Exeter, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ROBERT H. HICKAM, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 78-CE-8-D (4 ALRB No. 73) 9 ALRB No. 6

SUPPLEMENTAL DECISION AND ORDER

On October 19, 1978, the Agricultural Labor Relations Board (ALRB or Board) issued a Decision and Order in this proceeding (4 ALRB No. 73), concluding that Robert H. Hickam (Respondent) had violated Labor Code section 1153(e) and (a) by refusing to bargain with the United Farm Workers of America, AFL-CIO (UFW or Union). We ordered Respondent to make its employees whole for the economic losses they suffered as a result of its refusal to bargain.

A hearing was held before Administrative Law Judge (ALJ)[1/] Leonard M. Tillem for the purpose of determining the amount of makewhole due to each of Respondent's employees. Thereafter, on November 19, 1981, the ALJ issued his Decision, attached hereto. General Counsel, Charging Party, and Respondent each timely filed exceptions to the ALJ's Decision and a supporting brief, and

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[1/] At the time of the issuance of the ALJ's Decision, all ALJ's were referred to as Administrative Law Officers. (See Cal. Admin. code, tit. 8, § 20125, amended eff. Jan. 20, 1983.)

General Counsel and Respondent each filed a reply brief.

Pursuant to the provisions of section 1146 of the Labor Code, the Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record[2/] and the ALJ's Decision in light of the exceptions, supporting briefs and reply briefs, and has decided to adopt the makewhole formulas proposed by the General Counsel, as modified by the ALJ and as modified herein.

A makewhole order is designed to remedy a respondent's unfair labor practice by placing the employees in the economic position they would likely have been in but for that unfair labor practice. In this case, because Respondent unlawfully refused to bargain with the certified bargaining representative of its agricultural employees, Respondent must pay each of its agricultural employees an amount representing the difference between what she/he actually earned and what she/he would likely have earned had Respondent engaged in good faith bargaining leading to a contract with the Union.

Precedents of the National Labor Relations Board (NLRB) and this Board concerning the calculation of backpay due a discriminatee are generally applicable to the calculation of the amount of makewhole due to each of Respondent's agricultural employees. (Kyutoku Nursery, Inc. (1982) 8 ALRB No. 73.) The

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[2/] By stipulation of the parties, the record in Robert H. Hickam (1982) 8 ALRB No. 102 has been incorporated into the record in this case.

burden of any uncertainty concerning what wage rates the parties would likely have agreed upon in negotiations had Respondent bargained in good faith falls on the Respondent, whose violation of the Agricultural Labor Relations Act (Act) makes the compliance proceeding necessary in order to remedy the violation. (Kyutoku Nursery, Inc., Ibid.)

In makewhole cases, where the General Counsel has established at the hearing that the proposed makewhole formula(s) and calculations are reasonable and conform to the standards set forth in our decisions, we shall adopt the General Counsel's formulas and computations. We may reject or modify his or her formulas and/or computations where a respondent proves that the General Counsel's method of calculating makewhole is arbitrary, unreasonable, or inconsistent with Board precedents, or presents some other method of determining the makewhole amount which is more appropriate. (Kyutoku Nursery, Inc., Ibid.)

General Labor Hourly Wage

Pursuant to our Decision and Order in Robert H. Hickam (1978) 4 ALRB No. 73, the Regional Director surveyed UFW contracts that were negotiated and in effect during the makewhole period, July 23, 1977 through March 2, 1980. We affirm the ALJ's finding that the contracts used to determine the average general labor hourly wages are appropriate and reasonably reflect a contract that the UFW and Respondent would have agreed to had Respondent bargained in good faith. General Counsel agrees with the ALJ's modification of the average general labor hourly wage from its annual determination to a quarterly determination, but excepts to

some of the ALJ's arithmetic calculations. We find merit in those exceptions and have calculated the average general labor hourly wage for each quarter of the makewhole period as set forth in Appendix A (attached). The average general labor hourly wage plus the cost of fringe benefits[3/] is the makewhole rate for Respondent's general labor employees.[4/]

