Erdman could not state, however, how often to his Respondent seeks such information from the city.

I find that Erdman's vague testimony regarding the alleged lack of production by the Reynolds Junior's crew relative to other crews to be unpersuasive. He did not explain what particular circumstances dictated that an entire crew be laid off. He offered no comparison between the productivity of the Reynolds Junior's crew and other crews. Importantly, the Respondent introduced no production records in support of Erdman's testimony. These records are clearly within the Respondent's control and the failure to produce them causes me to draw the inference that they would not have supported Respondent's position regarding the reasons for the layoff of the Reynolds Junior's crew. See *Thermal Masters, Inc.*, 318 NLRB 43 (1995); *Bay Metal Cabinets Inc.*, 302 NLRB 152, 178, 179 (1991). In addition, the Respondent did not call any witnesses to corroborate the testimony of Erdman. I noted in particular that White, who made the final decision, did not testify at the hearing.

I find that Erdman's unsupported testimony does not establish by a preponderance of the evidence a legitimate reason for the selection for layoff of the entire Reynolds Junior's crew. I thus conclude that the Respondent has not rebutted the prima facie case by establishing it would have selected the Reynolds Junior's crew for layoff in the absence of the protected concerted activity engaged in by Lapham and Hall. I therefore conclude that the layoff of Lapham, Hall, Lewis, Reynolds Junior, and Cook violated Section 8(a)(1) of the Act.²⁸

CONCLUSIONS OF LAW

1. By suspending Joseph Lapham, David Hall, Miles Reynolds Jr., William Lewis, and George Cook on May 26, 2009, and laying off the above-named employees on June 4, 2009,

²⁸ Since the record establishes unlawful discrimination with respect to Hall's layoff, it was not necessary for him to testify at the hearing in order to be entitled to a remedy. *Southern Maryland Hospital*, supra

because Lapham and Hall engaged in protected concerted activities the Respondent violated Section 8(a)(1) of the Act.

2. By engaging in such conduct the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily first suspending and then laying off Joseph Lapham, David Hall, Miles Reynolds Jr. William Lewis and George Cook, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from 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 (1987).²⁹

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³⁰

ORDER

The Respondent, Ferguson Enterprises Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall

I. Cease and desist from

(a) Suspending, laying off, or otherwise discriminating against any employee for filing a concerted prevailing wage claim, or otherwise engaging in protected concerted activity.

(b) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

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

(a) Within 14 days from the date of the Board's Order, offer Joseph Lapham, David Hall, Miles Reynolds Jr., William Lewis, and George Cook 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.

(b) Make Joseph Lapham, David Hall, Miles Reynolds Jr., William Lewis, and George Cook 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.

(c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful suspensions

²⁹ The General Counsel seeks compound interest computed on a quarterly basis for any backpay I deny this request. The Board has recently indicated that it is not prepared at this time to deviate from its current practice of assessing simple interest. *Atlas Refinery, Inc.*, 354 NLRB No 120 fn 9 (2010)

³⁰ 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

and layoffs and within 3 days thereafter notify the employees in writing that this has been done and that the suspensions and layoffs will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix."³¹ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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 May 26, 2009.

(f) 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.

Dated, Washington, D.C. March 3, 2010

APPENDIX

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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT suspend, lay off, or otherwise discriminate against any of you for filing a concerted prevailing wage claim, or otherwise engaging in protected concerted activity.

³¹ 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"

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

WE WILL, within 14 days from the date of this Order, offer Joseph Lapham, David Hall, Miles Reynolds Jr., William Lewis, and George Cook 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 whole Joseph Lapham, David Hall, Miles Reynolds Jr., William Lewis, and George Cook 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 this Order, remove from our files any reference to the unlawful suspensions and layoffs of Joseph Lapham, David Hall, Miles Reynolds Jr., William Lewis, and George Cook and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the suspensions and layoffs will not be used against them in any way.

FERGUSON ENTERPRISES, INC.

No. 11-1086

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

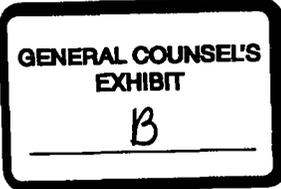
NATIONAL LABOR RELATIONS BOARD,)	
)	
Petitioner,)	
)	
v.)	<u>ORDER</u>
)	
FERGUSON ENTERPRISES, INC.,)	
)	
Respondent.)	

Before: GILMAN, KETHLEDGE, and STRANCH, Circuit Judges.

The National Labor Relations Board and the respondent, Ferguson Enterprises, Inc., have filed a stipulation for entry of a consent judgment enforcing the Board's September 22, 2010 order in Case No. 7-CA-52306. In view of the parties' agreement on this matter, it is **ORDERED** that the Board order in Case No. 7-CA-52306 is hereby enforced. The respondent, Ferguson Enterprises, Inc., its officers, agents, successors, and assigns, shall abide by the Board's directions contained therein. (See attached Order and Appendix).

ENTERED BY ORDER OF THE COURT

Clerk



NATIONAL LABOR RELATIONS BOARD

v.

FERGUSON ENTERPRISES, INC.

ORDER

The Respondent, Ferguson Enterprises Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Suspending, laying off, or otherwise discriminating against any employee for filing a concerted prevailing wage claim, or otherwise engaging in protected concerted activity.
 - (b) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) Within 14 days from the date of the Board's Order, offer Joseph Lapham, David Hall, Miles Reynolds Jr., William Lewis, and George Cook 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.
 - (b) Make Joseph Lapham, David Hall, Miles Reynolds Jr., William Lewis, and George Cook 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 Administrative Law Judge's March 3, 2010 decision, JD-12-10, Detroit, MI., adopted by the Board September 22, 2010, 355 NLRB No. 189.
 - (c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful suspensions and layoffs and within 3 days thereafter notify the employees in writing that this has been done and that the suspensions and layoffs will not be used against them in any way.

- (d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (e) Within 14 days after service by the Region, post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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 May 26, 2009.
- (f) 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.

**APPENDIX
NOTICE TO EMPLOYEES**

**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF
APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD.
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO
Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT suspend, lay off, or otherwise discriminate against any of you for filing a concerted prevailing wage claim, or otherwise engaging in protected concerted activity.

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

WE WILL, within 14 days from the date of this Order, offer Joseph Lapham, David Hall, Miles Reynolds Jr., William Lewis, and George Cook 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 whole Joseph Lapham, David Hall, Miles Reynolds Jr., William Lewis, and George Cook 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 this Order, remove from our files any reference to the unlawful suspensions and layoffs of Joseph Lapham, David Hall, Miles Reynolds Jr., William Lewis, and George Cook and **WE WILL**, within 3 days thereafter, notify each of them in writing that this has been done and that the suspensions and layoffs will not be used against them in any way.

FERGUSON ENTERPRISES, INC.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

FERGUSON ENTERPRISES, INC.

Respondent

and

CASE 7-CA-52306

JOSEPH LAPHAM, an Individual

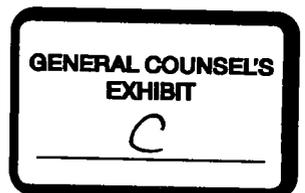
Charging Party

**COMPLIANCE SPECIFICATION
AND NOTICE OF HEARING**

The National Labor Relations Board, herein called the Board, issued its Decision and Order on September 22, 2010, reported at 355 NLRB No. 189, ordering Ferguson Enterprises, Inc., and its officers, agents, successors and assigns, herein called Respondent, to take certain actions, including offering reinstatement and making whole various employees, herein called discriminatees, for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest compounded on a daily basis. On May 16, 2011, the United States Court of Appeals for the Sixth Circuit entered its judgment in Case No. 11-1086 enforcing the aforesaid Decision and Order of the Board.

As a controversy presently exists regarding the liability of the Respondent as to the amount of backpay and other benefits owed the discriminatees under the terms of the Board's Order, as enforced by the United States Court of Appeals for the Sixth Circuit, the undersigned, pursuant to the authority duly conferred by the Board, hereby issues this Compliance Specification and Notice of Hearing and alleges as follows:

1. No payments have been made by the Respondent to satisfy its obligation under the terms of the aforesaid Board Order, as enforced by the United States Court of Appeals for the Sixth Circuit.
2. The backpay period began about May 26, 2009, and continued until about October 15, 2010, when the Respondent shut down its operations and there was no more work available for the discriminatees.



3. An appropriate measure of backpay due the discriminatees, who are named below, is the amount of earnings they would have received, but for the unlawful discrimination against them:

Joseph Lapham
George Cook
William Lewis

Miles Reynolds, Jr.
David Hall

4. (a). An appropriate measure of gross backpay can be obtained by determining the number of hours customarily worked by the discriminatees during their employment prior to their unlawful discharges by the Respondent, averaged into weekly pay periods during the calendar quarters and multiplied by the hourly wage rate each discriminatee received from the Respondent for regular hours, and by the same hourly rate times 1.5 for overtime hours.

(b). Quarterly interim earnings, whenever obtained, are deducted from gross backpay in order to obtain net backpay.

(c). Additional interim expenses incurred in searches for interim employment, as well as those additional interim expenses incurred in the course of performing interim employment, are added to net backpay as interim expenses.

(d). The totality of the above subsections of this paragraph comprise net backpay and expenses which are owed to the above-named discriminatees.

5. (a). An appropriate measure of gross fringe benefits can be obtained by determining the number of hours customarily worked by the discriminatees during their employment prior to their unlawful discharges by the Respondent, averaged into weekly pay periods during the calendar quarters and multiplied by the hourly fringe benefit contribution rate each discriminatee received from the Respondent.

(b). Quarterly interim fringe benefits, whenever obtained, are deducted from gross fringe benefits in order to obtain net fringe benefits.

(c). The totality of the above subsections of this paragraph comprise net fringe benefits which are owed to the above-named discriminatees.

6. (a). Discriminatee Joseph Lapham received \$25.03 per hour from the Respondent prior to his unlawful discharge, and customarily worked an average of 34.68 regular hours per weekly pay period and 1.27 hours of overtime during the same period, and during a full calendar quarter would have been employed 13 weeks. Based on these hours, during the backpay period of about May 26, 2009, to about October 15, 2010, Lapham would have received gross backpay of \$66,345.00. During the same period, Lapham did not have quarterly interim earnings or additional interim expenses. Accordingly, as there were no

interim earnings or interim expenses, the net backpay and expenses due Lapham remained at \$66,345.00 (see Schedule A).

(b). Discriminatee Miles Reynolds Jr. received \$26.62 per hour from the Respondent prior to his unlawful discharge, and customarily worked an average of 34.66 regular hours per weekly pay period and 3.55 hours of overtime during the same period, and during a full calendar quarter would have been employed 13 weeks. Based on these hours, during the backpay period of about May 26, 2009, to about October 15, 2010, Reynolds would have received gross backpay of \$77,064.00. During the same period, Reynolds had quarterly interim earnings of \$58,640.00. This amount was not deducted from the gross backpay to produce net backpay because the quarterly interim earnings included quarters in which Reynolds had greater interim earnings than he would have received in gross backpay. Therefore, in accordance with longstanding Board policy, the only quarters used were those in which there was greater gross backpay than there were interim earnings. This resulted in the utilization of the last three quarters of 2009 and the first three quarters of 2010, in which Reynolds would have received gross backpay of \$74,024.00. During the same period, Reynolds had quarterly interim earnings of \$32,462.00. This amount deducted from gross backpay produced net backpay of \$41,562.00. The addition of interim expenses of \$3,386.00 resulted in net back pay and expenses due Reynolds of \$44,948.00 (see Schedule B-1).

(c). Discriminatee George Cook received \$18.90 per hour from the Respondent prior to his unlawful discharge, and customarily worked an average of 30.62 regular hours per weekly pay period and 1.19 hours of overtime during the same period, and during a full calendar quarter would have been employed 13 weeks. Based on these hours, during the backpay period of about May 26, 2009, to about October 15, 2010, Cook would have received gross backpay of \$44,327.00. During the same period, Cook had quarterly interim earnings of \$11,022.00. This amount was not deducted from the gross backpay to produce net backpay because the quarterly interim earnings included quarters in which Cook had greater interim earnings than he would have received in gross backpay. Therefore, in accordance with longstanding Board policy, the only quarters used were those in which there was greater gross backpay than there were interim earnings. This resulted in the utilization of the last three quarters of 2009 and the first three quarters of 2010, in which Cook would have received gross backpay of \$42,578.00. During the same period, Reynolds had quarterly interim earnings of \$2,588.00. This amount deducted from gross backpay produced net backpay of \$39,990.00. During the same period, Cook did not have additional interim expenses. Accordingly, as there were no additional expenses, the net backpay and expenses due Cook remained at \$39,990.00 (see Schedule C).

(d). Discriminatee David Hall received \$19.75 per hour from the Respondent prior to his unlawful discharge, and customarily worked an average of 35.94 regular hours per weekly pay period and 1.52 hours of overtime during the same period, and during a full calendar quarter would have been employed 13 weeks. Based on these hours, during the backpay period of about May 26, 2009, to about October 15, 2010, Hall would have received

gross backpay of \$54,683.00. During the same period, Hall did not have quarterly interim earnings or additional interim expenses. Accordingly, as there were no interim earnings or interim expenses, the net backpay and expenses due Hall remained at \$54,683.00 (see Schedule D).

(e). Discriminatee William Lewis received \$19.58 per hour from the Respondent prior to his unlawful discharge, and customarily worked an average of 32.63 regular hours per weekly pay period and 1.05 hours of overtime during the same period, and during a full calendar quarter would have been employed 13 weeks. Based on these hours, during the backpay period of about May 26, 2009, to about October 15, 2010, Lewis would have received gross backpay of \$48,527.00. During the same period, Lewis did not have quarterly interim earnings or additional interim expenses. Accordingly, as there were no interim earnings or interim expenses, the net backpay and expenses due Lewis remained at \$48,527.00 (see Schedule E).

7. (a). Discriminatee Miles Reynolds, Jr. received \$18.99 in fringe benefit contributions per hour from the Respondent prior to his unlawful discharge, and customarily worked an average of 38.21 hours per weekly pay period and during a full calendar quarter would have been employed 13 weeks. Based on these hours, during the backpay period of about May 26, 2009, to about October 15, 2010, Reynolds would have received gross fringe benefits of \$52,583.00. During the same period, Reynolds had quarterly interim fringe benefits of \$34,517.00. This amount was not deducted from the gross backpay to produce net backpay because the quarterly interim fringe benefits included quarters in which Reynolds had greater interim fringe benefit contributions than he would have received in gross fringe benefit contributions. Therefore, in accordance with longstanding Board policy, the only quarters used were those in which there was greater gross fringe benefit contributions than there were interim fringe benefit contributions. This resulted in the utilization of the last three quarters of 2009 and the first three quarters of 2010, in which Reynolds would have received gross fringe benefit contributions of \$50,509.00. During the same period, Reynolds had quarterly interim fringe benefit contributions of \$19,338.00. This amount deducted from gross fringe benefit contributions produced net fringe benefits of \$31,171.00 (see Schedule F).

(b). Discriminatee George Cook received \$11.00 in fringe benefit contributions per hour from the Respondent prior to his unlawful discharge, and customarily worked an average of 31.81 hours per weekly pay period and during a full calendar quarter would have been employed 13 weeks. Based on these hours, during the backpay period of about May 26, 2009, to about October 15, 2010, Cook would have received gross fringe benefit contributions of \$25,350.00. During the same period, Cook did not have quarterly interim fringe benefit contributions. Accordingly, as there were no interim fringe benefit contributions, the net fringe benefits remained at \$25,350.00 (see Schedule G).

(c). Discriminatee William Lewis received \$14.16 in fringe benefit contributions per hour from the Respondent prior to his unlawful discharge, and customarily worked an average of 33.68 hours per weekly pay period and during a full calendar quarter would have been employed 13 weeks. Based on these hours, during the backpay period of about May 26, 2009, to about October 15, 2010, Lewis would have received gross fringe benefit contributions of \$34,549.00. During the same period, Lewis did not have quarterly interim fringe benefit contributions. Accordingly, as there were no interim fringe benefit contributions, the net fringe benefits remained at \$34,549.00 (see Schedule H).

8. As part of the remedy for the unfair labor practices found by the Board in its Decision and Order reported at 355 NLRB No. 189, the Acting General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and the taxes that would have been owed had there been no discrimination.

9. The Acting General Counsel further seeks, as part of the remedy for the unfair labor practices found by the Board in its Decision and Order reported at 355 NLRB No. 189, that Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods.

10. Summarizing the facts and figures above and denoted in Schedules A through H, Respondent's obligation to make whole the above-named discriminatees as enforced by the United States Court of Appeals for the Sixth Circuit, will be substantially discharged by payment of the following amounts, plus interest computed according to Board policy, as stated in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), less all tax withholdings as required by Federal, state, and municipal law:

Joseph Lapham	\$66,345.00
Miles Reynolds, Jr.	\$44,948.00
Reynolds' Fringe Benefits	\$31,171.00
George Cook	\$39,990.00
Cook's Fringe Benefits	\$25,350.00
David Hall	\$54,683.00
William Lewis	\$48,527.00
Lewis' Fringe Benefits	<u>\$34,549.00</u>
TOTAL	\$345,563.00

WHEREFORE, it is prayed that an Order be entered consistent with the above.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Section 102.56 of the Board's Rules and Regulations, it must file an answer to this compliance specification. The answer must be **received by this office on or before November 21, 2011, or postmarked on or before November 20, 2011.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on the **File Case Documents**, enter the NLRB Case Number, and then follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that such answer be signed and sworn to by Respondent or by a duly authorized agent with appropriate power of attorney affixed. See Section 102.56(a). If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a compliance specification is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must still be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

As to all matters set forth in the compliance specification that are within the knowledge of Respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the answer must state the basis for any disagreement with any allegations that are within Respondent's knowledge, and set forth in detail Respondent's position as to the applicable premises and furnish the appropriate supporting figures.

If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the compliance specification are true. If the answer fails to deny allegations of the compliance specification in the manner required under Section 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not

adequately explained, the Board may find those allegations in the compliance specification are true and preclude Respondent from introducing any evidence controverting those allegations.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on the 7th day of December, 2011 at 10:00 a.m., at Room 300, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this compliance specification. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Detroit, Michigan, this 31st day of October, 2011.

(SEAL)

/s/ Stephen M. Glasser
Stephen M. Glasser, Regional Director
National Labor Relations Board, Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: Joe Lapham

Backpay period: 5/26/09 - 10/15/10	Schedule A Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	2	4/4				-					
2009	2	4/11				-					
2009	2	4/18				-					
2009	2	4/25				-					
2009	2	5/2				-					
2009	2	5/9				-					
2009	2	5/16				-					
2009	2	5/23				-					
2009	2	5/30	19.82	0.73	25.03	524					
2009	2	6/6	34.68	1.27	25.03	916					
2009	2	6/13	34.68	1.27	25.03	916					
2009	2	6/20	34.68	1.27	25.03	916					
2009	2	6/27	34.68	1.27	25.03	916					
2009	2	Total				4,188		4,188	-	-	4,188
2009	3	7/4	34.68	1.27	25.03	916					
2009	3	7/11	34.68	1.27	25.03	916					
2009	3	7/18	34.68	1.27	25.03	916					
2009	3	7/25	34.68	1.27	25.03	916					
2009	3	8/1	34.68	1.27	25.03	916					
2009	3	8/8	34.68	1.27	25.03	916					
2009	3	8/15	34.68	1.27	25.03	916					
2009	3	8/22	34.68	1.27	25.03	916					
2009	3	8/29	34.68	1.27	25.03	916					
2009	3	9/5	34.68	1.27	25.03	916					
2009	3	9/12	34.68	1.27	25.03	916					
2009	3	9/19	34.68	1.27	25.03	916					
2009	3	9/26	34.68	1.27	25.03	916					
2009	3	Total				11,908		11,908	-	-	11,908

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: Joe Lapham

Backpay period: 5/26/09 - 10/15/10	Schedule A Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	4	10/3	34.68	1.27	25.03	916					
2009	4	10/10	34.68	1.27	25.03	916					
2009	4	10/17	34.68	1.27	25.03	916					
2009	4	10/24	34.68	1.27	25.03	916					
2009	4	10/31	34.68	1.27	25.03	916					
2009	4	11/7	34.68	1.27	25.03	916					
2009	4	11/14	34.68	1.27	25.03	916					
2009	4	11/21	34.68	1.27	25.03	916					
2009	4	11/28	34.68	1.27	25.03	916					
2009	4	12/5	34.68	1.27	25.03	916					
2009	4	12/12	34.68	1.27	25.03	916					
2009	4	12/19	34.68	1.27	25.03	916					
2009	4	12/26	34.68	1.27	25.03	916					
2009	4	Total				11,908		11,908	-	-	11,908
2010	1	1/2	34.68	1.27	25.03	916					
2010	1	1/9	34.68	1.27	25.03	916					
2010	1	1/16	34.68	1.27	25.03	916					
2010	1	1/23	34.68	1.27	25.03	916					
2010	1	1/30	34.68	1.27	25.03	916					
2010	1	2/6	34.68	1.27	25.03	916					
2010	1	2/13	34.68	1.27	25.03	916					
2010	1	2/20	34.68	1.27	25.03	916					
2010	1	2/27	34.68	1.27	25.03	916					
2010	1	3/6	34.68	1.27	25.03	916					
2010	1	3/13	34.68	1.27	25.03	916					
2010	1	3/20	34.68	1.27	25.03	916					
2010	1	3/27	34.68	1.27	25.03	916					
2010	1	Total				11,908		11,908	-	-	11,908
2010	2	4/3	34.68	1.27	25.03	916					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: Joe Lapham

Backpay period: 5/26/09 - 10/15/10	Schedule A Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	2	4/10	34.68	1.27	25.03	916					
2010	2	4/17	34.68	1.27	25.03	916					
2010	2	4/24	34.68	1.27	25.03	916					
2010	2	5/1	34.68	1.27	25.03	916					
2010	2	5/8	34.68	1.27	25.03	916					
2010	2	5/15	34.68	1.27	25.03	916					
2010	2	5/22	34.68	1.27	25.03	916					
2010	2	5/29	34.68	1.27	25.03	916					
2010	2	6/5	34.68	1.27	25.03	916					
2010	2	6/12	34.68	1.27	25.03	916					
2010	2	6/19	34.68	1.27	25.03	916					
2010	2	6/26	34.68	1.27	25.03	916					
2010	2	Total				11,908		11,908	-	-	11,908
2010	3	7/3	34.68	1.27	25.03	916					
2010	3	7/10	34.68	1.27	25.03	916					
2010	3	7/17	34.68	1.27	25.03	916					
2010	3	7/24	34.68	1.27	25.03	916					
2010	3	7/31	34.68	1.27	25.03	916					
2010	3	8/7	34.68	1.27	25.03	916					
2010	3	8/14	34.68	1.27	25.03	916					
2010	3	8/21	34.68	1.27	25.03	916					
2010	3	8/28	34.68	1.27	25.03	916					
2010	3	9/4	34.68	1.27	25.03	916					
2010	3	9/11	34.68	1.27	25.03	916					
2010	3	9/18	34.68	1.27	25.03	916					
2010	3	9/25	34.68	1.27	25.03	916					
2010	3	Total				11,908		11,908	-	-	11,908
2010	4	10/2	34.68	1.27	25.03	916					
2010	4	10/9	34.68	1.27	25.03	916					
2010	4	10/16	29.73	1.09	25.03	785					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: Joe Lapham

Backpay period: 5/26/09 - 10/15/10	Schedule A Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	4	10/23				-					
2010	4	10/30				-					
2010	4	11/6				-					
2010	4	11/13				-					
2010	4	11/20				-					
2010	4	11/27				-					
2010	4	12/4				-					
2010	4	12/11				-					
2010	4	12/18				-					
2010	4	12/25				-					
2010	4	Total				2,617		2,617	-	-	2,617

Totals	66,345	-	-	66,345
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Notes **Total Backpay and Expenses 66,345**

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 1
 Claimant: Miles Reynolds Jr

Backpay period: 5/26/09 - 10/15/10	Schedule B-1 Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses	
2009	2	4/4				-			248	6/		
2009	2	4/11				-						
2009	2	4/18				-						
2009	2	4/25				-						
2009	2	5/2				-						
2009	2	5/9				-						
2009	2	5/16				-						
2009	2	5/23				-						
2009	2	5/30	19.81	2.03	26.62	608						
2009	2	6/6	34.66	3.55	26.62	1,064						
2009	2	6/13	34.66	3.55	26.62	1,064						
2009	2	6/20	34.66	3.55	26.62	1,064						
2009	2	6/27	34.66	3.55	26.62	1,064						
2009	2	Total				4,864	2,504	1/	2,360	248	-	2,608
2009	3	7/4	34.66	3.55	26.62	1,064			660	6/		
2009	3	7/11	34.66	3.55	26.62	1,064						
2009	3	7/18	34.66	3.55	26.62	1,064						
2009	3	7/25	34.66	3.55	26.62	1,064						
2009	3	8/1	34.66	3.55	26.62	1,064						
2009	3	8/8	34.66	3.55	26.62	1,064						
2009	3	8/15	34.66	3.55	26.62	1,064						
2009	3	8/22	34.66	3.55	26.62	1,064						
2009	3	8/29	34.66	3.55	26.62	1,064						
2009	3	9/5	34.66	3.55	26.62	1,064						
2009	3	9/12	34.66	3.55	26.62	1,064						
2009	3	9/19	34.66	3.55	26.62	1,064						
2009	3	9/26	34.66	3.55	26.62	1,064						
2009	3	Total				13,832	11,293	1/	2,539	660	-	3,199

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.

Case Number: 1

Backpay period:

Schedule B-1

Claimant: Miles Reynolds Jr

5/26/09 - 10/15/10

Interest calculated to:

Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	4	10/3	34.66	3.55	26.62	1,064			495 6/		
2009	4	10/10	34.66	3.55	26.62	1,064			294 7/		
2009	4	10/17	34.66	3.55	26.62	1,064					
2009	4	10/24	34.66	3.55	26.62	1,064					
2009	4	10/31	34.66	3.55	26.62	1,064					
2009	4	11/7	34.66	3.55	26.62	1,064					
2009	4	11/14	34.66	3.55	26.62	1,064					
2009	4	11/21	34.66	3.55	26.62	1,064					
2009	4	11/28	34.66	3.55	26.62	1,064					
2009	4	12/5	34.66	3.55	26.62	1,064					
2009	4	12/12	34.66	3.55	26.62	1,064					
2009	4	12/19	34.66	3.55	26.62	1,064					
2009	4	12/26	34.66	3.55	26.62	1,064					
2009	4	Total				13,832	9,997 2/	3,835	789	-	4,624
2010	1	1/2	34.66	3.55	26.62	1,064			134 7/		
2010	1	1/9	34.66	3.55	26.62	1,064					
2010	1	1/16	34.66	3.55	26.62	1,064					
2010	1	1/23	34.66	3.55	26.62	1,064					
2010	1	1/30	34.66	3.55	26.62	1,064					
2010	1	2/6	34.66	3.55	26.62	1,064					
2010	1	2/13	34.66	3.55	26.62	1,064					
2010	1	2/20	34.66	3.55	26.62	1,064					
2010	1	2/27	34.66	3.55	26.62	1,064					
2010	1	3/6	34.66	3.55	26.62	1,064					
2010	1	3/13	34.66	3.55	26.62	1,064					
2010	1	3/20	34.66	3.55	26.62	1,064					
2010	1	3/27	34.66	3.55	26.62	1,064					
2010	1	Total				13,832	1,750 3/	12,082	134	-	12,216
2010	2	4/3	34.66	3.55	26.62	1,064					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 1
 Claimant: Miles Reynolds Jr

Backpay period: 5/26/09 - 10/15/10	Schedule B-1 Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	2	4/10	34.66	3.55	26.62	1,064					
2010	2	4/17	34.66	3.55	26.62	1,064					
2010	2	4/24	34.66	3.55	26.62	1,064					
2010	2	5/1	34.66	3.55	26.62	1,064					
2010	2	5/8	34.66	3.55	26.62	1,064					
2010	2	5/15	34.66	3.55	26.62	1,064					
2010	2	5/22	34.66	3.55	26.62	1,064					
2010	2	5/29	34.66	3.55	26.62	1,064					
2010	2	6/5	34.66	3.55	26.62	1,064					
2010	2	6/12	34.66	3.55	26.62	1,064					
2010	2	6/19	34.66	3.55	26.62	1,064					
2010	2	6/26	34.66	3.55	26.62	1,064					
2010	2	Total				13,832		13,832	-	-	13,832
2010	3	7/3	34.66	3.55	26.62	1,064			245 8/		
2010	3	7/10	34.66	3.55	26.62	1,064			1,310 9/		
2010	3	7/17	34.66	3.55	26.62	1,064					
2010	3	7/24	34.66	3.55	26.62	1,064					
2010	3	7/31	34.66	3.55	26.62	1,064					
2010	3	8/7	34.66	3.55	26.62	1,064					
2010	3	8/14	34.66	3.55	26.62	1,064					
2010	3	8/21	34.66	3.55	26.62	1,064					
2010	3	8/28	34.66	3.55	26.62	1,064					
2010	3	9/4	34.66	3.55	26.62	1,064					
2010	3	9/11	34.66	3.55	26.62	1,064					
2010	3	9/18	34.66	3.55	26.62	1,064					
2010	3	9/25	34.66	3.55	26.62	1,064					
2010	3	Total				13,832	6,918 4/	6,914	1,555	-	8,469
2010	4	10/2	34.66	3.55	26.62	1,064					
2010	4	10/9	34.66	3.55	26.62	1,064					
2010	4	10/16	29.71	3.04	26.62	912					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc
 Case Number: 1
 Claimant: Miles Reynolds Jr

Backpay period: 5/26/09 - 10/15/10	Schedule B-1 Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	4	10/23				-					
2010	4	10/30				-					
2010	4	11/6				-					
2010	4	11/13				-					
2010	4	11/20				-					
2010	4	11/27				-					
2010	4	12/4				-					
2010	4	12/11				-					
2010	4	12/18				-					
2010	4	12/25				-					
2010	4	Total				3,040	26,178 5/	-	-	-	-

Totals	41,562	3,386	-	44,948
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Total Backpay and Expenses	44,948
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Notes

- 1/ CV Cement Contracting Company, Inc.
- 2/ CV Cement Contracting Company, Inc. and E & T Trucking, Inc.
- 3/ E & T Trucking, Inc.
- 4/ Ideal Contracting and GEO Gradel Co.
- 5/ Ideal Contracting
- 6/ Mileage for CV Cement
- 7/ Mileage for E & T Trucking
- 8/ Mileage for GEO Gradel
- 9/ Mileage for Ideal Contracting

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: George Cook

Backpay period: 5/26/09 - 10/15/10	Schedule C Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	2	4/4				-					
2009	2	4/11				-					
2009	2	4/18				-					
2009	2	4/25				-					
2009	2	5/2				-					
2009	2	5/9				-					
2009	2	5/16				-					
2009	2	5/23				-					
2009	2	5/30	17.5	0.68	18.90	350					
2009	2	6/6	30.62	1.19	18.90	612					
2009	2	6/13	30.62	1.19	18.90	612					
2009	2	6/20	30.62	1.19	18.90	612					
2009	2	6/27	30.62	1.19	18.90	612					
2009	2	Total				2,798		2,798	-	-	2,798
2009	3	7/4	30.62	1.19	18.90	612					
2009	3	7/11	30.62	1.19	18.90	612					
2009	3	7/18	30.62	1.19	18.90	612					
2009	3	7/25	30.62	1.19	18.90	612					
2009	3	8/1	30.62	1.19	18.90	612					
2009	3	8/8	30.62	1.19	18.90	612					
2009	3	8/15	30.62	1.19	18.90	612					
2009	3	8/22	30.62	1.19	18.90	612					
2009	3	8/29	30.62	1.19	18.90	612					
2009	3	9/5	30.62	1.19	18.90	612					
2009	3	9/12	30.62	1.19	18.90	612					
2009	3	9/19	30.62	1.19	18.90	612					
2009	3	9/26	30.62	1.19	18.90	612					
2009	3	Total				7,956		7,956	-	-	7,956

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: George Cook

Backpay period: 5/26/09 - 10/15/10	Schedule C Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	4	10/3	30.62	1.19	18.90	612					
2009	4	10/10	30.62	1.19	18.90	612					
2009	4	10/17	30.62	1.19	18.90	612					
2009	4	10/24	30.62	1.19	18.90	612					
2009	4	10/31	30.62	1.19	18.90	612					
2009	4	11/7	30.62	1.19	18.90	612					
2009	4	11/14	30.62	1.19	18.90	612					
2009	4	11/21	30.62	1.19	18.90	612					
2009	4	11/28	30.62	1.19	18.90	612					
2009	4	12/5	30.62	1.19	18.90	612					
2009	4	12/12	30.62	1.19	18.90	612					
2009	4	12/19	30.62	1.19	18.90	612					
2009	4	12/26	30.62	1.19	18.90	612					
2009	4	Total				7,956		7,956	-	-	7,956
2010	1	1/2	30.62	1.19	18.90	612					
2010	1	1/9	30.62	1.19	18.90	612					
2010	1	1/16	30.62	1.19	18.90	612					
2010	1	1/23	30.62	1.19	18.90	612					
2010	1	1/30	30.62	1.19	18.90	612					
2010	1	2/6	30.62	1.19	18.90	612					
2010	1	2/13	30.62	1.19	18.90	612					
2010	1	2/20	30.62	1.19	18.90	612					
2010	1	2/27	30.62	1.19	18.90	612					
2010	1	3/6	30.62	1.19	18.90	612					
2010	1	3/13	30.62	1.19	18.90	612					
2010	1	3/20	30.62	1.19	18.90	612					
2010	1	3/27	30.62	1.19	18.90	612					
2010	1	Total				7,956		7,956	-	-	7,956
2010	2	4/3	30.62	1.19	18.90	612					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: George Cook

Backpay period: 5/26/09 - 10/15/10	Schedule C Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	2	4/10	30.62	1.19	18.90	612					
2010	2	4/17	30.62	1.19	18.90	612					
2010	2	4/24	30.62	1.19	18.90	612					
2010	2	5/1	30.62	1.19	18.90	612					
2010	2	5/8	30.62	1.19	18.90	612					
2010	2	5/15	30.62	1.19	18.90	612					
2010	2	5/22	30.62	1.19	18.90	612					
2010	2	5/29	30.62	1.19	18.90	612					
2010	2	6/5	30.62	1.19	18.90	612					
2010	2	6/12	30.62	1.19	18.90	612					
2010	2	6/19	30.62	1.19	18.90	612					
2010	2	6/26	30.62	1.19	18.90	612					
2010	2	Total				7,956		7,956	-	-	7,956
2010	3	7/3	30.62	1.19	18.90	612					
2010	3	7/10	30.62	1.19	18.90	612					
2010	3	7/17	30.62	1.19	18.90	612					
2010	3	7/24	30.62	1.19	18.90	612					
2010	3	7/31	30.62	1.19	18.90	612					
2010	3	8/7	30.62	1.19	18.90	612					
2010	3	8/14	30.62	1.19	18.90	612					
2010	3	8/21	30.62	1.19	18.90	612					
2010	3	8/28	30.62	1.19	18.90	612					
2010	3	9/4	30.62	1.19	18.90	612					
2010	3	9/11	30.62	1.19	18.90	612					
2010	3	9/18	30.62	1.19	18.90	612					
2010	3	9/25	30.62	1.19	18.90	612					
2010	3	Total				7,956	2,588 1/	5,368	-	-	5,368
2010	4	10/2	30.62	1.19	18.90	612					
2010	4	10/9	30.62	1.19	18.90	612					
2010	4	10/16	26.25	1.02	18.90	525					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: George Cook

Backpay period: 5/26/09 - 10/15/10	Schedule C Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	4	10/23				-					
2010	4	10/30				-					
2010	4	11/6				-					
2010	4	11/13				-					
2010	4	11/20				-					
2010	4	11/27				-					
2010	4	12/4				-					
2010	4	12/11				-					
2010	4	12/18				-					
2010	4	12/25				-					
2010	4	Total				1,749	8,434 1/	-	-	-	-

Totals	39,990	-	-	39,990
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Total Backpay and Expenses	39,990
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Notes

1/ Skyview Safety Services, Inc.