Respondent proposed computing the average general labor hourly wage on a calendar year basis; where the average general labor hourly wage for 1977 is based on the last six months of 1977; 1978 and 1979 each based on twelve months; and 1980 based on the first two months of 1980. Respondent has not proven that its proposed formula for computing the average general labor hourly wage is more appropriate than the formula adopted and modified by the ALJ. In this case, computing the average general labor hourly wage on a quarterly basis is the most appropriate formula to use to make Respondent's agricultural employees whole because it is based on equal periods of time (three month periods) and more accurately reflects the wages employees would have received at different times throughout the year, and we so find.

Hourly Wage Rates Above the General Labor Wage Rate

The average general labor hourly makewhole wage rate is equivalent to Respondent's lowest wage rate (general labor). (See Adam Dairy dba Rancho Dos Rios (1978) 4 ALRB No. 24.) However, some of Respondent's employees were paid more than the general

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[3/] See fringe benefits section, infra.

[4/] See Appendix C, attached.

labor wage rate. In order to make those higher-paid employees whole, General Counsel proposed that they receive a proportional increment above the makewhole base wage (average general labor hourly wage) applicable in the given quarter. The proportional difference between what the higher paid employees were paid and the general labor wage rate Respondent paid would then be used to calculate the makewhole amounts. For example, Larry Adams earned $3.25 per hour during the third quarter of 1977 when general laborers were paid $3.00 per hour. Adams therefore earned 8.33 percent [($3.25 - 3.00) ÷ 3.00 = .0833] more than a general laborer. Since the average general labor hourly wage under comparable UFW contracts is $3.25 per hour,[5/] Adams' makewhole wage would be 8.33 percent more than the $3.25 per hour average general hourly makewhole wage or $3.52 per hour.[6/] This wage rate is a reasonable approximation of the wage Larry Adams would likely have received had Respondent bargained in good faith. The cost of the applicable fringe benefits are then added to this proportionally increased hourly rate to calculate the total makewhole rate.

The ALJ found this to be an appropriate method of making the higher paid employees whole. We affirm his finding, as we find the formula is appropriate and reasonable. Respondent has made no alternate proposals concerning the makewhole rate for employees who earned more than the general labor wage rate and has

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[5/] If this wage was Adams' makewhole wage, he would receive no makewhole except fringe benefits.

[6/] 3.25 (average general labor hourly makewhole wage) plus $3.25 x 8.33 percent = 3.25 + .27 = 3.52.

failed to prove that the General Counsel's proposed formula was arbitrary and/or unreasonable. Respondent's argument that it customarily paid the higher paid employees in increments of 25 cents is not persuasive and is only speculation as to what Respondent would have done had it negotiated the wages of those employees in the collective bargaining process.

Piece Rate Wages

The Board in Robert H. Hickam, supra, 4 ALRB No. 73, found that the piece rate formula used in Adam Dairy dba Rancho Dos Rios, supra, 4 ALRB No. 24 may not make Respondent's piece rate workers substantially whole and directed the Regional Director to examine evidence relating to the use of a percentage increase computation for piece rate workers and to determine the amount of the makewhole award using the method which would best effectuate the purposes of the Act.

General Counsel proposed the following formula to compute the makewhole amounts due to piece rate workers: (1) each quarterly average general labor hourly wage computed from the comparable UFW contracts in evidence is compared to the general labor hourly wage actually paid by Respondent during the quarter;[7/] and (2) the percentage difference between the two wage rates represents the percentage the piece rate Respondent paid must be increased to arrive at the piece rate applicable to the quarterly

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[7/] See Appendix B, attached.

makewhole period.[8/] The makewhole piece rate is equal to the rate Respondent paid, plus the percentage increase, plus fringe benefits. For example, in the third quarter of 1979, Petrolino Adams earned $.30 per box picking and packing fruit. The general labor hourly wage rate paid by Respondent in the third quarter of 1979 was $3.25 and the computed average general labor hourly makewhole wage rate is $3.80. Thus the percentage increase is ($3.80 - 3.25) ÷ 3.25 = .1692 or 16.92 percent. In order to make Adams whole he should receive: $.30 per box plus 16.92 percent of .30 per box, i.e., (.30 x .1692) or .05 per box + .30 per box = $.35 per box, plus the cost of fringe benefits.

The ALJ found that General Counsel's percentage increase computation for piece-rate workers was equitable. We find that the percentage increase formula is appropriate and reasonable.

Respondent presented alternate formulas with respect to the percentage increase for piece-rate workers. Respondent suggested that the actual negotiation postures of the parties regarding the Thompson grape harvest in 1981 would reflect what might have been expected in previous years. The ALJ found this method of calculating the Thompson piece rate inappropriate because of the lack of a bargaining history between the UFW and Respondent and the lack of adequate records. We affirm the ALJ's finding as to Respondent's proposal regarding the Thompson grape piece rate.

[8/] This formula shall be utilized for all piece rates paid by Respondent including those for employees in the Thompson grape harvest.

Respondent argues that the tree pruning piece rates under the contracts in evidence show that Respondent paid an amount which was within the range of piece rates found in UFW contracts and therefore no makewhole should be granted for tree pruning work. The two collective bargaining agreements in evidence between Saucelito Ranch and the UFW are the only contracts that specify a piece rate for tree pruning. The other contracts in evidence do not specify a piece rate for tree pruning. A review of Respondent's payroll data shows that it did not pay one piece rate for all tree pruning work, but instead paid one rate for pruning "large" trees and a lower rate for "small" trees and different rates for peach, nectarine, and plum trees.[9/] The Saucelito-UFW contracts specified one fixed rate for tree pruning but a separate (fixed) rate for pruning prune trees. Contrary to Respondent's contention that it paid an amount for tree pruning that was within the range of piece rates found in the UFW contracts, we find that Respondent paid many different piece rates for tree pruning, most of which were below the rate specified in the Saucelito-UFW contracts and not within the range found in the contracts. Respondent failed to introduce evidence of other comparable UFW contracts with tree pruning rates during the makewhole period which would support its contention. Therefore we find that tree pruning piece rate workers are entitled to makewhole according to the general percentage increase formula adopted for

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[9/] In February 1978 the rate varied from $.80 per tree for nectarine trees to $1.35 per tree for plum trees. In December 1978 the rate varied from $1.30 per large tree to $1.00 per small tree.

piece rate workers. We find insufficient evidence on the record to support Respondent's claim concerning UFW contract rates for tree pruning.

Respondent also argues that no makewhole should be awarded for the other operations because comparative data is not available. Even though there is no comparative data in evidence concerning other piece rates, the formula we have adopted is a reasonable estimation of what piece rate workers would have received had Respondent bargained in good faith and reached a contract with the UFW. In the alternative, Respondent argues that fringe benefits should not be added to compute makewhole for piece rate workers until it is determined how many hours the piece rate workers actually worked. There is no record evidence concerning the number of hours worked by piece rate workers. Such information, if it still exists, is more likely available to Respondent than to the UFW or General Counsel. Piece rate workers are entitled to receive fringe benefits. Respondent has not presented evidence which would justify denying fringe benefits to piece rate workers. We reject Respondent's implication that fringe benefits should be based solely on hourly wages.

We reject Respondent's alternate formulas for piece rate workers. Respondent bears the burden of any uncertainty in the calculation of makewhole because it is Respondent who has violated the Act. Respondent has not proven that General Counsel's piece rate formula is arbitrary or unreasonable and has not presented a more appropriate formula. Accordingly, we adopt General Counsel's formula for determining the makewhole amounts due for piece rate workers.