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: David Hall

Backpay period: 5/26/09 - 10/15/10	Schedule D Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	2	4/4				-					
2009	2	4/11				-					
2009	2	4/18				-					
2009	2	4/25				-					
2009	2	5/2				-					
2009	2	5/9				-					
2009	2	5/16				-					
2009	2	5/23				-					
2009	2	5/30	20.54	0.87	19.75	431					
2009	2	6/6	35.94	1.52	19.75	755					
2009	2	6/13	35.94	1.52	19.75	755					
2009	2	6/20	35.94	1.52	19.75	755					
2009	2	6/27	35.94	1.52	19.75	755					
2009	2	Total				3,451		3,451	-	-	3,451
2009	3	7/4	35.94	1.52	19.75	755					
2009	3	7/11	35.94	1.52	19.75	755					
2009	3	7/18	35.94	1.52	19.75	755					
2009	3	7/25	35.94	1.52	19.75	755					
2009	3	8/1	35.94	1.52	19.75	755					
2009	3	8/8	35.94	1.52	19.75	755					
2009	3	8/15	35.94	1.52	19.75	755					
2009	3	8/22	35.94	1.52	19.75	755					
2009	3	8/29	35.94	1.52	19.75	755					
2009	3	9/5	35.94	1.52	19.75	755					
2009	3	9/12	35.94	1.52	19.75	755					
2009	3	9/19	35.94	1.52	19.75	755					
2009	3	9/26	35.94	1.52	19.75	755					
2009	3	Total				9,815		9,815	-	-	9,815

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: David Hall

Backpay period: 5/26/09 - 10/15/10	Schedule D Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	4	10/3	35.94	1.52	19.75	755					
2009	4	10/10	35.94	1.52	19.75	755					
2009	4	10/17	35.94	1.52	19.75	755					
2009	4	10/24	35.94	1.52	19.75	755					
2009	4	10/31	35.94	1.52	19.75	755					
2009	4	11/7	35.94	1.52	19.75	755					
2009	4	11/14	35.94	1.52	19.75	755					
2009	4	11/21	35.94	1.52	19.75	755					
2009	4	11/28	35.94	1.52	19.75	755					
2009	4	12/5	35.94	1.52	19.75	755					
2009	4	12/12	35.94	1.52	19.75	755					
2009	4	12/19	35.94	1.52	19.75	755					
2009	4	12/26	35.94	1.52	19.75	755					
2009	4	Total				9,815		9,815	-	-	9,815
2010	1	1/2	35.94	1.52	19.75	755					
2010	1	1/9	35.94	1.52	19.75	755					
2010	1	1/16	35.94	1.52	19.75	755					
2010	1	1/23	35.94	1.52	19.75	755					
2010	1	1/30	35.94	1.52	19.75	755					
2010	1	2/6	35.94	1.52	19.75	755					
2010	1	2/13	35.94	1.52	19.75	755					
2010	1	2/20	35.94	1.52	19.75	755					
2010	1	2/27	35.94	1.52	19.75	755					
2010	1	3/6	35.94	1.52	19.75	755					
2010	1	3/13	35.94	1.52	19.75	755					
2010	1	3/20	35.94	1.52	19.75	755					
2010	1	3/27	35.94	1.52	19.75	755					
2010	1	Total				9,815		9,815	-	-	9,815
2010	2	4/3	35.94	1.52	19.75	755					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: David Hall

Backpay period: 5/26/09 - 10/15/10	Schedule D Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	2	4/10	35.94	1.52	19.75	755					
2010	2	4/17	35.94	1.52	19.75	755					
2010	2	4/24	35.94	1.52	19.75	755					
2010	2	5/1	35.94	1.52	19.75	755					
2010	2	5/8	35.94	1.52	19.75	755					
2010	2	5/15	35.94	1.52	19.75	755					
2010	2	5/22	35.94	1.52	19.75	755					
2010	2	5/29	35.94	1.52	19.75	755					
2010	2	6/5	35.94	1.52	19.75	755					
2010	2	6/12	35.94	1.52	19.75	755					
2010	2	6/19	35.94	1.52	19.75	755					
2010	2	6/26	35.94	1.52	19.75	755					
2010	2	Total				9,815		9,815	-	-	9,815
2010	3	7/3	35.94	1.52	19.75	755					
2010	3	7/10	35.94	1.52	19.75	755					
2010	3	7/17	35.94	1.52	19.75	755					
2010	3	7/24	35.94	1.52	19.75	755					
2010	3	7/31	35.94	1.52	19.75	755					
2010	3	8/7	35.94	1.52	19.75	755					
2010	3	8/14	35.94	1.52	19.75	755					
2010	3	8/21	35.94	1.52	19.75	755					
2010	3	8/28	35.94	1.52	19.75	755					
2010	3	9/4	35.94	1.52	19.75	755					
2010	3	9/11	35.94	1.52	19.75	755					
2010	3	9/18	35.94	1.52	19.75	755					
2010	3	9/25	35.94	1.52	19.75	755					
2010	3	Total				9,815		9,815	-	-	9,815
2010	4	10/2	35.94	1.52	19.75	755					
2010	4	10/9	35.94	1.52	19.75	755					
2010	4	10/16	30.81	1.3	19.75	647					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: David Hall

Backpay period: 5/26/09 - 10/15/10	Schedule D Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	4	10/23				-					
2010	4	10/30				-					
2010	4	11/6				-					
2010	4	11/13				-					
2010	4	11/20				-					
2010	4	11/27				-					
2010	4	12/4				-					
2010	4	12/11				-					
2010	4	12/18				-					
2010	4	12/25				-					
2010	4	Total				2,157		2,157	-	-	2,157

Totals	54,683	-	-	54,683
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Notes

Total Backpay and Expenses	54,683
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NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: William Lewis

Backpay period: 5/26/09 - 10/15/10	Schedule E Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	2	4/4				-					
2009	2	4/11				-					
2009	2	4/18				-					
2009	2	4/25				-					
2009	2	5/2				-					
2009	2	5/9				-					
2009	2	5/16				-					
2009	2	5/23				-					
2009	2	5/30	18.65	0.6	19.58	383					
2009	2	6/6	32.63	1.05	19.58	670					
2009	2	6/13	32.63	1.05	19.58	670					
2009	2	6/20	32.63	1.05	19.58	670					
2009	2	6/27	32.63	1.05	19.58	670					
2009	2	Total				3,063		3,063	-	-	3,063
2009	3	7/4	32.63	1.05	19.58	670					
2009	3	7/11	32.63	1.05	19.58	670					
2009	3	7/18	32.63	1.05	19.58	670					
2009	3	7/25	32.63	1.05	19.58	670					
2009	3	8/1	32.63	1.05	19.58	670					
2009	3	8/8	32.63	1.05	19.58	670					
2009	3	8/15	32.63	1.05	19.58	670					
2009	3	8/22	32.63	1.05	19.58	670					
2009	3	8/29	32.63	1.05	19.58	670					
2009	3	9/5	32.63	1.05	19.58	670					
2009	3	9/12	32.63	1.05	19.58	670					
2009	3	9/19	32.63	1.05	19.58	670					
2009	3	9/26	32.63	1.05	19.58	670					
2009	3	Total				8,710		8,710	-	-	8,710

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: William Lewis

Backpay period: 5/26/09 - 10/15/10	Schedule E Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	4	10/3	32.63	1.05	19.58	670					
2009	4	10/10	32.63	1.05	19.58	670					
2009	4	10/17	32.63	1.05	19.58	670					
2009	4	10/24	32.63	1.05	19.58	670					
2009	4	10/31	32.63	1.05	19.58	670					
2009	4	11/7	32.63	1.05	19.58	670					
2009	4	11/14	32.63	1.05	19.58	670					
2009	4	11/21	32.63	1.05	19.58	670					
2009	4	11/28	32.63	1.05	19.58	670					
2009	4	12/5	32.63	1.05	19.58	670					
2009	4	12/12	32.63	1.05	19.58	670					
2009	4	12/19	32.63	1.05	19.58	670					
2009	4	12/26	32.63	1.05	19.58	670					
2009	4	Total				8,710		8,710	-	-	8,710
2010	1	1/2	32.63	1.05	19.58	670					
2010	1	1/9	32.63	1.05	19.58	670					
2010	1	1/16	32.63	1.05	19.58	670					
2010	1	1/23	32.63	1.05	19.58	670					
2010	1	1/30	32.63	1.05	19.58	670					
2010	1	2/6	32.63	1.05	19.58	670					
2010	1	2/13	32.63	1.05	19.58	670					
2010	1	2/20	32.63	1.05	19.58	670					
2010	1	2/27	32.63	1.05	19.58	670					
2010	1	3/6	32.63	1.05	19.58	670					
2010	1	3/13	32.63	1.05	19.58	670					
2010	1	3/20	32.63	1.05	19.58	670					
2010	1	3/27	32.63	1.05	19.58	670					
2010	1	Total				8,710		8,710	-	-	8,710
2010	2	4/3	32.63	1.05	19.58	670					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: William Lewis

Backpay period: 5/26/09 - 10/15/10	Schedule E Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	2	4/10	32.63	1.05	19.58	670					
2010	2	4/17	32.63	1.05	19.58	670					
2010	2	4/24	32.63	1.05	19.58	670					
2010	2	5/1	32.63	1.05	19.58	670					
2010	2	5/8	32.63	1.05	19.58	670					
2010	2	5/15	32.63	1.05	19.58	670					
2010	2	5/22	32.63	1.05	19.58	670					
2010	2	5/29	32.63	1.05	19.58	670					
2010	2	6/5	32.63	1.05	19.58	670					
2010	2	6/12	32.63	1.05	19.58	670					
2010	2	6/19	32.63	1.05	19.58	670					
2010	2	6/26	32.63	1.05	19.58	670					
2010	2	Total				8,710		8,710	-	-	8,710
2010	3	7/3	32.63	1.05	19.58	670					
2010	3	7/10	32.63	1.05	19.58	670					
2010	3	7/17	32.63	1.05	19.58	670					
2010	3	7/24	32.63	1.05	19.58	670					
2010	3	7/31	32.63	1.05	19.58	670					
2010	3	8/7	32.63	1.05	19.58	670					
2010	3	8/14	32.63	1.05	19.58	670					
2010	3	8/21	32.63	1.05	19.58	670					
2010	3	8/28	32.63	1.05	19.58	670					
2010	3	9/4	32.63	1.05	19.58	670					
2010	3	9/11	32.63	1.05	19.58	670					
2010	3	9/18	32.63	1.05	19.58	670					
2010	3	9/25	32.63	1.05	19.58	670					
2010	3	Total				8,710		8,710	-	-	8,710
2010	4	10/2	32.63	1.05	19.58	670					
2010	4	10/9	32.63	1.05	19.58	670					
2010	4	10/16	27.97	0.9	19.58	574					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: William Lewis

Backpay period: 5/26/09 - 10/15/10	Schedule E Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	4	10/23				-					
2010	4	10/30				-					
2010	4	11/6				-					
2010	4	11/13				-					
2010	4	11/20				-					
2010	4	11/27				-					
2010	4	12/4				-					
2010	4	12/11				-					
2010	4	12/18				-					
2010	4	12/25				-					
2010	4	Total				1,914		1,914	-	-	1,914

Totals	48,527	-	-	48,527
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Notes **Total Backpay and Expenses 48,527**

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.

Case Number: 7-CA-52306

Backpay period:

5/26/09 - 10/15/10

Schedule F

Interest calculated to:

Claimant: Miles Reynolds Jr. Fringes

Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	2	4/4				-					
2009	2	4/11				-					
2009	2	4/18				-					
2009	2	4/25				-					
2009	2	5/2				-					
2009	2	5/9				-					
2009	2	5/16				-					
2009	2	5/23				-					
2009	2	5/30	21.84		18.99	415					
2009	2	6/6	38.21		18.99	726					
2009	2	6/13	38.21		18.99	726					
2009	2	6/20	38.21		18.99	726					
2009	2	6/27	38.21		18.99	726					
2009	2	Total				3,319	2,431	1/	888	-	888
2009	3	7/4	38.21		18.99	726					
2009	3	7/11	38.21		18.99	726					
2009	3	7/18	38.21		18.99	726					
2009	3	7/25	38.21		18.99	726					
2009	3	8/1	38.21		18.99	726					
2009	3	8/8	38.21		18.99	726					
2009	3	8/15	38.21		18.99	726					
2009	3	8/22	38.21		18.99	726					
2009	3	8/29	38.21		18.99	726					
2009	3	9/5	38.21		18.99	726					
2009	3	9/12	38.21		18.99	726					
2009	3	9/19	38.21		18.99	726					
2009	3	9/26	38.21		18.99	726					
2009	3	Total				9,438	6,257	1/	3,181	-	3,181

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.

Case Number: 7-CA-52306

Backpay period:
5/26/09 - 10/15/10

Schedule F
Interest calculated to:

Claimant: Miles Reynolds Jr. Fringes

Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses	
2009	4	10/3	38.21		18.99	726						
2009	4	10/10	38.21		18.99	726						
2009	4	10/17	38.21		18.99	726						
2009	4	10/24	38.21		18.99	726						
2009	4	10/31	38.21		18.99	726						
2009	4	11/7	38.21		18.99	726						
2009	4	11/14	38.21		18.99	726						
2009	4	11/21	38.21		18.99	726						
2009	4	11/28	38.21		18.99	726						
2009	4	12/5	38.21		18.99	726						
2009	4	12/12	38.21		18.99	726						
2009	4	12/19	38.21		18.99	726						
2009	4	12/26	38.21		18.99	726						
2009	4	Total				9,438	5,317	2/	4,121	-	-	4,121
2010	1	1/2	38.21		18.99	726						
2010	1	1/9	38.21		18.99	726						
2010	1	1/16	38.21		18.99	726						
2010	1	1/23	38.21		18.99	726						
2010	1	1/30	38.21		18.99	726						
2010	1	2/6	38.21		18.99	726						
2010	1	2/13	38.21		18.99	726						
2010	1	2/20	38.21		18.99	726						
2010	1	2/27	38.21		18.99	726						
2010	1	3/6	38.21		18.99	726						
2010	1	3/13	38.21		18.99	726						
2010	1	3/20	38.21		18.99	726						
2010	1	3/27	38.21		18.99	726						
2010	1	Total				9,438	1,330	3/	8,108	-	-	8,108
2010	2	4/3	38.21		18.99	726						

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: Miles Reynolds Jr. Fringes

Backpay period: 5/26/09 - 10/15/10	Schedule F Interest calculated to.
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	2	4/10	38.21		18.99	726					
2010	2	4/17	38.21		18.99	726					
2010	2	4/24	38.21		18.99	726					
2010	2	5/1	38.21		18.99	726					
2010	2	5/8	38.21		18.99	726					
2010	2	5/15	38.21		18.99	726					
2010	2	5/22	38.21		18.99	726					
2010	2	5/29	38.21		18.99	726					
2010	2	6/5	38.21		18.99	726					
2010	2	6/12	38.21		18.99	726					
2010	2	6/19	38.21		18.99	726					
2010	2	6/26	38.21		18.99	726					
2010	2	Total				9,438		9,438	-	-	9,438
2010	3	7/3	38.21		18.99	726					
2010	3	7/10	38.21		18.99	726					
2010	3	7/17	38.21		18.99	726					
2010	3	7/24	38.21		18.99	726					
2010	3	7/31	38.21		18.99	726					
2010	3	8/7	38.21		18.99	726					
2010	3	8/14	38.21		18.99	726					
2010	3	8/21	38.21		18.99	726					
2010	3	8/28	38.21		18.99	726					
2010	3	9/4	38.21		18.99	726					
2010	3	9/11	38.21		18.99	726					
2010	3	9/18	38.21		18.99	726					
2010	3	9/25	38.21		18.99	726					
2010	3	Total				9,438	4,003	4/ 5,435	-	-	5,435
2010	4	10/2	38.21		18.99	726					
2010	4	10/9	38.21		18.99	726					
2010	4	10/16	32.75		18.99	622					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc
 Case Number: 7-CA-52306

Backpay period:
 5/26/09 - 10/15/10

Schedule F
 Interest calculated to:

Claimant: Miles Reynolds Jr. Fringes

Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	4	10/23				-					
2010	4	10/30				-					
2010	4	11/6				-					
2010	4	11/13				-					
2010	4	11/20				-					
2010	4	11/27				-					
2010	4	12/4				-					
2010	4	12/11				-					
2010	4	12/18				-					
2010	4	12/25				-					
2010	4	Total				2,074	15,179	5/	-	-	-

Totals 31,171 - - 31,171

Total Backpay and Expenses 31,171

Notes

- 1/ CV Cement Contracting Company, Inc.
- 2/ CV Cement Contracting Company, Inc. and E & T Trucking, Inc.
- 3/ E & T Trucking, Inc.
- 4/ Ideal Contracting and GEO Gradel Co.
- 5/ Ideal Contracting

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.

Case Number: 7-CA-52306

Backpay period.

Schedule G

Claimant: George Cook Fringes

5/26/09 - 10/15/10

Interest calculated to:

Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	2	4/4				-					
2009	2	4/11				-					
2009	2	4/18				-					
2009	2	4/25				-					
2009	2	5/2				-					
2009	2	5/9				-					
2009	2	5/16				-					
2009	2	5/23				-					
2009	2	5/30	18.18		11.00	200					
2009	2	6/6	31.81		11.00	350					
2009	2	6/13	31.81		11.00	350					
2009	2	6/20	31.81		11.00	350					
2009	2	6/27	31.81		11.00	350					
2009	2	Total				1,600		1,600	-	-	1,600
2009	3	7/4	31.81		11.00	350					
2009	3	7/11	31.81		11.00	350					
2009	3	7/18	31.81		11.00	350					
2009	3	7/25	31.81		11.00	350					
2009	3	8/1	31.81		11.00	350					
2009	3	8/8	31.81		11.00	350					
2009	3	8/15	31.81		11.00	350					
2009	3	8/22	31.81		11.00	350					
2009	3	8/29	31.81		11.00	350					
2009	3	9/5	31.81		11.00	350					
2009	3	9/12	31.81		11.00	350					
2009	3	9/19	31.81		11.00	350					
2009	3	9/26	31.81		11.00	350					
2009	3	Total				4,550		4,550	-	-	4,550

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: George Cook Fringes

Backpay period: 5/26/09 - 10/15/10	Schedule G Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	4	10/3	31.81		11.00	350					
2009	4	10/10	31.81		11.00	350					
2009	4	10/17	31.81		11.00	350					
2009	4	10/24	31.81		11.00	350					
2009	4	10/31	31.81		11.00	350					
2009	4	11/7	31.81		11.00	350					
2009	4	11/14	31.81		11.00	350					
2009	4	11/21	31.81		11.00	350					
2009	4	11/28	31.81		11.00	350					
2009	4	12/5	31.81		11.00	350					
2009	4	12/12	31.81		11.00	350					
2009	4	12/19	31.81		11.00	350					
2009	4	12/26	31.81		11.00	350					
2009	4	Total				4,550		4,550	-	-	4,550
2010	1	1/2	31.81		11.00	350					
2010	1	1/9	31.81		11.00	350					
2010	1	1/16	31.81		11.00	350					
2010	1	1/23	31.81		11.00	350					
2010	1	1/30	31.81		11.00	350					
2010	1	2/6	31.81		11.00	350					
2010	1	2/13	31.81		11.00	350					
2010	1	2/20	31.81		11.00	350					
2010	1	2/27	31.81		11.00	350					
2010	1	3/6	31.81		11.00	350					
2010	1	3/13	31.81		11.00	350					
2010	1	3/20	31.81		11.00	350					
2010	1	3/27	31.81		11.00	350					
2010	1	Total				4,550		4,550	-	-	4,550
2010	2	4/3	31.81		11.00	350					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: George Cook Fringes

Backpay period: 5/26/09 - 10/15/10	Schedule G Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	2	4/10	31.81		11.00	350					
2010	2	4/17	31.81		11.00	350					
2010	2	4/24	31.81		11.00	350					
2010	2	5/1	31.81		11.00	350					
2010	2	5/8	31.81		11.00	350					
2010	2	5/15	31.81		11.00	350					
2010	2	5/22	31.81		11.00	350					
2010	2	5/29	31.81		11.00	350					
2010	2	6/5	31.81		11.00	350					
2010	2	6/12	31.81		11.00	350					
2010	2	6/19	31.81		11.00	350					
2010	2	6/26	31.81		11.00	350					
2010	2	Total				4,550		4,550	-	-	4,550
2010	3	7/3	31.81		11.00	350					
2010	3	7/10	31.81		11.00	350					
2010	3	7/17	31.81		11.00	350					
2010	3	7/24	31.81		11.00	350					
2010	3	7/31	31.81		11.00	350					
2010	3	8/7	31.81		11.00	350					
2010	3	8/14	31.81		11.00	350					
2010	3	8/21	31.81		11.00	350					
2010	3	8/28	31.81		11.00	350					
2010	3	9/4	31.81		11.00	350					
2010	3	9/11	31.81		11.00	350					
2010	3	9/18	31.81		11.00	350					
2010	3	9/25	31.81		11.00	350					
2010	3	Total				4,550		4,550	-	-	4,550
2010	4	10/2	31.81		11.00	350					
2010	4	10/9	31.81		11.00	350					
2010	4	10/16	27.27		11.00	300					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: George Cook Fringes

Backpay period: 5/26/09 - 10/15/10	Schedule G Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	4	10/23				-					
2010	4	10/30				-					
2010	4	11/6				-					
2010	4	11/13				-					
2010	4	11/20				-					
2010	4	11/27				-					
2010	4	12/4				-					
2010	4	12/11				-					
2010	4	12/18				-					
2010	4	12/25				-					
2010	4	Total				1,000		1,000	-	-	1,000

Totals	25,350	-	-	25,350
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Notes

Total Backpay and Expenses	25,350
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NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: William Lewis Fringes