Fringe Benefits

The ALJ found that the 22 percent figure for fringe benefits as proposed by the General Counsel was too high, and suggested that the fringe benefits percentage be recalculated to correspond with the comparative cost of fringe benefits in the representative contracts in evidence. In finding 22 percent to be too high, the ALJ considered the UFW's proposal during the 1980 negotiations, added the UFW's proposals for its medical plan, pension plan and Martin Luther King Fund and divided the sum by the "total" economic proposal to arrive at the fringe benefits percentage. However, the ALJ failed to consider the economic value of fringe benefits such as vacation pay, holiday pay, overtime pay, and stand-by pay and failed to place any economic value on seniority or grievance provisions. The Board expressly rejected the ALJ's method of individually quantifying the various fringe benefits in its Decision and Order in Adam Dairy dba Rancho Dos Rios, supra, 4 ALRB No. 24 and also rejected the method of trying to speculate as to the exact amount of fringe benefits that would have been included in a contract between the Union and Respondent. Instead the Board adopted a formula for calculating fringe benefits based on a Bureau of Labor Statistics report for nonmanufacturing industries which in 1974 found that fringe benefits represented 22 percent of a worker's total wages. That formula assigns a value of 78 percent to the makewhole wage and 22 percent to fringe benefits. We adopted that formula in order to avoid lengthy post-decisional proceedings, to provide an effective redress for employee losses

and to promote the course of good faith negotiations between the parties in the future.

In Adam Dairy dba Rancho Dos Rios, supra, 4 ALRB No. 24, we stated that the total hourly value of all monetary benefits which employees receive from the employer shall include any sums paid by the employer for the benefit of employees. This means that a Respondent shall be credited for its share of contributions to funds to which it directly contributes for the employees' benefit. In Kyutoku Nursery, Inc., supra, 8 ALRB No. 73, we added the fringe benefits paid by Respondent to each employee's net pay received. Respondent is required by state and/or federal law to make contributions to certain funds for the benefit of its employees. These funds are Workers' Compensation, Unemployment and Social Security (Federal Insurance Contributions Act (FICA)). The payments to employee benefit funds which are mandated by law have increased significantly since 1974.[10/] Because of the nature of agriculture in California and the nature of the unemployment and workers' compensation systems, payments into these funds vary from grower to grower and are dependent upon such variables as the kinds of crops grown, the nature of the agricultural operation (mechanized or hand labor), the total number of claims made and paid, and the type of equipment used by the workers.

Because contributions to these funds are required by law, they are not and cannot be affected by the collective bargaining process. Such contributions are not covered by a

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[10/] E.g., Social Security payments in 1974 stood at 4.4 percent; in 1983 they are 6.7 percent.

collective bargaining agreement and must be made even in the absence of a collective bargaining agreement. The rights of agricultural workers to receive the benefits of such funds is governed by law rather than by a contract.

In this case, in order to make an employee whole, the wage rates computed pursuant to the previously stated formulas (both hourly and piece rates) will be assigned a value of 78.0 percent and fringe benefits will be assigned a value of 22.0 percent, 15.7 percent for voluntary benefits and 6.3 percent for mandatory benefits.[11/] The evidence shows that Respondent herein made the legally required payments to those funds. As the employees have acutally received the benefit of those legally required fringe benefits, there is no need for us to provide for them as part of a makewhole award. Therefore, the gross makewhole wage shall be reduced by 6.3 percent to reflect the mandatory payments made by Respondent.[12/]

In Kyutoku Nursery, Inc., supra, 8 ALRB No. 73, we noted that General Counsel added Respondent's actual payments into those funds to the employees' gross earnings. Although this is an appropriate method of offsetting the employer's mandatory contributions, we find that the reduction of the gross makewhole wage by 6.3 percent to reflect mandatory payments is more

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[11/] 6.3 percent represents the mandatory payments as set forth in the 1974 Bureau of Labor Statistics Report which was adopted by the Board in Adam Dairy dba Rancho Dos Rios, supra, 4 ALRB No. 24. (BLS Bulletin 1963.)

[12/] See Appendix C for makewhole computations for the average general labor hourly wage.

appropriate.

Voluntary payments made to fringe benefit funds or directly to the employee shall be deducted from the gross makewhole award to the employee for that particular year. In this case, those employees who received vacation pay and/or bonuses shall have their makewhole awards for that year reduced by the amounts they actually received in such fringe benefits. (See Appendix D.)

Respondent's Financial Situation

We affirm the ALJ's finding that Respondent's present ability or inability to pay makewhole is irrelevant to our determination of the extent of Respondent's liability and is not a valid defense in ALRB makewhole proceedings. The burden of any uncertainty concerning the wage rates the parties would likely have agreed upon in negotiations had Respondent bargained in good faith falls on Respondent. (Kyutoku Nursery, Inc., supra, 8 ALRB No. 73; also see Fibreboard Products Corp. (1969) 180 NLRB 142 [72 LRRM 1617].) We find no error in the ALJ's refusal to admit into evidence Respondent's exhibits 2 and 6(a), 6(b), 6(c) and 6(d).[13/]

An agricultural employee's right to receive makewhole is based on having worked for Respondent at any time during the makewhole period. Respondent's liability has been established in a prior unfair labor practice (ULP) proceeding where we

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[13/] Respondent's exhibit 2 is an income statement for Robert and Shirley Hickam and Respondent's exhibits 6(a), (b), and (d) are the 1977, 1978, 1979, and 1980 tax returns of Robert and Shirley Hickam.

concluded that Respondent unlawfully refused to bargain in good faith with the certified bargaining representative of its agricultural employees. Respondent may not now seek to mitigate or negate its liability based on any defense it raised or could have raised during the ULP proceedings.

Respondent's present financial situation has no bearing on the amount of makewhole each of its agricultural employees is entitled to receive.[14/] Respondent must bear the consequences of its unlawful refusal to bargain, regardless of its financial status.

Agricultural Workers Entitled to Makewhole

In Robert H. Hickam (1982) 8 ALRB No. 102 we held that Respondent was the agricultural employer of all agricultural employees on its payroll at all times material. Respondent, by unlawfully refusing to bargain with the UFW, assumed the risk associated with that conduct, i.e., that it would be liable to its agricultural workers for makewhole. The Board's finding that Respondent is the agricultural employer of all agricultural employees on its payroll did not deny Respondent due process, nor did it violate the constitutional prohibition against ex post facto laws, which applies only to criminal statutes. (De Veau v. Braisted (1960) 363 U.S. 144, 80 S.Ct. 1146; Fleming v. Nestor (1960) 363 U.S. 603, 80 S.Ct. 1367; Calder v. Ball (1798) 3 Dall. 386.) The Agricultural Labor Relations Act is not a

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[14/] As we cannot impose greater financial liability merely because a respondent earns an extremely large profit, we cannot impose a lesser financial liability merely because a respondent claims to have or has financial difficulties.

criminal statute and does not impose penalties for violations but merely remedies those violations by placing the wronged party(ies) in the position(s) it (they) would have been in but for a respondent's violation(s).

Prior to committing an unfair labor practice, Respondent could have requested the Board to clarify the certified bargaining unit, but did not.[15/] Respondent may not now seek to mitigate or negate its liability based on any defense it raised or could have raised during the underlying ULP proceeding. Respondent's status as an agricultural employer was not imposed retroactively.

The composition of Respondent's bargaining unit was fully litigated in Robert H. Hickam (1982) 8 ALRB No. 102.[16/] Respondent has been on notice since our Decision and Order in 4 ALRB No. 73 that it was required to make whole all of its agricultural employees because of its refusal to bargain with the UFW, the certified bargaining representative of all its agricultural employees. Therefore, we reject Respondent's contention that its custom harvester status may only be applied prospectively and that equitable principles preclude what

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[15/] Respondent argues that the UFW could have filed a petition for a unit clarification at any time since 1975. However, as Respondent refused to bargain with the UFW and never raised the issue of the proper bargaining unit until 1980, the UFW had no basis for believing the composition of the unit was questioned by Respondent.