Backpay period: 5/26/09 - 10/15/10	Schedule H Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	2	4/4				-					
2009	2	4/11				-					
2009	2	4/18				-					
2009	2	4/25				-					
2009	2	5/2				-					
2009	2	5/9				-					
2009	2	5/16				-					
2009	2	5/23				-					
2009	2	5/30	19.25		14.16	273					
2009	2	6/6	33.68		14.16	477					
2009	2	6/13	33.68		14.16	477					
2009	2	6/20	33.68		14.16	477					
2009	2	6/27	33.68		14.16	477					
2009	2	Total				2,181		2,181	-	-	2,181
2009	3	7/4	33.68		14.16	477					
2009	3	7/11	33.68		14.16	477					
2009	3	7/18	33.68		14.16	477					
2009	3	7/25	33.68		14.16	477					
2009	3	8/1	33.68		14.16	477					
2009	3	8/8	33.68		14.16	477					
2009	3	8/15	33.68		14.16	477					
2009	3	8/22	33.68		14.16	477					
2009	3	8/29	33.68		14.16	477					
2009	3	9/5	33.68		14.16	477					
2009	3	9/12	33.68		14.16	477					
2009	3	9/19	33.68		14.16	477					
2009	3	9/26	33.68		14.16	477					
2009	3	Total				6,201		6,201	-	-	6,201

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc
 Case Number: 7-CA-52306
 Claimant: William Lewis Fringes

Backpay period: 5/26/09 - 10/15/10	Schedule H Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	4	10/3	33.68		14.16	477					
2009	4	10/10	33.68		14.16	477					
2009	4	10/17	33.68		14.16	477					
2009	4	10/24	33.68		14.16	477					
2009	4	10/31	33.68		14.16	477					
2009	4	11/7	33.68		14.16	477					
2009	4	11/14	33.68		14.16	477					
2009	4	11/21	33.68		14.16	477					
2009	4	11/28	33.68		14.16	477					
2009	4	12/5	33.68		14.16	477					
2009	4	12/12	33.68		14.16	477					
2009	4	12/19	33.68		14.16	477					
2009	4	12/26	33.68		14.16	477					
2009	4	Total				6,201		6,201	-	-	6,201
2010	1	1/2	33.68		14.16	477					
2010	1	1/9	33.68		14.16	477					
2010	1	1/16	33.68		14.16	477					
2010	1	1/23	33.68		14.16	477					
2010	1	1/30	33.68		14.16	477					
2010	1	2/6	33.68		14.16	477					
2010	1	2/13	33.68		14.16	477					
2010	1	2/20	33.68		14.16	477					
2010	1	2/27	33.68		14.16	477					
2010	1	3/6	33.68		14.16	477					
2010	1	3/13	33.68		14.16	477					
2010	1	3/20	33.68		14.16	477					
2010	1	3/27	33.68		14.16	477					
2010	1	Total				6,201		6,201	-	-	6,201
2010	2	4/3	33.68		14.16	477					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: William Lewis Fringes

Backpay period: 5/26/09 - 10/15/10	Schedule H Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	2	4/10	33.68		14.16	477					
2010	2	4/17	33.68		14.16	477					
2010	2	4/24	33.68		14.16	477					
2010	2	5/1	33.68		14.16	477					
2010	2	5/8	33.68		14.16	477					
2010	2	5/15	33.68		14.16	477					
2010	2	5/22	33.68		14.16	477					
2010	2	5/29	33.68		14.16	477					
2010	2	6/5	33.68		14.16	477					
2010	2	6/12	33.68		14.16	477					
2010	2	6/19	33.68		14.16	477					
2010	2	6/26	33.68		14.16	477					
2010	2	Total				6,201		6,201	-	-	6,201
2010	3	7/3	33.68		14.16	477					
2010	3	7/10	33.68		14.16	477					
2010	3	7/17	33.68		14.16	477					
2010	3	7/24	33.68		14.16	477					
2010	3	7/31	33.68		14.16	477					
2010	3	8/7	33.68		14.16	477					
2010	3	8/14	33.68		14.16	477					
2010	3	8/21	33.68		14.16	477					
2010	3	8/28	33.68		14.16	477					
2010	3	9/4	33.68		14.16	477					
2010	3	9/11	33.68		14.16	477					
2010	3	9/18	33.68		14.16	477					
2010	3	9/25	33.68		14.16	477					
2010	3	Total				6,201		6,201	-	-	6,201
2010	4	10/2	33.68		14.16	477					
2010	4	10/9	33.68		14.16	477					
2010	4	10/16	28.87		14.16	409					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: William Lewis Fringes

Backpay period: 5/26/09 - 10/15/10	Schedule H Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	4	10/23				-					
2010	4	10/30				-					
2010	4	11/6				-					
2010	4	11/13				-					
2010	4	11/20				-					
2010	4	11/27				-					
2010	4	12/4				-					
2010	4	12/11				-					
2010	4	12/18				-					
2010	4	12/25				-					
2010	4	Total				1,363		1,363	-	-	1,363

Totals	34,549	-	-	34,549
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Notes

Total Backpay and Expenses	34,549
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BOARD'S RULES AND REGULATIONS

SEC. 102.56 *Answer to compliance specification*

(a) *Filing and service of answer; form.* — Each respondent alleged in the specification to have compliance obligations shall, within 21 days from the service of the specification, file an original and four copies of an answer thereto with the Regional Director issuing the specification, and shall immediately serve a copy thereof on the other parties. The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the mailing address of the respondent.

(b) *Contents of answer to specification.* — The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

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

(d) *Extension of time for filing answer to specification.* — Upon the Regional Director's own motion or upon proper cause shown by any respondent, the Regional Director issuing the compliance specification and notice of hearing may by written order extend the time within which the answer to the specification shall be filed.

(e) *Amendment to answer.* — Following the amendment of the specification by the Regional Director, any respondent affected by the amendment may amend its answer thereto.

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FERGUSON ENTERPRISES, INC.

Respondent

and

JOSEPH LAPHAM, An Individual

Charging Party

CASE 07-CA-052306

DATE OF MAILING: October 31, 2011

AFFIDAVIT OF SERVICE OF: COMPLIANCE SPECIFICATION AND NOTICE OF HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above, I served the above-entitled document(s) by certified and regular mail upon the following persons, addressed to them at the following addresses:

CERTIFIED MAIL:

Ms Gwendolyn Young
Ferguson Enterprises Inc
14385 Wyoming St
Detroit MI 48238-2378
Certified # 7003 2260 0005 9722 0898

REGULAR MAIL:

Stanley C Moore III Esq
Plunkett Cooney
38505 Woodward Ave Ste 2000
Bloomfield Hills MI 48304-5096

Joseph Lapham
914 Genesee Dr
Royal Oak MI 48073-2052
Certified # 7003 2260 0005 9722 1017

MDB/sr


Sheila Matlock, Mail Clerk

GENERAL COUNSEL'S
EXHIBIT
D

Subscribed and sworn to before me this

31st day of October, 2011

DESIGNATED AGENT:


NOTARY PUBLIC FOR WASHTENAW COUNTY,
ACTING IN WAYNE COUNTY, MICHIGAN
MY COMMISSION EXPIRES: 11-27-2012

IN THE UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

FERGUSON ENTERPRISES, INC.

Respondent

and

JOSEPH LAPHAM, an Individual

Charging Party

RECEIVED
NLRB-REGION 7
2011 NOV 21 P 3:31
DETROIT MICHIGAN
CASE 7-CA-52306

RESPONDENT'S ANSWER TO COMPLIANCE SPECIFICATION

NOW COMES the Respondent, FERGUSON ENTERPRISES, INC., by and through its counsel of record, and in answer to the Compliance Specification, states as follows:

1. Admitted.
2. Admitted.
3. Admitted with the caveat that such a measure of back-pay must be offset

against the available work that was performed by individuals who remained employed with the Respondent.

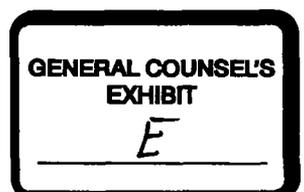
4.

- (a) Admitted that the measure set forth is an appropriate measure, but

Respondent submits that same must be offset by the available work that was performed by individuals who remained employed with the Respondent.

- (b) Admitted.

- (c) Admitted.



(d) Denied for the reason that the measure of back-pay used in this specification has not been offset against the available work performed by the individuals who remained employed with the Respondent and, therefore, the back-pay specification is inaccurate.

5.

(a) Respondent admits that the measure set forth is an appropriate measure, but submits that fringe benefits are not paid directly to an individual. Rather, they are to be paid to a union-sponsored fringe benefit fund and, therefore, are not owed to an individual.

(b) Respondent admits that the measure set forth is an appropriate measure, but submits that fringe benefits are not paid directly to an individual. Rather, they are to be paid to a union-sponsored fringe benefit fund and, therefore, are not owed to an individual.

(c) Respondent admits that the measure set forth is an appropriate measure, but submits that fringe benefits are not paid directly to an individual. Rather, they are to be paid to a union-sponsored fringe benefit fund and, therefore, are not owed to an individual.

6.

(a) Regarding Joseph Lapham, Respondent admits that his per hour rate was \$25.03 per hour and that he functioned as an operating engineer. Regarding the allegation that he worked an average of 34.68 hours per weekly pay period and 1.27 hours of overtime, there is no detail provided as to what time period was used to

calculate those hours. Without such detail, Respondent is unable to validate and/or challenge the calculation set forth by the Region.

In further answer, a list of hire/seniority dates of individuals functioning as operating engineers for Respondent during the relevant period is attached as *Exhibit A*. Additionally, Respondent provided the Region with Operating Engineers Fringe Benefit Funds Reports from May, 2009 through October, 2010 showing the hours worked by individuals on a monthly basis. Based on a review of those reports and the individuals' hire/seniority dates per *Exhibit A*, Respondent submits the following would apply regarding the work opportunities of Mr. Lapham based on the Region's specification:

May, 2009	No dispute
June, 2009	No dispute
July, 2009	No dispute
August, 2009	No dispute
September, 2009	No dispute
October, 2009	No dispute
November, 2009	No dispute
December, 2009	No dispute
January, 2010	Disputed and submitted that Reynolds would have worked in place of McIntosh, but Lapham would not have worked
February, 2010	Disputed and submitted that Reynolds would have worked in place of McIntosh, but Lapham would not have worked
March, 2010	Disputed and submitted that Reynolds would have worked in place of McIntosh, but Lapham would not have worked
April, 2010	Would not have worked
May, 2010	Would not have worked
June, 2010	Would not have worked
July, 2010	Would not have worked
August, 2010	Would not have worked
September, 2010	Would not have worked
October, 2010	Would not have worked

Thereby, Respondent asserts that for the period of January, 2010 through October, 2010, Lapham would not have worked and the amount of \$38,341 must be deducted from the specification.

In further answer to paragraph 6(a), Respondent, having received no information from the Region regarding any efforts made by Lapham to seek interim employment, cannot make an accurate determination why Lapham did not have any quarterly interim earnings or additional interim expenses. Thereby, Respondent cannot accept the specification calculation.

Additionally, based on an analysis of the Calendar Quarter Ending Reports from the Michigan Unemployment Insurance Agency for the quarters ending June 30, 2009 through September 30, 2010, there are questions raised by the time periods/number of items regarding when Lapham received unemployment and why there were weeks he did not. A summary of the reports is attached as *Exhibit B*.

Respondent contends that the alleged lack of any interim earnings by Lapham is improbable at best. It is submitted that there is no basis to accept the Region's allegation that Lapham had no other earnings for the period of May 26, 2009 through October 15, 2010 and relied solely on unemployment compensation for his welfare. The Region has not provided the Respondent with any documentation to substantiate any efforts having been made by Lapham to find alternate employment. Respondent contends that, at the hearing, it will be able to demonstrate through the testimony of Lapham that either he was unavailable for work and/or engaged in willful idleness. In the absence of evidence as to what Lapham could have earned had he engaged in reasonable efforts to secure and retain interim employment, it must be assumed that

any other employment would have yielded earnings equal to what Lapham would have earned had he remained employed with Respondent. In this circumstance, no back-pay is owed to Lapham.

(b). Regarding Miles Reynolds, Jr., Respondent admits that his rate was \$26.62 per hour and that he functioned as an operating engineer. Regarding the allegation that he worked an average of 34.66 per weekly pay period and 3.55 hours of overtime, there is no detail provided as to what time period was used to calculate those hours. Without such detail, Respondent is unable to validate and/or challenge the calculation set forth by the Region.

In further answer, a list of hire/seniority dates of individuals functioning as operating engineers for Respondent during the relevant period is attached as *Exhibit A*. Additionally, Respondent provided the Region with Operating Engineers Fringe Benefit Funds Reports from May, 2009 through October, 2010 showing the hours worked by individuals on a monthly basis. Based on a review of those reports and the individuals' hire/seniority dates per *Exhibit A*, Respondent submits the following would apply regarding the work opportunities of Mr. Reynolds based on the Region's specification:

May, 2009	No dispute
June, 2009	No dispute
July, 2009	No dispute
August, 2009	No dispute
September, 2009	No dispute
October, 2009	No dispute
November, 2009	No dispute
December, 2009	No dispute
January, 2010	No dispute
February, 2010	No dispute
March, 2010	No dispute
April, 2010	Would not have worked
May, 2010	Would not have worked

June, 2010	Would not have worked
July, 2010	Would not have worked
August, 2010	Would not have worked
September, 2010	Would not have worked
October, 2010	Would not have worked

Thereby, Respondent asserts that the back-pay for the period of April through October, 2010 in the amount of \$27,664 must be deducted from the specification.

In further answer to paragraph 6(b), Respondent, having received no information from the Region regarding any efforts made by Reynolds to seek interim employment, cannot make an accurate determination why Reynolds did not have any quarterly interim earnings or additional interim expenses. Thereby, Respondent cannot accept the specification calculation.

Additionally, based on an analysis of the Calendar Quarter Ending Reports from the Michigan Unemployment Insurance Agency for the quarters ending June 30, 2009 through September 30, 2010, there are questions raised by the time periods/number of items regarding when Reynolds received unemployment and why there were weeks he did not. A summary of the reports is attached as *Exhibit B*.

Based on any time period he was not available for work or was willfully idle, he is not entitled to fringe benefits; see *Exhibit B*. As an example, for the first quarter of 2010, he claims interim earnings of only \$1,750 but received no unemployment compensation. In the second quarter of 2010, he claims no interim earnings but received no unemployment compensation. Clearly, questions exist that need to be answered by Reynolds at the hearing.

Respondent contends that the alleged lack of interim earnings by Reynolds in certain weeks/quarters is questionable. It is submitted that there is no basis to accept

the Region's allegation that Reynolds had the limited stated earnings and no other earnings for the period of May 26, 2009 through October 15, 2010. The Region has not provided the Respondent with any documentation to substantiate efforts having been made by Reynolds to find other interim employment. Respondent contends that, at the hearing, it will be able to demonstrate through the testimony of Reynolds that either he was unavailable for work and/or engaged in willful idleness. In the absence of evidence as to what Reynolds could have earned had he engaged in reasonable efforts to secure and retain other interim employment, it must be assumed that any other employment would have yielded earnings equal to what Reynolds would have earned had he remained employed with Respondent. In this circumstance, no back-pay is owed to Reynolds.

(c) Regarding George Cook, Respondent admits that his rate was \$18.90 per hour and that he functioned as an operating engineer apprentice. Regarding the allegation that he worked an average of 30.62 hours per weekly pay period and 1.19 hours overtime, there is no detail provided as to what time period was used to calculate those hours. Without such detail, Respondent is unable to validate and/or challenge the calculation set forth by the Region.

In further answer, a list of hire/seniority dates of individuals functioning as operating engineers for Respondent during the relevant period is attached as *Exhibit A*. Additionally, Respondent provided the Region with Operating Engineers Fringe Benefit Funds Reports from May, 2009 through October, 2010 showing the hours worked by individuals on a monthly basis. Based on a review of those reports and the individuals'

hire/seniority dates per *Exhibit A*, Respondent submits the following would apply regarding the work opportunities of Mr. Cook based on the Region's specification.

For May, 2009, there is no dispute. However, from June, 2009 through October, 2010, Cook would not have worked. Please see Exhibit A listing the hire/seniority dates and the previously submitted Operating Engineers Fringe Benefit Funds Reports. A review of same will show that all other operating engineers, except York, had more seniority and would have worked before Cook. Thereby, the only sum due Cook is \$350 for May, 2009.

In further answer to paragraph 6(c), Respondent, having received no information from the Region regarding any efforts made by Cook to seek interim employment, cannot make an accurate determination why Cook did not have any quarterly interim earnings or additional interim expenses. Thereby, Respondent cannot accept the specification calculation.

Additionally, based on an analysis of the Calendar Quarter Ending Reports from the Michigan Unemployment Insurance Agency for the quarters ending June 30, 2009 through September 30, 2010, there are questions raised by the time periods/number of items regarding when Cook received unemployment and why there were weeks he did not. A summary of the reports is attached as *Exhibit B*.

Respondent contends that the alleged lack of any interim earnings by Cook is improbable at best. It is submitted that there is no basis to accept the Region's allegation that Cook had no other earnings for the period of May 26, 2009 through October 15, 2010 and relied solely on unemployment compensation for his welfare. The Region has not provided the Respondent with any documentation to substantiate any

efforts having been made by Cook to find alternate employment. Respondent contends that, at the hearing, it will be able to demonstrate through the testimony of Cook that either he was unavailable for work and/or engaged in willful idleness. In the absence of evidence as to what Cook could have earned had he engaged in reasonable efforts to secure and retain interim employment, it must be assumed that any other employment would have yielded earnings equal to what Cook would have earned had he remained employed with Respondent. In this circumstance, no back-pay is owed to Cook.

(d) Regarding David Hall, Respondent admits that his rate was \$19.75 per hour and that he functioned as a laborer. Regarding the allegation he worked 35.94 hours per weekly pay period and 1.52 hours overtime, there is no detail provided as to what time period was used to calculate those hours. Without such detail, Respondent is unable to validate and/or challenge the calculation set forth by the Region.

Respondent submitted fringe benefit reports for all three Laborers Locals (334, 1076 and 1191) showing the hours reported each month for each individual who worked from May, 2009 through October, 2010. Respondent submits that only the work performed under the jurisdiction of Laborers Union Local 1191 should be considered. Work performed under the jurisdiction of Laborers Union Locals 334 and 1076 was not performed by Hall. Therefore, to determine the hours worked, only the reports to the Laborers Fringe Benefit Funds for Local 1191 should be considered.

Accordingly, based on Hall's hire/seniority date of December 2, 2004, there is no dispute regarding him having worked for the period of May, 2009 through October, 2010. However, it is submitted that Hall was either unavailable for work and/or engaged in willful idleness and, therefore, is not entitled to any back-pay.

A review of *Exhibit B* will show that Hall received only six weeks of unemployment compensation for the time period of May 26, 2009 through September 30, 2010. Clearly, he was either working, and has not reported his interim earnings to the Region, or he was unavailable for work and/or was willfully idle.

Because the Region has not provided Respondent with any information regarding any efforts by Hall to find interim employment, Respondent will need to examine Hall at the hearing as to what he was or was not doing in seeking interim employment. Based on the information known to Respondent at this time, it is submitted that Hall is entitled to no back-pay.

(e) Regarding William Lewis, Respondent admits that his rate was \$19.58 per hour and that he functioned as a laborer. Regarding the allegation he worked 32.63 hours per weekly pay period and 1.05 hours overtime, there is no detail provided as to what time period was used to calculate those hours. Without such detail, Respondent is unable to validate and/or challenge the calculation set forth by the Region.

Respondent submitted fringe benefit reports for all three Laborers Locals (334, 1076 and 1191) showing the hours reported each month for each individual who worked from May, 2009 through October, 2010. Respondent submits that only the work performed under the jurisdiction of Laborers Union Local 1191 should be considered. The work performed under the jurisdiction of Laborers Union Locals 334 and 1076 was not performed by Lewis. Therefore, to determine the hours worked, only the reports to the Laborers Fringe Benefit Funds for Local 1191 should be considered.

Accordingly, based on Lewis' hire/seniority date of January 18, 2007, there is no dispute he would have worked from May, 2009 through June, 2010. For July, 2010, it

is submitted that Hall, whose seniority date is 12/02/04, would have worked and that James Washington, whose seniority date is 01/29/07, would not have worked and, thereby, Lewis (seniority date 01/18/07) also would not have worked.

For August, 2010, Lewis would have worked in place of James Washington. However, for both September and October, 2010, Hall would have worked. Thereby, James Washington would not have worked. Also, Lewis would not have worked. Accordingly, the sum of \$7,274 needs to be deducted from the specification (10 weeks at \$670 per week, and 1 week at \$574 per week).

In further answer to paragraph 6(e), Respondent, having received no information from the Region regarding any efforts made by Lewis to seek interim employment, cannot make an accurate determination why Lewis did not have any quarterly interim earnings or additional interim expenses. Thereby, Respondent cannot accept the specification calculation.

Additionally, based on an analysis of the Calendar Quarter Ending Reports from the Michigan Unemployment Insurance Agency for the quarters ending June 30, 2009 through September 30, 2010, there are questions raised by the time periods/number of items regarding when Lewis received unemployment and why there were weeks he did not. A summary of the reports is attached as *Exhibit B*.

Respondent contends that the alleged lack of any interim earnings by Lewis is improbable at best. It is submitted that there is no basis to accept the Region's allegation that Lewis had no other earnings for the period of May 26, 2009 through October 15, 2010 and relied solely on unemployment compensation for his welfare. The Region has not provided the Respondent with any documentation to substantiate any

efforts having been made by Lewis to find alternate employment. Respondent contends that, at the hearing, it will be able to demonstrate through the testimony of Lewis that either he was unavailable for work and/or engaged in willful idleness. In the absence of evidence as to what Lewis could have earned had he engaged in reasonable efforts to secure and retain interim employment, it must be assumed that any other employment would have yielded earnings equal to what Lewis would have earned had he remained employed with Respondent. In this circumstance, no back-pay is owed to Lewis.

7.

(a) Regarding the claim for fringe benefits for Miles Reynolds, Jr., Respondent admits his rate is \$18.99 per hour but denies he is entitled to same. First, Respondent reasserts, as if fully set forth herein, its response to Reynolds' claim for back-pay in paragraph 6(b) hereof and the analysis of when he would have worked for Respondent. The time period he would not have worked (April, 2010 through October, 2010) must be excluded from the specification regarding fringe benefits.

Second, based on any time period he was not available for work or was willfully idle, he is not entitled to fringe benefits; see *Exhibit B*. As an example, for the first quarter of 2010, he claims interim earnings of only \$1,750 but received no unemployment compensation. In the second quarter of 2010, he claims no interim earnings but received no unemployment compensation. Clearly, questions exist that need to be answered by Reynolds at the hearing.

Third, fringe benefits are not paid directly to an individual but, rather, to a union fund. Accordingly, no sums for fringe benefits are owed to Reynolds.

(b) Regarding the claim for fringe benefits for George Cook, Respondent admits the rate is \$11.00 per hour, but denies he is entitled to same.

First, Respondent asserts that because Cook would not have worked except for May, 2009, as set forth in the answer to paragraph 6(c), which is fully incorporated herein, he is entitled to no fringe benefit contributions.

Second, Respondent asserts that fringe benefits are not paid directly to an individual but, rather, to a union fund. Accordingly, no sums for fringe benefits are owed to Cook.

(c) Regarding the claim for fringe benefits for William Lewis, Respondent admits the rate is \$14.16 per hour but denies he is entitled to same.

First, Respondent reasserts, as though fully set forth herein, its response to Lewis' claim for back-pay on paragraph 6(e) hereof and the analysis of when he would have worked. For the time periods of July, September and October, 2010, Lewis would not have worked. Therefore, he is not entitled to fringe benefits for those periods.

Second, as set forth in paragraph 6(e), because Lewis was unavailable for work or willfully idle, he is not entitled to any fringe benefits.

Third, fringe benefits are not paid directly to an individual but, rather, to a union fund. Accordingly, no sums for fringe benefits are owed to Lewis.

8. Denied that the acting General Counsel is entitled to the Order sought in paragraph 8.

9. Admitted.

10. Denied that said figures are accurate and owed for the reasons set forth herein. Respondent asserts the discriminatees are owed nothing in the way of back pay

and fringe benefits given what appears to be a failure to mitigate. However, if any sums were deemed to be owed for back pay, at a maximum, it would be:

Lapham	\$66,345	- \$38,341	= \$28,004
Reynolds	\$44,948	- \$27,664	= \$17,284
Cook	\$39,990	- \$39,640	= \$ 350
Hall	\$54,683	- \$54,683	= \$ 0
Lewis	\$48,527	- \$7,274	= <u>\$41,253</u>
TOTAL:			\$ 86,891

Also, Respondent submits nothing is owed to Reynolds, Cook, and Lewis for fringe benefits.

WHEREFORE, Respondent prays that the relief and Order sought in the Compliance Specification be denied.

Respectfully Submitted,

PLUNKETT COONEY

By: 

Stanley C. Moore, III (P23358)
Atty(s) for Respondent Ferguson Enterprises, Inc.
38505 Woodward Avenue, Suite 2000
Bloomfield Hills, MI 48304
PH: (248) 901-4011
FAX: (248) 901-4040
E-mail: smoore@plunkettcooney.com

Dated: November 21, 2011

EXHIBIT A

OPERATING ENGINEERS
LIST OF HIRE/SENIORITY DATES

DATE	NAME
01.09.89	<i>Boyer, Issac</i>
01.25.00	<i>Erdman, Fred</i>
06.25.07	<i>Pritchett, Tony</i>
09.23.03	<i>Serzement, Anthony Dennis</i>
11.21.03	<i>Shepherd, Lonnell</i>
04.21.04	<i>Beesley, John</i>
06.02.04	<i>Bridges, Angelo</i>
07.09.04	<i>Rayford, Ashanti</i>
11.05.04	<i>Ferguson, James</i>
05.06.05	<i>Messing, Harry</i>
12.11.06	<i>Graves, Don</i>
12.19.06	<i>Reynold Jr., Miles</i>
01.17.07	<i>Lapham, Joseph</i>
08.13.07	<i>McIntosh, Steve</i>
02.08.08	<i>Westmoreland, Mark</i>
04.01.08	<i>Cook, George</i>
05.03.08	<i>York, Curtis</i>

EXHIBIT B

**BY QUARTERS, NUMBER OF WEEKS
OF EMPLOYMENT COLLECTED SHOWN
BY "NUMBER OF ITEMS"**

QUARTER ENDING DATE	LAPHAM	REYNOLDS	COOK	HALL	LEWIS
06/30/09	4	2	7	2	2
09/30/09	14	---	12	---	14
12/31/09	4	6	3	4	2
03/31/10	12	---	10	---	12
06/30/10	12	---	14	---	14
09/30/10	2	4	2	---	---
12/31/10	UNAVAILABLE AT THIS TIME				

IN THE UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

FERGUSON ENTERPRISES, INC.

Respondent

and

CASE 7-CA-52306

JOSEPH LAPHAM, an Individual

Charging Party

CERTIFICATE OF SERVICE

I hereby certify that on Monday, November 21, 2011, a copy of the *Respondent's Answer to Compliance Specification*, together with a copy of this *Certificate of Service*, were served upon the following parties/attorney(s) of record via U.S. Mail, with first class postage thereupon fully prepaid.

MR JOSEPH LAPHAM
914 GENESEE
ROYAL OAK MI 48073-2052

Under penalty of perjury, I declare that the foregoing is true to the best of my information, knowledge and belief.


Stanley C. Moore III

Open.15510.21935.11374638-1

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

FERGUSON ENTERPRISES, INC.

Respondent

and

CASE 7-CA-52306

JOSEPH LAPHAM, An Individual

Charging Party

**AMENDED COMPLIANCE SPECIFICATION
AND NOTICE OF HEARING**

The National Labor Relations Board, herein called the Board, issued its Decision and Order on September 22, 2010, reported at 355 NLRB No. 189, ordering Ferguson Enterprises, Inc., and its officers, agents, successors and assigns, herein called Respondent, to take certain actions, including offering reinstatement and making whole various employees, herein called discriminatees, for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest compounded on a daily basis. On May 16, 2011, the United States Court of Appeals for the Sixth Circuit entered its judgment in Case No. 11-1086 enforcing the aforesaid Decision and Order of the Board.

As a controversy presently exists regarding the liability of the Respondent as to the amount of backpay and other benefits owed the discriminatees under the terms of the Board's Order, as enforced by the United States Court of Appeals for the Sixth Circuit, the undersigned, pursuant to the authority duly conferred by the Board, hereby issues this Amended Compliance Specification and Notice of Hearing and alleges as follows:

1. No payments have been made by the Respondent to satisfy its obligation under the terms of the aforesaid Board Order, as enforced by the United States Court of Appeals for the Sixth Circuit.
2. The backpay period began about May 26, 2009, and continued until about October 15, 2010, when the Respondent shut down its operations and there was no more work available for the discriminatees.

**GENERAL COUNSEL'S
EXHIBIT**

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3. An appropriate measure of backpay due the discriminatees, who are named below, is the amount of earnings they would have received, but for the unlawful discrimination against them:

Joseph Lapham
George Cook
William Lewis

Miles Reynolds, Jr.
David Hall

4.(a). An appropriate measure of gross backpay can be obtained by determining the number of hours customarily worked by the discriminatees during their employment the year prior to their unlawful discharges by the Respondent, averaged into weekly pay periods during the calendar quarters and multiplied by the hourly wage rate each discriminatee received from the Respondent for regular hours, and by the same hourly rate times 1.5 for overtime hours.

(b). Quarterly interim earnings, whenever obtained, are deducted from gross backpay in order to obtain net backpay.

(c). Additional interim expenses incurred in searches for interim employment, as well as those additional interim expenses incurred in the course of performing interim employment, are added to net backpay as interim expenses.

(d). The totality of the above subsections of this paragraph comprise net backpay and expenses which are owed to the discriminatees.

5.(a). An appropriate measure of gross fringe benefits can be obtained by determining the number of hours customarily worked by the discriminatees during their employment prior to their unlawful discharges by the Respondent, averaged into weekly pay periods during the calendar quarters and multiplied by the hourly fringe benefit contribution rate each discriminatee received from the Respondent.

(b). Quarterly interim fringe benefits, whenever obtained, are deducted from gross fringe benefits in order to obtain net fringe benefits.

(c). The totality of the above subsections of this paragraph comprise net fringe benefits which are owed to the discriminatees.

6.(a). Joseph Lapham was an operating engineer underground, class I. The prevailing wages rates for Wayne County utilized by the State of Michigan, Department of Labor and Economic Growth, Wage and Hour Division for operating engineer underground, class I during the backpay period are as follows: May 26, 2009 to October 6, 2009 - \$46.04

per hour; October 7, 2009 to October 6, 2010 – \$47.24 per hour; and, October 7, 2010 to October 15, 2010 - \$48.34 per hour. On June 11, 2009, Respondent acknowledged in a document entitled “Acknowledgment and Release of All Claims” that Lapham was entitled to prevailing wage for work he performed for a period up to his layoff date. Therefore, the appropriate hourly rates for Lapham are the prevailing wage rates listed above. Lapham customarily worked an average of 34.18 regular hours per weekly pay period and 1.18 hours of overtime during the same period, and during a full calendar quarter would have been employed 13 weeks. Based on these hours, during the backpay period of about May 26, 2009, to about October 15, 2010, Lapham would have received gross backpay of \$122,219.00. During the same period, Lapham did not have quarterly interim earnings or additional interim expenses. Accordingly, as there were no interim earnings or interim expenses, the net backpay and expenses due Lapham remain at \$122,219.00 (see Schedule A).

(b). Miles Reynolds Jr. received \$26.62 per hour from the Respondent prior to his unlawful discharge, and customarily worked an average of 33.3 regular hours per weekly pay period and 3.45 hours of overtime during the same period, and during a full calendar quarter would have been employed 13 weeks. Based on these hours, during the backpay period of about May 26, 2009, to about June 27, 2009, Reynolds would have received gross backpay of \$4,681.00. During the same quarterly period, Reynolds had interim earnings of \$2,504.00. This amount deducted from gross back pay produced net backpay of \$2,177.00. The addition of interim expenses of \$248.00 resulted in net backpay and expenses due Reynolds of \$2,425.00. During the backpay period of about June 28, 2009, to about September 26, 2009, Reynolds would have received gross backpay of \$13,312.00. During the same quarterly period, Reynolds had interim earnings of \$11,293.00. This amount deducted from gross back pay produced net backpay of \$2,019.00. The addition of interim expenses of \$660.00 resulted in net backpay and expenses due Reynolds of \$2,679.00. During the backpay period of about September 27, 2009, to about December 26, 2009, Reynolds would have received gross backpay of \$13,312.00. During the same quarterly period, Reynolds had interim earnings of \$9,997.00. This amount deducted from gross back pay produced net backpay of \$3,315.00. The addition of interim expenses of \$789.00 resulted in net backpay and expenses due Reynolds of \$4,104.00. During the backpay period of about December 27, 2009, to about March 27, 2010, Reynolds would have received gross backpay of \$13,312.00. During the same quarterly period, Reynolds had interim earnings of \$1,750.00. This amount deducted from gross backpay produced net backpay of \$11,562.00. The addition of interim expenses of \$134.00 resulted in net backpay and expenses due Reynolds of \$11,696.00. During the backpay period of about March 28, 2010, to about June 26, 2010, Reynolds would have received gross backpay of \$13,312.00. During the same quarterly period, Reynolds did not have interim earnings or additional interim expenses. Accordingly, as there were no interim earnings or interim expenses, the net backpay and expenses due Reynolds remained at \$13,312.00. During the backpay period of about June 27, 2010, to about September 25, 2010, Reynolds would have received gross backpay of

\$13,312.00. During the same quarterly period, Reynolds had interim earnings of \$6,918.00. This amount deducted from gross backpay produced net backpay of \$6,394.00. The addition of interim expenses of \$1,555.00 resulted in net backpay and expenses due Reynolds of \$7,949.00. During the backpay period of about September 26, 2010, to about October 15, 2010, Reynolds would have received gross backpay of \$3,072.00. During the same quarterly period, Reynolds had interim earnings of \$26,178.00. Interim earnings were greater than the gross backpay Reynolds would have received and, therefore, Reynolds is not due any backpay for this quarterly period. Accordingly, for the backpay period of May 26, 2009, to October 15, 2010, the net backpay and expenses due Reynolds are \$42,165.00 (See Schedule B).

(c). George Cook received \$18.90 per hour from the Respondent prior to his unlawful discharge, and customarily worked an average of 30.83 regular hours per weekly pay period and 1.31 hours of overtime during the same period, and during a full calendar quarter would have been employed 13 weeks. Based on these hours, during the backpay period of about May 26, 2009, to about June 26, 2010, Cook would have received gross backpay of \$35,074.00. During the same quarterly periods, Cook did not have interim earnings or additional interim expenses. Accordingly, as there were no interim earnings or interim expenses, the net backpay and expenses due Cook remained at \$35,074.00. During the backpay period of about June 27, 2010, to about September 25, 2010, Cook would have received gross backpay of \$8,060.00. During the same quarterly period, Cook had interim earnings of \$2,588.00. This amount deducted from gross backpay produced net backpay of \$5,472.00. Cook did not have additional interim expenses during this period. Accordingly, as there were no interim expenses, the net backpay and expenses due Cook remained at \$5,472.00. During the backpay period of about September 26, 2010, to about October 15, 2010, Cook would have received gross backpay of \$1,771.00. During the same quarterly period, Cook had interim earnings of \$8,434.00. Interim earnings were greater than the gross backpay Cook would have received and, therefore, Cook is not due any backpay for this quarterly period. Accordingly, for the backpay period of May 26, 2009, to October 15, 2010, the net backpay and expenses due Cook are \$40,546 (See Schedule C).

(d). David Hall was a construction laborer, class I. The prevailing wage rates for Wayne County utilized by the State of Michigan, Department of Labor and Economic Growth, Wage and Hour Division for construction laborer, class I during the backpay period, are as follows: May 26, 2009, to October 6, 2010 - \$34.39 per hour; and, October 7, 2010, to October 15, 2010 - \$34.99 per hour. On June 11, 2009, Respondent acknowledged in a document entitled "Acknowledgment and Release of All Claims" that Hall was entitled to prevailing wage for the work he performed for a period up to his layoff date. Therefore, the appropriate hourly rate for Hall is the prevailing wage rates listed above. Hall customarily worked an average of 35.09 regular hours per weekly pay period and 1.47 hours of overtime during the same period, and during a full calendar quarter would have been employed 13 weeks. Based on these hours, during the backpay period of about May 26,

2009, to about June 27, 2009, Hall would have received gross backpay of \$5,865.00. During the same quarterly period, Hall had interim earnings of \$3,728.00. This amount deducted from gross back pay produced net backpay of \$2,137.00. During the backpay period of about June 28, 2009, to about September 26, 2009, Hall would have received gross backpay of \$16,679.00. During the same quarterly period, Hall had interim earnings of \$16,155.00. This amount deducted from gross backpay produced net backpay of \$524.00. During the backpay period of about September 27, 2009, to about December 26, 2009, Hall would have received gross backpay of \$16,679.00. During the same quarterly period, Hall had interim earnings of \$8,699.00. This amount deducted from gross backpay produced net backpay of \$7,980.00. During the backpay period of about December 27, 2009, to about March 27, 2010, Hall would have received gross backpay of \$16,679.00. During the same quarterly period, Hall did not have interim earnings. Accordingly, as there were no interim earnings, the net backpay due Hall remained at \$16,679.00. During the backpay period of about March 28, 2010, to about June 26, 2010, Hall would have received gross backpay of \$16,679.00. During the same quarterly period, Hall had interim earnings of \$21,066.00, including fringe benefit contributions. Interim earnings were greater than the gross backpay Hall would have received and, therefore, Hall is not due any backpay for this quarterly period. During the backpay period of about June 27, 2010, to about September 25, 2010, Hall would have received gross backpay of \$16,679.00. During the same quarterly period, Hall had interim earnings of \$22,768.00, including fringe benefit contributions. Interim earnings were greater than the gross backpay Hall would have received and, therefore, Hall is not due any backpay for this quarterly period. During the backpay period of about September 26, 2010, to about October 15, 2010, Hall would have received gross backpay of \$3,707.00. During the same quarterly period, Hall had interim earnings of \$12,260.00, including fringe benefit contributions. Interim earnings were greater than the gross backpay Hall would have received and, therefore, Hall is not due any backpay for this quarterly period. Hall did not have additional interim expenses during the backpay period of May 26, 2009 to October 15, 2010. Accordingly, for the backpay period of May 26, 2009, to October 15, 2010, the net backpay and expenses due Hall are \$27,320.00 (See Schedule D).