[16/] In addition, Respondent adduced evidence at this hearing concerning workers who were employed in its commercial packing shed and thus not agricultural employees entitled to receive makewhole, but failed to present evidence contesting the status of other employees listed on the makewhole specification and thereby waived the issue.

Respondent terms to be a retroactive application of its status.

Computations Pursuant to the Board's Formulas

The formulas adopted by this Board, although based on General Counsel's specification, will yield makewhole amounts for each of Respondent's agricultural employees that are different from the amounts General Counsel computed pursuant to the original specification, because the computations were made on a yearly rather than a quarterly basis and the mandatory fringe benefit costs were not deducted. Thus, computations must be made for each agricultural employee using the formulas set forth in this Decision.

The Board has considered the alternatives and has decided that General Counsel, because of his familiarity and expertise in the area of makewhole, shall be ordered to revise his calculations, using the formulas set forth in this Decision to compute the makewhole amounts owed to each of Respondent's agricultural employees,[17/] and to submit the revised calculations to an ALJ. Respondent and Charging Party shall be given a reasonable time to prepare any opposition to the General Counsel's arithmetic computations.[18/] The ALJ shall thereafter reopen the record for the limited purpose of receiving in evidence the General Counsel's new makewhole calculations and any opposition

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[17/] See Appendix E (list of Agricultural Employees).

[18/] Respondent was given an adequate opportunity to litigate all other issues during the original makewhole hearing.

thereto.[19] The ALJ shall thereafter submit the revised figures to the Board in a Supplemental Decision for review.

ORDER

This case is hereby ordered remanded to an Administrative Law Judge and General Counsel is hereby ordered to prepare, with all deliberate speed, revised calculations of the amounts of makewhole due to the agricultural employees of Respondent who are listed in Appendix E of this Decision. The aforesaid amounts shall be computed by the General Counsel in accordance with the formulas set forth in this Decision. The General Counsel shall thereafter submit the revised calculations to the other parties and an Administrative Law Judge, who shall then reopen the record for the limited purpose of receiving in evidence the new calculations from the General Counsel and any party's opposition to General Counsel's arithmetic computations, and thereafter prepare and issue a Supplemental Decision and recommended Order.

Dated: March 1, 1983

ALFRED H. SONG, Chairman

JEROME H. WALDIE, Member

JORGE CARRILLO, Member

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[19] We leave the method of reopening the record to the discretion of the Administrative Law Judge.

CASE SUMMARY

Robert H. Hickam (UFW)

9 ALRB No. 6
Case No. 78-CE-8-D
(4 ALRB No. 73)

ALJ DECISION

The Administrative Law Judge (ALJ) found that the Board was not precluded from applying the makewhole formulas in Adam Dairy dba Rancho Dos Rios (1978) 4 ALRB No. 24 to this case. Respondent's ability or inability to pay the makewhole awards is irrelevant to this compliance proceeding. The determination of the composition of the appropriate bargaining is not barred by the 6 months statute of limitations. The UFW-negotiated contracts used to compute the makewhole amounts were appropriate and comparable. The ALJ adopted the formulas proposed by the General Counsel but modified the averaging formulas from an annual to a quarterly basis.

The ALJ found General Counsel's makewhole formula for workers who earned more than the general labor wage to be appropriate and proper. He also found General Counsel's proportionate increase formula for piece rate workers to be equitable.

The ALJ found that 22 percent of the total wage package for fringe benefits was too high, and noted that the portions of the comparable UFW contracts containing fringe benefits were not submitted into evidence by the General Counsel.

BOARD DECISION

The Board affirmed the ALJ's findings that the UFW-negotiated contracts in evidence were comparable and affirmed the ALJ's adoption of the General Counsel's formula for computing the average general labor hourly wage, as modified to reflect a quarterly rather than annual computation. The Board also adopted the proportional increment formula proposed by the General Counsel for employees who earned more than the general labor hourly wage and the percentage increase formula for piece rate workers proposed by the General Counsel.