(e). William Lewis received \$19.58 per hour from the Respondent prior to his unlawful discharge, and customarily worked an average of 32.63 regular hours per weekly pay period and .92 hours of overtime during the same period, and during a full calendar quarter would have been employed 13 weeks. Based on these hours, during the backpay period of about May 26, 2009, to about October 15, 2010, Lewis would have received gross backpay of \$48,238.00. During the same period, Lewis did not have quarterly interim earnings or additional interim expenses. Accordingly, as there were no interim earnings or interim expenses, the net backpay and expenses due Lewis remained at \$48,238.00 (see Schedule E).

7.(a). Miles Reynolds, Jr. received \$20.95 in fringe benefit contributions per hour from the Respondent prior to his unlawful discharge and that rate increased to \$22.05 on about September 1, 2009, and to \$23.05 on about September 1, 2010. Reynolds customarily worked an average of 36.75 hours per weekly pay period and during a full calendar quarter would have been employed 13 weeks. Based on these hours, during the backpay period of about May 26, 2009, to about June 27, 2009, Reynolds would have received gross fringe benefits of \$3,520.00. During the same quarterly period, Reynolds had interim fringe benefits of \$2,682.00. This amount deducted from gross fringe benefits produced net fringe benefits of \$838.00. During the backpay period of about June 28, 2009, to about September 26, 2009, Reynolds would have received gross fringe benefits of \$10,170.00. During the same quarterly period, Reynolds had interim fringe benefits of \$7,014.00. This amount deducted from gross fringe benefits produced net fringe benefits of \$3,156.00. During the backpay period of about September 27, 2009, to about December 26, 2009, Reynolds would have received gross fringe benefits of \$10,530.00. During the same quarterly period, Reynolds had interim fringe benefits of \$6,174.00. This amount deducted from gross fringe benefits produced net fringe benefits of \$4,356.00. During the backpay period of about December 27, 2009, to about March 27, 2010, Reynolds would have received gross fringe benefits of \$10,530.00. During the same quarterly period, Reynolds had interim fringe benefits of \$1,544.00. This amount deducted from gross fringe benefits produced net fringe benefits of \$8,986.00. During the backpay period of about March 28, 2010, to about June 26, 2010, Reynolds would have received gross fringe benefits of \$10,530.00. During the same quarterly period, Reynolds did not have interim fringe benefits. Accordingly, as there were no interim fringe benefits, the net fringe benefits due Reynolds remain at \$10,530.00. During the backpay period of about June 27, 2010, to about September 25, 2010, Reynolds would have received gross fringe benefits of \$10,678.00. During the same quarterly period, Reynolds had interim fringe benefits of \$4,710.00. This amount deducted from gross fringe benefits produced net fringe benefits of \$5,968.00. During the backpay period of about September 26, 2010, to about October 15, 2010, Reynolds would have received gross fringe benefits of \$2,420.00. During the same quarterly period, Reynolds had interim fringe benefits of \$18,424.00. Interim fringe benefits were greater than the gross fringe benefits Reynolds would have received and, therefore, Reynolds is not due any fringe benefits for this quarterly period. Accordingly, for the backpay period of May 26, 2009, to October 15, 2010, the net fringe benefits due Reynolds are \$33,834.00 (See Schedule F).

(b). George Cook received \$19.80 in fringe benefit contributions per hour from the Respondent prior to his unlawful discharge and that rate increased to \$20.90 on about September 1, 2009, and to \$22.00 on about September 1, 2010. Cook customarily worked an average of 32.14 hours per weekly pay period and during a full calendar quarter would have been employed 13 weeks. Based on these hours, during the backpay period of about May 26, 2009, to about October 15, 2010, Cook would have received gross fringe benefit contributions of \$48,424.00. During the same period, Cook did not have quarterly interim

fringe benefit contributions. Accordingly, as there were no interim fringe benefit contributions, the net fringe benefits remained at \$48,424.00.00 (see Schedule G).

(c). William Lewis received \$15.15 in fringe benefit contributions per hour from the Respondent prior to his unlawful discharge and that rate increased to \$15.37 on about September 1, 2009. Lewis customarily worked an average of 33.55 hours per weekly pay period and during a full calendar quarter would have been employed 13 weeks. Based on these hours, during the backpay period of about May 26, 2009, to about October 15, 2010, Lewis would have received gross fringe benefit contributions of \$37,264.00. During the same period, Lewis did not have quarterly interim fringe benefit contributions. Accordingly, as there were no interim fringe benefit contributions, the net fringe benefits remained at \$37,264.00 (see Schedule H).

8. The Acting General Counsel further seeks, as part of the remedy for the unfair labor practices found by the Board in its Decision and Order reported at 355 NLRB No. 189, that Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods.

9. Summarizing the facts and figures above and denoted in Schedules A through H, Respondent's obligation to make whole the above-named discriminatees as enforced by the United States Court of Appeals for the Sixth Circuit, will be substantially discharged by payment of the following amounts, plus interest computed according to Board policy, as stated in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), less all tax withholdings as required by Federal, state, and municipal law:

Joseph Lapham	\$122,219.00
Miles Reynolds Jr.	\$ 42,165.00
Reynolds' Fringe Benefits	\$ 33,834.00
George Cook	\$ 40,546.00
Cook's Fringe Benefits	\$ 48,424.00
David Hall	\$ 27,320.00
William Lewis	\$ 48,238.00
Lewis' Fringe Benefits	\$ 37,264.00
TOTAL	\$400,010.00

WHEREFORE, it is prayed that an Order be entered consistent with the above.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Section 102.56 of the Board's Rules and Regulations, it must file an answer to this compliance specification. The answer must be **received by this office on or before January 19, 2012, or postmarked on or before January 18, 2012.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on E-Gov, then click on the E-Filing link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that such answer be signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed. See Section 102.56(a). If the answer being filed electronically is a PDF document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a compliance specification is not a PDF file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

As to all matters set forth in the compliance specification that are within the knowledge of Respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the answer must state the basis for any disagreement with any allegations that are within the Respondent's knowledge, and set forth in detail Respondent's position as to the applicable premises and furnish the appropriate supporting figures.

If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the compliance specification are true. If the answer fails to deny allegations of the compliance specification in the manner required under Section 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not adequately explained, the Board may find those allegations in the compliance specification are true and preclude Respondent from introducing any evidence controverting those allegations.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on the 8th day of February, 2012 at 10:00 a.m., at Room 300, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this compliance specification. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Detroit, Michigan, this 29th day of December, 2011.

(SEAL)

/s/ Stephen M. Glasser
Stephen M. Glasser, Regional Director
National Labor Relations Board, Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226-2543

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: Joe Lapham

Backpay period: 5/26/09 - 10/15/10	Schedule A Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	2	4/4				-					
2009	2	4/11				-					
2009	2	4/18				-					
2009	2	4/25				-					
2009	2	5/2				-					
2009	2	5/9				-					
2009	2	5/16				-					
2009	2	5/23				-					
2009	2	5/30	19.53	0.67	46.04	945					
2009	2	6/6	34.18	1.18	46.04	1,655					
2009	2	6/13	34.18	1.18	46.04	1,655					
2009	2	6/20	34.18	1.18	46.04	1,655					
2009	2	6/27	34.18	1.18	46.04	1,655					
2009	2	Total				7,565		7,565	-	-	7,565
2009	3	7/4	34.18	1.18	46.04	1,655					
2009	3	7/11	34.18	1.18	46.04	1,655					
2009	3	7/18	34.18	1.18	46.04	1,655					
2009	3	7/25	34.18	1.18	46.04	1,655					
2009	3	8/1	34.18	1.18	46.04	1,655					
2009	3	8/8	34.18	1.18	46.04	1,655					
2009	3	8/15	34.18	1.18	46.04	1,655					
2009	3	8/22	34.18	1.18	46.04	1,655					
2009	3	8/29	34.18	1.18	46.04	1,655					
2009	3	9/5	34.18	1.18	46.04	1,655					
2009	3	9/12	34.18	1.18	46.04	1,655					
2009	3	9/19	34.18	1.18	46.04	1,655					
2009	3	9/26	34.18	1.18	46.04	1,655					
2009	3	Total				21,515		21,515	-	-	21,515

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: Joe Lapham

Backpay period:	Schedule A
5/26/09 - 10/15/10	Interest calculated to:

Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	4	10/3	34.18	1.18	46.04	1,655					
2009	4	10/10	34.18	1.18	47.24	1,698					
2009	4	10/17	34.18	1.18	47.24	1,698					
2009	4	10/24	34.18	1.18	47.24	1,698					
2009	4	10/31	34.18	1.18	47.24	1,698					
2009	4	11/7	34.18	1.18	47.24	1,698					
2009	4	11/14	34.18	1.18	47.24	1,698					
2009	4	11/21	34.18	1.18	47.24	1,698					
2009	4	11/28	34.18	1.18	47.24	1,698					
2009	4	12/5	34.18	1.18	47.24	1,698					
2009	4	12/12	34.18	1.18	47.24	1,698					
2009	4	12/19	34.18	1.18	47.24	1,698					
2009	4	12/26	34.18	1.18	47.24	1,698					
2009	4	Total				22,031		22,031	-	-	22,031
2010	1	1/2	34.18	1.18	47.24	1,698					
2010	1	1/9	34.18	1.18	47.24	1,698					
2010	1	1/16	34.18	1.18	47.24	1,698					
2010	1	1/23	34.18	1.18	47.24	1,698					
2010	1	1/30	34.18	1.18	47.24	1,698					
2010	1	2/6	34.18	1.18	47.24	1,698					
2010	1	2/13	34.18	1.18	47.24	1,698					
2010	1	2/20	34.18	1.18	47.24	1,698					
2010	1	2/27	34.18	1.18	47.24	1,698					
2010	1	3/6	34.18	1.18	47.24	1,698					
2010	1	3/13	34.18	1.18	47.24	1,698					
2010	1	3/20	34.18	1.18	47.24	1,698					
2010	1	3/27	34.18	1.18	47.24	1,698					
2010	1	Total				22,074		22,074	-	-	22,074
2010	2	4/3	34.18	1.18	47.24	1,698					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: Joe Lapham

Backpay period: 5/26/09 - 10/15/10	Schedule A Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	2	4/10	34.18	1.18	47.24	1,698					
2010	2	4/17	34.18	1.18	47.24	1,698					
2010	2	4/24	34.18	1.18	47.24	1,698					
2010	2	5/1	34.18	1.18	47.24	1,698					
2010	2	5/8	34.18	1.18	47.24	1,698					
2010	2	5/15	34.18	1.18	47.24	1,698					
2010	2	5/22	34.18	1.18	47.24	1,698					
2010	2	5/29	34.18	1.18	47.24	1,698					
2010	2	6/5	34.18	1.18	47.24	1,698					
2010	2	6/12	34.18	1.18	47.24	1,698					
2010	2	6/19	34.18	1.18	47.24	1,698					
2010	2	6/26	34.18	1.18	47.24	1,698					
2010	2	Total				22,074		22,074	-	-	22,074
2010	3	7/3	34.18	1.18	47.24	1,698					
2010	3	7/10	34.18	1.18	47.24	1,698					
2010	3	7/17	34.18	1.18	47.24	1,698					
2010	3	7/24	34.18	1.18	47.24	1,698					
2010	3	7/31	34.18	1.18	47.24	1,698					
2010	3	8/7	34.18	1.18	47.24	1,698					
2010	3	8/14	34.18	1.18	47.24	1,698					
2010	3	8/21	34.18	1.18	47.24	1,698					
2010	3	8/28	34.18	1.18	47.24	1,698					
2010	3	9/4	34.18	1.18	47.24	1,698					
2010	3	9/11	34.18	1.18	47.24	1,698					
2010	3	9/18	34.18	1.18	47.24	1,698					
2010	3	9/25	34.18	1.18	47.24	1,698					
2010	3	Total				22,074		22,074	-	-	22,074
2010	4	10/2	34.18	1.18	47.24	1,698					
2010	4	10/9	34.18	1.18	47.24	1,698					
2010	4	10/16	29.3	1.01	48.34	1,490					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: Joe Lapham

Backpay period: 5/26/09 - 10/15/10	Schedule A Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	4	10/23				-					
2010	4	10/30				-					
2010	4	11/6				-					
2010	4	11/13				-					
2010	4	11/20				-					
2010	4	11/27				-					
2010	4	12/4				-					
2010	4	12/11				-					
2010	4	12/18				-					
2010	4	12/25				-					
2010	4	Total				4,886		4,886	-	-	4,886

Totals	122,219	-	-	122,219
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Notes

Total Backpay and Expenses	122,219
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NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.

Case Number: 7-CA-52306

Claimant: Miles Reynolds Jr

Backpay period:

5/26/09 - 10/15/10

Schedule B

Interest calculated to:

Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses	
2009	2	4/4				-			248	6/		
2009	2	4/11				-						
2009	2	4/18				-						
2009	2	4/25				-						
2009	2	5/2				-						
2009	2	5/9				-						
2009	2	5/16				-						
2009	2	5/23				-						
2009	2	5/30	19.03	1.97	26.62	585						
2009	2	6/6	33.3	3.45	26.62	1,024						
2009	2	6/13	33.3	3.45	26.62	1,024						
2009	2	6/20	33.3	3.45	26.62	1,024						
2009	2	6/27	33.3	3.45	26.62	1,024						
2009	2	Total				4,681	2,504	1/	2,177	248	-	2,425
2009	3	7/4	33.3	3.45	26.62	1,024			660	6/		
2009	3	7/11	33.3	3.45	26.62	1,024						
2009	3	7/18	33.3	3.45	26.62	1,024						
2009	3	7/25	33.3	3.45	26.62	1,024						
2009	3	8/1	33.3	3.45	26.62	1,024						
2009	3	8/8	33.3	3.45	26.62	1,024						
2009	3	8/15	33.3	3.45	26.62	1,024						
2009	3	8/22	33.3	3.45	26.62	1,024						
2009	3	8/29	33.3	3.45	26.62	1,024						
2009	3	9/5	33.3	3.45	26.62	1,024						
2009	3	9/12	33.3	3.45	26.62	1,024						
2009	3	9/19	33.3	3.45	26.62	1,024						
2009	3	9/26	33.3	3.45	26.62	1,024						
2009	3	Total				13,312	11,293	1/	2,019	660	-	2,679

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: Miles Reynolds Jr

Backpay period: 5/26/09 - 10/15/10	Schedule B interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses	
2009	4	10/3	33.3	3.45	26.62	1,024			495	8/		
2009	4	10/10	33.3	3.45	26.62	1,024			294	7/		
2009	4	10/17	33.3	3.45	26.62	1,024						
2009	4	10/24	33.3	3.45	26.62	1,024						
2009	4	10/31	33.3	3.45	26.62	1,024						
2009	4	11/7	33.3	3.45	26.62	1,024						
2009	4	11/14	33.3	3.45	26.62	1,024						
2009	4	11/21	33.3	3.45	26.62	1,024						
2009	4	11/28	33.3	3.45	26.62	1,024						
2009	4	12/5	33.3	3.45	26.62	1,024						
2009	4	12/12	33.3	3.45	26.62	1,024						
2009	4	12/19	33.3	3.45	26.62	1,024						
2009	4	12/26	33.3	3.45	26.62	1,024						
2009	4	Total				13,312	9,997	2/	3,315	789	-	4,104
2010	1	1/2	33.3	3.45	26.62	1,024			134	7/		
2010	1	1/9	33.3	3.45	26.62	1,024						
2010	1	1/16	33.3	3.45	26.62	1,024						
2010	1	1/23	33.3	3.45	26.62	1,024						
2010	1	1/30	33.3	3.45	26.62	1,024						
2010	1	2/6	33.3	3.45	26.62	1,024						
2010	1	2/13	33.3	3.45	26.62	1,024						
2010	1	2/20	33.3	3.45	26.62	1,024						
2010	1	2/27	33.3	3.45	26.62	1,024						
2010	1	3/6	33.3	3.45	26.62	1,024						
2010	1	3/13	33.3	3.45	26.62	1,024						
2010	1	3/20	33.3	3.45	26.62	1,024						
2010	1	3/27	33.3	3.45	26.62	1,024						
2010	1	Total				13,312	1,750	3/	11,562	134	-	11,696
2010	2	4/3	33.3	3.45	26.62	1,024						

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: Miles Reynolds Jr

Backpay period: 5/26/09 - 10/15/10	Schedule B Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	2	4/10	33.3	3.45	26.62	1,024					
2010	2	4/17	33.3	3.45	26.62	1,024					
2010	2	4/24	33.3	3.45	26.62	1,024					
2010	2	5/1	33.3	3.45	26.62	1,024					
2010	2	5/8	33.3	3.45	26.62	1,024					
2010	2	5/15	33.3	3.45	26.62	1,024					
2010	2	5/22	33.3	3.45	26.62	1,024					
2010	2	5/29	33.3	3.45	26.62	1,024					
2010	2	6/5	33.3	3.45	26.62	1,024					
2010	2	6/12	33.3	3.45	26.62	1,024					
2010	2	6/19	33.3	3.45	26.62	1,024					
2010	2	6/26	33.3	3.45	26.62	1,024					
2010	2	Total				13,312		13,312	-	-	13,312
2010	3	7/3	33.3	3.45	26.62	1,024			245 8/		
2010	3	7/10	33.3	3.45	26.62	1,024			1,310 9/		
2010	3	7/17	33.3	3.45	26.62	1,024					
2010	3	7/24	33.3	3.45	26.62	1,024					
2010	3	7/31	33.3	3.45	26.62	1,024					
2010	3	8/7	33.3	3.45	26.62	1,024					
2010	3	8/14	33.3	3.45	26.62	1,024					
2010	3	8/21	33.3	3.45	26.62	1,024					
2010	3	8/28	33.3	3.45	26.62	1,024					
2010	3	9/4	33.3	3.45	26.62	1,024					
2010	3	9/11	33.3	3.45	26.62	1,024					
2010	3	9/18	33.3	3.45	26.62	1,024					
2010	3	9/25	33.3	3.45	26.62	1,024					
2010	3	Total				13,312	6,918 4/	6,394	1,555	-	7,949
2010	4	10/2	33.3	3.45	26.62	1,024					
2010	4	10/9	33.3	3.45	26.62	1,024					
2010	4	10/16	28.54	2.96	26.62	878					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: Miles Reynolds Jr

Backpay period: 5/26/09 - 10/15/10	Schedule B Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	4	10/23				-					
2010	4	10/30				-					
2010	4	11/6				-					
2010	4	11/13				-					
2010	4	11/20				-					
2010	4	11/27				-					
2010	4	12/4				-					
2010	4	12/11				-					
2010	4	12/18				-					
2010	4	12/25				-					
2010	4	Total				3,072	26,178 5/	-	-	-	-

Totals	38,779	3,386	-	42,165
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Total Backpay and Expenses 42,165

Notes

- 1/ GV Cement Contracting Company, Inc.
- 2/ GV Cement Contracting Company, Inc. and E & T Trucking, Inc.
- 3/ E & T Trucking, Inc.
- 4/ Ideal Contracting and GEO Gradel Co.
- 5/ Ideal Contracting
- 6/ Mileage for GV Cement
- 7/ Mileage for E & T Trucking
- 8/ Mileage for GEO Gradel
- 9/ Mileage for Ideal Contracting

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: George Cook

Backpay period: 5/26/09 - 10/15/10	Schedule C Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	2	4/4				-					
2009	2	4/11				-					
2009	2	4/18				-					
2009	2	4/25				-					
2009	2	5/2				-					
2009	2	5/9				-					
2009	2	5/16				-					
2009	2	5/23				-					
2009	2	5/30	17.61	0.75	18.90	354					
2009	2	6/6	30.83	1.31	18.90	620					
2009	2	6/13	30.83	1.31	18.90	620					
2009	2	6/20	30.83	1.31	18.90	620					
2009	2	6/27	30.83	1.31	18.90	620					
2009	2	Total				2,834		2,834	-	-	2,834
2009	3	7/4	30.83	1.31	18.90	620					
2009	3	7/11	30.83	1.31	18.90	620					
2009	3	7/18	30.83	1.31	18.90	620					
2009	3	7/25	30.83	1.31	18.90	620					
2009	3	8/1	30.83	1.31	18.90	620					
2009	3	8/8	30.83	1.31	18.90	620					
2009	3	8/15	30.83	1.31	18.90	620					
2009	3	8/22	30.83	1.31	18.90	620					
2009	3	8/29	30.83	1.31	18.90	620					
2009	3	9/5	30.83	1.31	18.90	620					
2009	3	9/12	30.83	1.31	18.90	620					
2009	3	9/19	30.83	1.31	18.90	620					
2009	3	9/26	30.83	1.31	18.90	620					
2009	3	Total				8,060		8,060	-	-	8,060

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: George Cook

Backpay period: 5/26/09 - 10/15/10	Schedule C Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	4	10/3	30.83	1.31	18.90	620					
2009	4	10/10	30.83	1.31	18.90	620					
2009	4	10/17	30.83	1.31	18.90	620					
2009	4	10/24	30.83	1.31	18.90	620					
2009	4	10/31	30.83	1.31	18.90	620					
2009	4	11/7	30.83	1.31	18.90	620					
2009	4	11/14	30.83	1.31	18.90	620					
2009	4	11/21	30.83	1.31	18.90	620					
2009	4	11/28	30.83	1.31	18.90	620					
2009	4	12/5	30.83	1.31	18.90	620					
2009	4	12/12	30.83	1.31	18.90	620					
2009	4	12/19	30.83	1.31	18.90	620					
2009	4	12/26	30.83	1.31	18.90	620					
2009	4	Total				8,060		8,060	-	-	8,060
2010	1	1/2	30.83	1.31	18.90	620					
2010	1	1/9	30.83	1.31	18.90	620					
2010	1	1/16	30.83	1.31	18.90	620					
2010	1	1/23	30.83	1.31	18.90	620					
2010	1	1/30	30.83	1.31	18.90	620					
2010	1	2/6	30.83	1.31	18.90	620					
2010	1	2/13	30.83	1.31	18.90	620					
2010	1	2/20	30.83	1.31	18.90	620					
2010	1	2/27	30.83	1.31	18.90	620					
2010	1	3/6	30.83	1.31	18.90	620					
2010	1	3/13	30.83	1.31	18.90	620					
2010	1	3/20	30.83	1.31	18.90	620					
2010	1	3/27	30.83	1.31	18.90	620					
2010	1	Total				8,060		8,060	-	-	8,060
2010	2	4/3	30.83	1.31	18.90	620					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: George Cook

Backpay period: 5/26/09 - 10/15/10	Schedule C Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	2	4/10	30.83	1.31	18.90	620					
2010	2	4/17	30.83	1.31	18.90	620					
2010	2	4/24	30.83	1.31	18.90	620					
2010	2	5/1	30.83	1.31	18.90	620					
2010	2	5/8	30.83	1.31	18.90	620					
2010	2	5/15	30.83	1.31	18.90	620					
2010	2	5/22	30.83	1.31	18.90	620					
2010	2	5/29	30.83	1.31	18.90	620					
2010	2	6/5	30.83	1.31	18.90	620					
2010	2	6/12	30.83	1.31	18.90	620					
2010	2	6/19	30.83	1.31	18.90	620					
2010	2	6/26	30.83	1.31	18.90	620					
2010	2	Total				8,060		8,060	-	-	8,060
2010	3	7/3	30.83	1.31	18.90	620					
2010	3	7/10	30.83	1.31	18.90	620					
2010	3	7/17	30.83	1.31	18.90	620					
2010	3	7/24	30.83	1.31	18.90	620					
2010	3	7/31	30.83	1.31	18.90	620					
2010	3	8/7	30.83	1.31	18.90	620					
2010	3	8/14	30.83	1.31	18.90	620					
2010	3	8/21	30.83	1.31	18.90	620					
2010	3	8/28	30.83	1.31	18.90	620					
2010	3	9/4	30.83	1.31	18.90	620					
2010	3	9/11	30.83	1.31	18.90	620					
2010	3	9/18	30.83	1.31	18.90	620					
2010	3	9/25	30.83	1.31	18.90	620					
2010	3	Total				8,060	2,588 1/	5,472	-	-	5,472
2010	4	10/2	30.83	1.31	18.90	620					
2010	4	10/9	30.83	1.31	18.90	620					
2010	4	10/16	26.43	1.12	18.90	531					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: George Cook

Backpay period: 5/26/09 - 10/15/10	Schedule C Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	4	10/23				-					
2010	4	10/30				-					
2010	4	11/6				-					
2010	4	11/13				-					
2010	4	11/20				-					
2010	4	11/27				-					
2010	4	12/4				-					
2010	4	12/11				-					
2010	4	12/18				-					
2010	4	12/25				-					
2010	4	Total				1,771	8,434 1/	-	-	-	-

Totals	40,546	-	-	40,546
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Notes **Total Backpay and Expenses 40,546**

1/ Skyview Safety Services, Inc.

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: David Hall

Backpay period: 5/26/09 - 10/15/10	Schedule D Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	2	4/4				-					
2009	2	4/11				-					
2009	2	4/18				-					
2009	2	4/25				-					
2009	2	5/2				-					
2009	2	5/9				-					
2009	2	5/16				-					
2009	2	5/23				-					
2009	2	5/30	20.05	0.84	34.39	733					
2009	2	6/6	35.09	1.47	34.39	1,283					
2009	2	6/13	35.09	1.47	34.39	1,283					
2009	2	6/20	35.09	1.47	34.39	1,283					
2009	2	6/27	35.09	1.47	34.39	1,283					
2009	2	Total				5,865	3,728	1/	2,137	-	2,137
2009	3	7/4	35.09	1.47	34.39	1,283					
2009	3	7/11	35.09	1.47	34.39	1,283					
2009	3	7/18	35.09	1.47	34.39	1,283					
2009	3	7/25	35.09	1.47	34.39	1,283					
2009	3	8/1	35.09	1.47	34.39	1,283					
2009	3	8/8	35.09	1.47	34.39	1,283					
2009	3	8/15	35.09	1.47	34.39	1,283					
2009	3	8/22	35.09	1.47	34.39	1,283					
2009	3	8/29	35.09	1.47	34.39	1,283					
2009	3	9/5	35.09	1.47	34.39	1,283					
2009	3	9/12	35.09	1.47	34.39	1,283					
2009	3	9/19	35.09	1.47	34.39	1,283					
2009	3	9/26	35.09	1.47	34.39	1,283					
2009	3	Total				16,679	16,155	1/	524	-	524

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: David Hall

Backpay period: 5/26/09 - 10/15/10	Schedule D Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses	
2009	4	10/3	35.09	1.47	34.39	1,283						
2009	4	10/10	35.09	1.47	34.39	1,283						
2009	4	10/17	35.09	1.47	34.39	1,283						
2009	4	10/24	35.09	1.47	34.39	1,283						
2009	4	10/31	35.09	1.47	34.39	1,283						
2009	4	11/7	35.09	1.47	34.39	1,283						
2009	4	11/14	35.09	1.47	34.39	1,283						
2009	4	11/21	35.09	1.47	34.39	1,283						
2009	4	11/28	35.09	1.47	34.39	1,283						
2009	4	12/5	35.09	1.47	34.39	1,283						
2009	4	12/12	35.09	1.47	34.39	1,283						
2009	4	12/19	35.09	1.47	34.39	1,283						
2009	4	12/26	35.09	1.47	34.39	1,283						
2009	4	Total				16,679	8,699	1/	7,980	-	-	7,980
2010	1	1/2	35.09	1.47	34.39	1,283						
2010	1	1/9	35.09	1.47	34.39	1,283						
2010	1	1/16	35.09	1.47	34.39	1,283						
2010	1	1/23	35.09	1.47	34.39	1,283						
2010	1	1/30	35.09	1.47	34.39	1,283						
2010	1	2/6	35.09	1.47	34.39	1,283						
2010	1	2/13	35.09	1.47	34.39	1,283						
2010	1	2/20	35.09	1.47	34.39	1,283						
2010	1	2/27	35.09	1.47	34.39	1,283						
2010	1	3/6	35.09	1.47	34.39	1,283						
2010	1	3/13	35.09	1.47	34.39	1,283						
2010	1	3/20	35.09	1.47	34.39	1,283						
2010	1	3/27	35.09	1.47	34.39	1,283						
2010	1	Total				16,679			16,679	-	-	16,679
2010	2	4/3	35.09	1.47	34.39	1,283						

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.

Case Number: 7-CA-52306

Claimant: David Hall

Backpay period:	Schedule D
5/26/09 - 10/15/10	interest calculated to:

Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	2	4/10	35.09	1.47	34.39	1,283					
2010	2	4/17	35.09	1.47	34.39	1,283					
2010	2	4/24	35.09	1.47	34.39	1,283					
2010	2	5/1	35.09	1.47	34.39	1,283					
2010	2	5/8	35.09	1.47	34.39	1,283					
2010	2	5/15	35.09	1.47	34.39	1,283					
2010	2	5/22	35.09	1.47	34.39	1,283					
2010	2	5/29	35.09	1.47	34.39	1,283					
2010	2	6/5	35.09	1.47	34.39	1,283					
2010	2	6/12	35.09	1.47	34.39	1,283					
2010	2	6/19	35.09	1.47	34.39	1,283					
2010	2	6/26	35.09	1.47	34.39	1,283					
2010	2	Total				16,679	21,016	2/	-	-	-
2010	3	7/3	35.09	1.47	34.39	1,283					
2010	3	7/10	35.09	1.47	34.39	1,283					
2010	3	7/17	35.09	1.47	34.39	1,283					
2010	3	7/24	35.09	1.47	34.39	1,283					
2010	3	7/31	35.09	1.47	34.39	1,283					
2010	3	8/7	35.09	1.47	34.39	1,283					
2010	3	8/14	35.09	1.47	34.39	1,283					
2010	3	8/21	35.09	1.47	34.39	1,283					
2010	3	8/28	35.09	1.47	34.39	1,283					
2010	3	9/4	35.09	1.47	34.39	1,283					
2010	3	9/11	35.09	1.47	34.39	1,283					
2010	3	9/18	35.09	1.47	34.39	1,283					
2010	3	9/25	35.09	1.47	34.39	1,283					
2010	3	Total				16,679	22,768	2/	-	-	-
2010	4	10/2	35.09	1.47	34.39	1,283					
2010	4	10/9	35.09	1.47	34.99	1,305					
2010	4	10/16	30.08	1.26	34.99	1,119					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: David Hall

Backpay period: 5/26/09 - 10/15/10	Schedule D Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	4	10/23				-					
2010	4	10/30				-					
2010	4	11/6				-					
2010	4	11/13				-					
2010	4	11/20				-					
2010	4	11/27				-					
2010	4	12/4				-					
2010	4	12/11				-					
2010	4	12/18				-					
2010	4	12/25				-					
2010	4	Total				3,707	12,260	2/	-	-	-

Totals	27,320	-	27,320
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Total Backpay and Expenses	27,320
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Notes

- 1/ Marden Construction, Inc.
- 2/ GV Cement Contracting Co.

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: William Lewis

Backpay period: 5/26/09 - 10/15/10	Schedule E Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	2	4/4				-					
2009	2	4/11				-					
2009	2	4/18				-					
2009	2	4/25				-					
2009	2	5/2				-					
2009	2	5/9				-					
2009	2	5/16				-					
2009	2	5/23				-					
2009	2	5/30	18.65	0.53	19.58	381					
2009	2	6/6	32.63	0.92	19.58	666					
2009	2	6/13	32.63	0.92	19.58	666					
2009	2	6/20	32.63	0.92	19.58	666					
2009	2	6/27	32.63	0.92	19.58	666					
2009	2	Total				3,045		3,045	-	-	3,045
2009	3	7/4	32.63	0.92	19.58	666					
2009	3	7/11	32.63	0.92	19.58	666					
2009	3	7/18	32.63	0.92	19.58	666					
2009	3	7/25	32.63	0.92	19.58	666					
2009	3	8/1	32.63	0.92	19.58	666					
2009	3	8/8	32.63	0.92	19.58	666					
2009	3	8/15	32.63	0.92	19.58	666					
2009	3	8/22	32.63	0.92	19.58	666					
2009	3	8/29	32.63	0.92	19.58	666					
2009	3	9/5	32.63	0.92	19.58	666					
2009	3	9/12	32.63	0.92	19.58	666					
2009	3	9/19	32.63	0.92	19.58	666					
2009	3	9/26	32.63	0.92	19.58	666					
2009	3	Total				8,658		8,658	-	-	8,658

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.

Case Number: 7-CA-52306

Claimant: William Lewis

Backpay period:

5/26/09 - 10/15/10

Schedule E

Interest
calculated to:

Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	4	10/3	32.63	0.92	19.58	666					
2009	4	10/10	32.63	0.92	19.58	666					
2009	4	10/17	32.63	0.92	19.58	666					
2009	4	10/24	32.63	0.92	19.58	666					
2009	4	10/31	32.63	0.92	19.58	666					
2009	4	11/7	32.63	0.92	19.58	666					
2009	4	11/14	32.63	0.92	19.58	666					
2009	4	11/21	32.63	0.92	19.58	666					
2009	4	11/28	32.63	0.92	19.58	666					
2009	4	12/5	32.63	0.92	19.58	666					
2009	4	12/12	32.63	0.92	19.58	666					
2009	4	12/19	32.63	0.92	19.58	666					
2009	4	12/26	32.63	0.92	19.58	666					
2009	4	Total				8,658		8,658	-	-	8,658
2010	1	1/2	32.63	0.92	19.58	666					
2010	1	1/9	32.63	0.92	19.58	666					
2010	1	1/16	32.63	0.92	19.58	666					
2010	1	1/23	32.63	0.92	19.58	666					
2010	1	1/30	32.63	0.92	19.58	666					
2010	1	2/6	32.63	0.92	19.58	666					
2010	1	2/13	32.63	0.92	19.58	666					
2010	1	2/20	32.63	0.92	19.58	666					
2010	1	2/27	32.63	0.92	19.58	666					
2010	1	3/6	32.63	0.92	19.58	666					
2010	1	3/13	32.63	0.92	19.58	666					
2010	1	3/20	32.63	0.92	19.58	666					
2010	1	3/27	32.63	0.92	19.58	666					
2010	1	Total				8,658		8,658	-	-	8,658
2010	2	4/3	32.63	0.92	19.58	666					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: William Lewis

Backpay period: 5/26/09 - 10/15/10	Schedule E Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	2	4/10	32.63	0.92	19.58	666					
2010	2	4/17	32.63	0.92	19.58	666					
2010	2	4/24	32.63	0.92	19.58	666					
2010	2	5/1	32.63	0.92	19.58	666					
2010	2	5/8	32.63	0.92	19.58	666					
2010	2	5/15	32.63	0.92	19.58	666					
2010	2	5/22	32.63	0.92	19.58	666					
2010	2	5/29	32.63	0.92	19.58	666					
2010	2	6/5	32.63	0.92	19.58	666					
2010	2	6/12	32.63	0.92	19.58	666					
2010	2	6/19	32.63	0.92	19.58	666					
2010	2	6/26	32.63	0.92	19.58	666					
2010	2	Total				8,658		8,658	-	-	8,658
2010	3	7/3	32.63	0.92	19.58	666					
2010	3	7/10	32.63	0.92	19.58	666					
2010	3	7/17	32.63	0.92	19.58	666					
2010	3	7/24	32.63	0.92	19.58	666					
2010	3	7/31	32.63	0.92	19.58	666					
2010	3	8/7	32.63	0.92	19.58	666					
2010	3	8/14	32.63	0.92	19.58	666					
2010	3	8/21	32.63	0.92	19.58	666					
2010	3	8/28	32.63	0.92	19.58	666					
2010	3	9/4	32.63	0.92	19.58	666					
2010	3	9/11	32.63	0.92	19.58	666					
2010	3	9/18	32.63	0.92	19.58	666					
2010	3	9/25	32.63	0.92	19.58	666					
2010	3	Total				8,658		8,658	-	-	8,658
2010	4	10/2	32.63	0.92	19.58	666					
2010	4	10/9	32.63	0.92	19.58	666					
2010	4	10/16	27.97	0.79	19.58	571					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: William Lewis

Backpay period: 5/26/09 - 10/15/10	Schedule E Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	4	10/23				-					
2010	4	10/30				-					
2010	4	11/6				-					
2010	4	11/13				-					
2010	4	11/20				-					
2010	4	11/27				-					
2010	4	12/4				-					
2010	4	12/11				-					
2010	4	12/18				-					
2010	4	12/25				-					
2010	4	Total				1,903		1,903	-	-	1,903

Totals	48,238	-	-	48,238
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Notes

Total Backpay and Expenses	48,238
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NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.

Case Number: 7-CA-52306

Claimant: Miles Reynolds Jr. Fringes

Backpay period:
5/26/09 - 10/15/10

Schedule F
Interest
calculated to:

Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	2	4/4				-					
2009	2	4/11				-					
2009	2	4/18				-					
2009	2	4/25				-					
2009	2	5/2				-					
2009	2	5/9				-					
2009	2	5/16				-					
2009	2	5/23				-					
2009	2	5/30	21		20.95	440					
2009	2	6/6	36.75		20.95	770					
2009	2	6/13	36.75		20.95	770					
2009	2	6/20	36.75		20.95	770					
2009	2	6/27	36.75		20.95	770					
2009	2	Total				3,520	2,682	1/	838	-	838
2009	3	7/4	36.75		20.95	770					
2009	3	7/11	36.75		20.95	770					
2009	3	7/18	36.75		20.95	770					
2009	3	7/25	36.75		20.95	770					
2009	3	8/1	36.75		20.95	770					
2009	3	8/8	36.75		20.95	770					
2009	3	8/15	36.75		20.95	770					
2009	3	8/22	36.75		20.95	770					
2009	3	8/29	36.75		20.95	770					
2009	3	9/5	36.75		22.05	810					
2009	3	9/12	36.75		22.05	810					
2009	3	9/19	36.75		22.05	810					
2009	3	9/26	36.75		22.05	810					
2009	3	Total				10,170	7,014	1/	3,156	-	3,156

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306

Backpay period: 5/26/09 - 10/15/10	Schedule F Interest calculated to:
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Claimant: Miles Reynolds Jr. Fringes

Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	4	10/3	36.75		22.05	810					
2009	4	10/10	36.75		22.05	810					
2009	4	10/17	36.75		22.05	810					
2009	4	10/24	36.75		22.05	810					
2009	4	10/31	36.75		22.05	810					
2009	4	11/7	36.75		22.05	810					
2009	4	11/14	36.75		22.05	810					
2009	4	11/21	36.75		22.05	810					
2009	4	11/28	36.75		22.05	810					
2009	4	12/5	36.75		22.05	810					
2009	4	12/12	36.75		22.05	810					
2009	4	12/19	36.75		22.05	810					
2009	4	12/26	36.75		22.05	810					
2009	4	Total				10,530	6,174	2/	4,356	-	4,356
2010	1	1/2	36.75		22.05	810					
2010	1	1/9	36.75		22.05	810					
2010	1	1/16	36.75		22.05	810					
2010	1	1/23	36.75		22.05	810					
2010	1	1/30	36.75		22.05	810					
2010	1	2/6	36.75		22.05	810					
2010	1	2/13	36.75		22.05	810					
2010	1	2/20	36.75		22.05	810					
2010	1	2/27	36.75		22.05	810					
2010	1	3/6	36.75		22.05	810					
2010	1	3/13	36.75		22.05	810					
2010	1	3/20	36.75		22.05	810					
2010	1	3/27	36.75		22.05	810					
2010	1	Total				10,530	1,544	3/	8,986	-	8,986
2010	2	4/3	36.75		22.05	810					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306

Backpay period: 5/26/09 - 10/15/10	Schedule F Interest calculated to:
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Claimant: Miles Reynolds Jr. Fringes

Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	2	4/10	36.75		22.05	810					
2010	2	4/17	36.75		22.05	810					
2010	2	4/24	36.75		22.05	810					
2010	2	5/1	36.75		22.05	810					
2010	2	5/8	36.75		22.05	810					
2010	2	5/15	36.75		22.05	810					
2010	2	5/22	36.75		22.05	810					
2010	2	5/29	36.75		22.05	810					
2010	2	6/5	36.75		22.05	810					
2010	2	6/12	36.75		22.05	810					
2010	2	6/19	36.75		22.05	810					
2010	2	6/26	36.75		22.05	810					
2010	2	Total				10,530		10,530	-	-	10,530
2010	3	7/3	36.75		22.05	810					
2010	3	7/10	36.75		22.05	810					
2010	3	7/17	36.75		22.05	810					
2010	3	7/24	36.75		22.05	810					
2010	3	7/31	36.75		22.05	810					
2010	3	8/7	36.75		22.05	810					
2010	3	8/14	36.75		22.05	810					
2010	3	8/21	36.75		22.05	810					
2010	3	8/28	36.75		22.05	810					
2010	3	9/4	36.75		23.05	847					
2010	3	9/11	36.75		23.05	847					
2010	3	9/18	36.75		23.05	847					
2010	3	9/25	36.75		23.05	847					
2010	3	Total				10,678	4,710	5,968	-	-	5,968
2010	4	10/2	36.75		23.05	847					
2010	4	10/9	36.75		23.05	847					
2010	4	10/16	31.5		23.05	726					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.

Case Number: 7-CA-52306

Backpay period:
5/26/09 - 10/15/10

Schedule F
Interest
calculated to:

Claimant: Miles Reynolds Jr. Fringes

Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	4	10/23				-					
2010	4	10/30				-					
2010	4	11/6				-					
2010	4	11/13				-					
2010	4	11/20				-					
2010	4	11/27				-					
2010	4	12/4				-					
2010	4	12/11				-					
2010	4	12/18				-					
2010	4	12/25				-					
2010	4	Total				2,420	18,424 5/	-	-	-	-

Totals	33,834	-	-	33,834
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Notes

- 1/ GV Cement Contracting Company, Inc.
- 2/ GV Cement Contracting Company, Inc. and E & T Trucking, Inc.
- 3/ E & T Trucking, Inc.
- 4/ Ideal Contracting and GEO Gradel Co.
- 5/ Ideal Contracting

Total Backpay and Expenses	33,834
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NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.

Case Number: 7-CA-52306

Claimant: George Cook Fringes

Backpay period: 5/26/09 - 10/15/10	Schedule G Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	2	4/4				-					
2009	2	4/11				-					
2009	2	4/18				-					
2009	2	4/25				-					
2009	2	5/2				-					
2009	2	5/9				-					
2009	2	5/16				-					
2009	2	5/23				-					
2009	2	5/30	18.37		19.80	364					
2009	2	6/6	32.14		19.80	636					
2009	2	6/13	32.14		19.80	636					
2009	2	6/20	32.14		19.80	636					
2009	2	6/27	32.14		19.80	636					
2009	2	Total				2,908		2,908	-	-	2,908
2009	3	7/4	32.14		19.80	636					
2009	3	7/11	32.14		19.80	636					
2009	3	7/18	32.14		19.80	636					
2009	3	7/25	32.14		19.80	636					
2009	3	8/1	32.14		19.80	636					
2009	3	8/8	32.14		19.80	636					
2009	3	8/15	32.14		19.80	636					
2009	3	8/22	32.14		19.80	636					
2009	3	8/29	32.14		19.80	636					
2009	3	9/5	32.14		20.90	672					
2009	3	9/12	32.14		20.90	672					
2009	3	9/19	32.14		20.90	672					
2009	3	9/26	32.14		20.90	672					
2009	3	Total				8,412		8,412	-	-	8,412

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306

Backpay period:

Schedule G

Claimant: George Cook Fringes

5/26/09 - 10/15/10

Interest
calculated to:

Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	4	10/3	32.14		20.90	672					
2009	4	10/10	32.14		20.90	672					
2009	4	10/17	32.14		20.90	672					
2009	4	10/24	32.14		20.90	672					
2009	4	10/31	32.14		20.90	672					
2009	4	11/7	32.14		20.90	672					
2009	4	11/14	32.14		20.90	672					
2009	4	11/21	32.14		20.90	672					
2009	4	11/28	32.14		20.90	672					
2009	4	12/5	32.14		20.90	672					
2009	4	12/12	32.14		20.90	672					
2009	4	12/19	32.14		20.90	672					
2009	4	12/26	32.14		20.90	672					
2009	4	Total				8,736		8,736	-	-	8,736
2010	1	1/2	32.14		20.90	672					
2010	1	1/9	32.14		20.90	672					
2010	1	1/16	32.14		20.90	672					
2010	1	1/23	32.14		20.90	672					
2010	1	1/30	32.14		20.90	672					
2010	1	2/6	32.14		20.90	672					
2010	1	2/13	32.14		20.90	672					
2010	1	2/20	32.14		20.90	672					
2010	1	2/27	32.14		20.90	672					
2010	1	3/6	32.14		20.90	672					
2010	1	3/13	32.14		20.90	672					
2010	1	3/20	32.14		20.90	672					
2010	1	3/27	32.14		20.90	672					
2010	1	Total				8,736		8,736	-	-	8,736
2010	2	4/3	32.14		20.90	672					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: George Cook Fringes

Backpay period: 5/26/09 - 10/15/10	Schedule G Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	2	4/10	32.14		20.90	672					
2010	2	4/17	32.14		20.90	672					
2010	2	4/24	32.14		20.90	672					
2010	2	5/1	32.14		20.90	672					
2010	2	5/8	32.14		20.90	672					
2010	2	5/15	32.14		20.90	672					
2010	2	5/22	32.14		20.90	672					
2010	2	5/29	32.14		20.90	672					
2010	2	6/5	32.14		20.90	672					
2010	2	6/12	32.14		20.90	672					
2010	2	6/19	32.14		20.90	672					
2010	2	6/26	32.14		20.90	672					
2010	2	Total				8,736		8,736	-	-	8,736
2010	3	7/3	32.14		20.90	672					
2010	3	7/10	32.14		20.90	672					
2010	3	7/17	32.14		20.90	672					
2010	3	7/24	32.14		20.90	672					
2010	3	7/31	32.14		20.90	672					
2010	3	8/7	32.14		20.90	672					
2010	3	8/14	32.14		20.90	672					
2010	3	8/21	32.14		20.90	672					
2010	3	8/28	32.14		20.90	672					
2010	3	9/4	32.14		22.00	707					
2010	3	9/11	32.14		22.00	707					
2010	3	9/18	32.14		22.00	707					
2010	3	9/25	32.14		22.00	707					
2010	3	Total				8,876		8,876	-	-	8,876
2010	4	10/2	32.14		22.00	707					
2010	4	10/9	32.14		22.00	707					
2010	4	10/16	27.55		22.00	606					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: George Cook Fringes

Backpay period: 5/26/09 - 10/15/10	Schedule G Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	4	10/23				-					
2010	4	10/30				-					
2010	4	11/6				-					
2010	4	11/13				-					
2010	4	11/20				-					
2010	4	11/27				-					
2010	4	12/4				-					
2010	4	12/11				-					
2010	4	12/18				-					
2010	4	12/25				-					
2010	4	Total				2,020		2,020	-	-	2,020

Totals	48,424	-	-	48,424
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Notes

Total Backpay and Expenses	48,424
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NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc

Case Number: 7-CA-52306

Claimant: William Lewis Fringes

Backpay period:

5/26/09 - 10/15/10

Schedule H

Interest calculated to:

Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	2	4/4				-					
2009	2	4/11				-					
2009	2	4/18				-					
2009	2	4/25				-					
2009	2	5/2				-					
2009	2	5/9				-					
2009	2	5/16				-					
2009	2	5/23				-					
2009	2	5/30	19.17		15.15	290					
2009	2	6/6	33.55		15.15	508					
2009	2	6/13	33.55		15.15	508					
2009	2	6/20	33.55		15.15	508					
2009	2	6/27	33.55		15.15	508					
2009	2	Total				2,322		2,322	-	-	2,322
2009	3	7/4	33.55		15.15	508					
2009	3	7/11	33.55		15.15	508					
2009	3	7/18	33.55		15.15	508					
2009	3	7/25	33.55		15.15	508					
2009	3	8/1	33.55		15.15	508					
2009	3	8/8	33.55		15.15	508					
2009	3	8/15	33.55		15.15	508					
2009	3	8/22	33.55		15.15	508					
2009	3	8/29	33.55		15.15	508					
2009	3	9/5	33.55		15.37	516					
2009	3	9/12	33.55		15.37	516					
2009	3	9/19	33.55		15.37	516					
2009	3	9/26	33.55		15.37	516					
2009	3	Total				6,636		6,636	-	-	6,636

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.
 Case Number: 7-CA-52306
 Claimant: William Lewis Fringes

Backpay period: 5/26/09 - 10/15/10	Schedule H Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	4	10/3	33.55		15.37	516					
2009	4	10/10	33.55		15.37	516					
2009	4	10/17	33.55		15.37	516					
2009	4	10/24	33.55		15.37	516					
2009	4	10/31	33.55		15.37	516					
2009	4	11/7	33.55		15.37	516					
2009	4	11/14	33.55		15.37	516					
2009	4	11/21	33.55		15.37	516					
2009	4	11/28	33.55		15.37	516					
2009	4	12/5	33.55		15.37	516					
2009	4	12/12	33.55		15.37	516					
2009	4	12/19	33.55		15.37	516					
2009	4	12/26	33.55		15.37	516					
2009	4	Total				6,708		6,708	-	-	6,708
2010	1	1/2	33.55		15.37	516					
2010	1	1/9	33.55		15.37	516					
2010	1	1/16	33.55		15.37	516					
2010	1	1/23	33.55		15.37	516					
2010	1	1/30	33.55		15.37	516					
2010	1	2/6	33.55		15.37	516					
2010	1	2/13	33.55		15.37	516					
2010	1	2/20	33.55		15.37	516					
2010	1	2/27	33.55		15.37	516					
2010	1	3/6	33.55		15.37	516					
2010	1	3/13	33.55		15.37	516					
2010	1	3/20	33.55		15.37	516					
2010	1	3/27	33.55		15.37	516					
2010	1	Total				6,708		6,708	-	-	6,708
2010	2	4/3	33.55		15.37	516					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.

Case Number: 7-CA-52306

Backpay period:

5/26/09 - 10/15/10

Schedule H

Interest
calculated to:

Claimant: William Lewis Fringes

Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	2	4/10	33.55		15.37	516					
2010	2	4/17	33.55		15.37	516					
2010	2	4/24	33.55		15.37	516					
2010	2	5/1	33.55		15.37	516					
2010	2	5/8	33.55		15.37	516					
2010	2	5/15	33.55		15.37	516					
2010	2	5/22	33.55		15.37	516					
2010	2	5/29	33.55		15.37	516					
2010	2	6/5	33.55		15.37	516					
2010	2	6/12	33.55		15.37	516					
2010	2	6/19	33.55		15.37	516					
2010	2	6/26	33.55		15.37	516					
2010	2	Total				6,708		6,708	-	-	6,708
2010	3	7/3	33.55		15.37	516					
2010	3	7/10	33.55		15.37	516					
2010	3	7/17	33.55		15.37	516					
2010	3	7/24	33.55		15.37	516					
2010	3	7/31	33.55		15.37	516					
2010	3	8/7	33.55		15.37	516					
2010	3	8/14	33.55		15.37	516					
2010	3	8/21	33.55		15.37	516					
2010	3	8/28	33.55		15.37	516					
2010	3	9/4	33.55		15.37	516					
2010	3	9/11	33.55		15.37	516					
2010	3	9/18	33.55		15.37	516					
2010	3	9/25	33.55		15.37	516					
2010	3	Total				6,708		6,708	-	-	6,708
2010	4	10/2	33.55		15.37	516					
2010	4	10/9	33.55		15.37	516					
2010	4	10/16	28.76		15.37	442					

NLRB Backpay Calculation

Case Name: Ferguson Enterprises, Inc.

Case Number: 7-CA-52306

Claimant: William Lewis Fringes

Backpay period: 5/26/09 - 10/15/10	Schedule H Interest calculated to:
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Year	Qtr	Week End	Reg Hours	OT Hours	Hourly Rate	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	4	10/23				-					
2010	4	10/30				-					
2010	4	11/6				-					
2010	4	11/13				-					
2010	4	11/20				-					
2010	4	11/27				-					
2010	4	12/4				-					
2010	4	12/11				-					
2010	4	12/18				-					
2010	4	12/25				-					
2010	4	Total				1,474		1,474	-	-	1,474

Totals	37,264	-	-	37,264
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Notes

Total Backpay and Expenses	37,264
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BOARD'S RULES AND REGULATIONS

SEC. 102.56 *Answer to compliance specification*

(a) *Filing and service of answer; form.* — Each respondent alleged in the specification to have compliance obligations shall, within 21 days from the service of the specification, file an original and four copies of an answer thereto with the Regional Director issuing the specification, and shall immediately serve a copy thereof on the other parties. The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the mailing address of the respondent.

(b) *Contents of answer to specification.* — The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

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

(d) *Extension of time for filing answer to specification.* — Upon the Regional Director's own motion or upon proper cause shown by any respondent, the Regional Director issuing the compliance specification and notice of hearing may by written order extend the time within which the answer to the specification shall be filed.

(e) *Amendment to answer.* — Following the amendment of the specification by the Regional Director, any respondent affected by the amendment may amend its answer thereto.

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FERGUSON ENTERPRISES, INC.

Respondent

and

JOSEPH LAPHAM, An Individual

Charging Party

CASE 07-CA-052306

DATE OF MAILING: December 29, 2011

AFFIDAVIT OF SERVICE OF: AMENDED COMPLIANCE SPECIFICATION AND NOTICE OF HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above, I served the above-entitled document(s) by certified and regular mail upon the following persons, addressed to them at the following addresses:

CERTIFIED MAIL:

Ms Gwendolyn Young
Ferguson Enterprises Inc
14385 Wyoming St
Detroit MI 48238-2378
Certified # 7004 2510 0001 4357 6388

REGULAR MAIL:

Stanley C Moore Esq
Plunkett Cooney
38505 Woodward Avenue Ste 2000
Bloomfield Hills MI 48304-5096

Joseph Lapham
914 Genesee Dr
Royal Oak MI 48073-2052
Certified # 7004 2510 0001 4357 6395

JEK/sr

Ethelyon Smith
Ethelyon Smith, Mail Clerk

GENERAL COUNSEL'S
EXHIBIT

G

Subscribed and sworn to before me this

29th day of December, 2011

DESIGNATED AGENT:

Andra B. Bigner
NOTARY PUBLIC FOR WASHTENAW COUNTY,
ACTING IN WAYNE COUNTY, MICHIGAN
MY COMMISSION EXPIRES: 11-27-2012

PLUNKETT  COONEY

January 13, 2012

VIA E-MAIL: robert.buzaitis@nlrb.gov,
and regular U.S. Mail

Mr. Robert Buzaitis
National Labor Relations Board – Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue – Room 300
Detroit, MI 48226-2568

Re: *Ferguson Enterprises*
Case No. 07-CA-52306

Dear Mr. Buzaitis:

It is my understanding that Ms. Roumayah is out of the office this week and next, as indicated by her voice mail. Accordingly, I am forwarding this letter to you in her absence. I have been directed by my client, Ferguson Enterprises, not to file an answer/response to the Amended Compliance Specification. That answer/response is due on January 19.

I have also been directed by my client to advise you that I will not be attending the hearing currently scheduled for February 8, 2012 at 10:00 a.m.

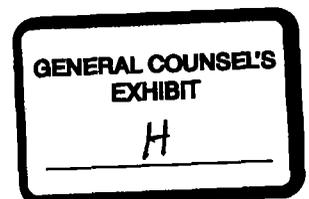
Should you have any questions regarding the information set forth in this letter, please do not hesitate to contact me.

Very truly yours,

PLUNKETT  COONEY

Stanley C. Moore, III
PH: (248) 901-4011
FAX: (248) 901-4040
E-mail: smoore@plunkettcooney.com

SCM/kj
cc: Ferguson Enterprises, Inc.
Open.15510.21935.11514793-1



ATTORNEYS & COUNSELORS AT LAW

PLUNKETT  COONEY

January 18, 2012

VIA E-MAIL: robert.buzaitis@nlrb.gov,
and regular U.S. Mail

Mr. Robert Buzaitis
National Labor Relations Board – Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue – Room 300
Detroit, MI 48226-2568

Re: *Ferguson Enterprises*
Case No. 07-CA-52306

Dear Mr. Buzaitis:

This letter is a follow-up to our telephone conversation of January 17 and to my prior communication of January 13 regarding the Amended Compliance Specification in this matter. Pursuant to your request, I have discussed the issue of Respondent's answer to the Compliance Specification dated November 21, 2011. My client has authorized me to advise you on behalf of the Board that it hereby withdraws its answer to the Compliance Specification.

Should you need any additional information, please do not hesitate to contact me.

Very truly yours,

PLUNKETT  COONEY



Stanley C. Moore, III

PH: (248) 901-4011

FAX: (248) 901-4040

E-mail: smoore@plunkettcooney.com

SCM/kj

cc: Ferguson Enterprises, Inc.
Open.15510.21935.11523244-1

GENERAL COUNSEL'S
EXHIBIT

I

ATTORNEYS & COUNSELORS AT LAW

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

FERGUSON ENTERPRISES, INC.

Respondent

CASE 07-CA-052306

and

JOSEPH LAPHAM, An Individual

Charging Party

AFFIDAVIT

I, Raymond Kassab, being duly sworn, hereby swear that I am the Acting Regional Director for the Seventh Region of the National Labor Relations Board, that the Compliance Specification and Notice of Hearing in the above-captioned case issued on October 31, 2011; the Amended Compliance Specification and Notice of Hearing in the above-captioned case issued on December 29, 2011; and after Respondent withdrew its November 21, 2011, answer to the Compliance Specification on January 18, 2012, no answer has been filed with the Seventh Region by Respondent.

Dated at Detroit, Michigan this 30th day of January, 2012.

(SEAL)



Raymond Kassab
Acting Regional Director, Seventh Region
National Labor Relations Board
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226



Notary Public for Washtenaw County, acting
in Wayne County, Michigan
My Commission expires 11/27/12

SANDRA L. ROEGNER
Notary Public, State of Michigan.
County of Washtenaw
My Commission Expires Nov. 27, 2012
Acting in the County of Wayne

GENERAL COUNSEL'S
EXHIBIT

J