The Board rejected the ALJ's finding that 22 percent for fringe benefits was too high, and reaffirmed its holding in Adam Dairy, supra, 4 ALRB No. 24 concerning the calculation of fringe benefits. Included in the 22 percent assigned for fringe benefits are payments to employee benefit funds which are mandated by state or federal law. Because those mandatory fringe benefit payments are required by law and therefore cannot be affected by the collective bargaining process, the Board will deduct from the total makewhole wage rate 6.3 percent, which represents the amount of mandatory fringe benefits identified in the data used in its Adam Dairy Decision and Order.

Respondent's alleged present inability to pay makewhole is irrelevant and is not a valid defense in this proceeding. The burden of any uncertainty concerning the wage rates the parties would likely have agreed upon in negotiations had Respondent bargained in good faith falls on Respondent.

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This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

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APPENDIX A

(see Footnote on Page 2)

Contract	1977 July	Aug.	Sept.	Oct.	Nov.	Dec.
Radovich						
Caratan						
Barbic						
Cesare						
Tex-Cal						
Missakian	3.15	3.15	3.35	3.35	3.35	3.35
Canata						
Kotchevar	3.15	3.35	3.35	3.35	3.35	3.35
Saucelito	3.15	3.30	3.30	3.30	3.30	3.30
Bozanich						
Total for Qtr.		29.25			30.00	
Avg. for Qtr.	29.25 ÷ 9 = 3.25			30.00 ÷ 9 = 3.33		

Contract	1978 Jan.	Feb.	Mar.	Apr.	May	June	1978 July	Aug.	Sept.	Oct.	Nov.	Dec.
Radovich	3.30	3.30	3.30	3.30	3.47[1]	3.50	3.50	3.50	3.50	3.50	3.50	3.50
Caratan	3.30	3.30	3.30	3.30	3.47[1]	3.50	3.50	3.50	3.50	3.50	3.50	3.50
Barbic	3.30	3.30	3.30	3.30	3.47[1]	3.50	3.50	3.50	3.50	3.50	3.50	3.50
Cesare	3.30	3.30	3.30	3.30	3.47[1]	3.50	3.50	3.50	3.50	3.50	3.50	3.50
Tex-Cal					3.50[2]	3.50	3.50	3.50	3.50	3.50	3.50	3.50
Missakian	3.35	3.35	3.35	3.35	3.35	3.35	3.35	3.35	3.50	3.50	3.50	3.50
Canata	3.30	3.30	3.30	3.30	3.47[5]	3.50	3.50	3.50	3.50	3.50	3.50	3.50
Kotchevar	3.35	3.35	3.35	3.35	3.35	3.35	3.35	3.55	3.55[6]	3.55	3.55	3.55
Saucelito	3.30	3.30	3.30	3.30	3.30	3.30	3.30	3.45	3.45	3.45	3.45	3.45
Bozanich	3.30	3.30	3.30	3.30	3.47[1]	3.50	3.50	3.50	3.50	3.50	3.50	3.50
Total for Qtr.		89.40			98.62			104.35			105.00	
Avg. for Qtr.		89.40 ÷ 27 = 3.31			98.62 ÷ 29 = 3.40			104.35 ÷ 30 = 3.48			105.00 ÷ 30 = 3.50	

Contracts	Jan.	1979 Feb.	Mar.	Apr.	May	June	July	Aug.	1979 Sept.	Oct.	Nov.	Dec.
Radovich	3.50	3.50	3.50	3.50	3.50	3.85	3.85	3.85	3.85	3.85	3.85	3.85
Caratan	3.50	3.50	3.50	3.50	3.50							
Barbic	3.50	3.50	3.50	3.50	3.50	3.85	3.85	3.85	3.85	3.85	3.85	3.85
Cesare	3.50	3.50	3.50	3.50	3.50	3.85	3.85	3.85	3.85	3.85	3.85	3.85
Tex-Cal	3.50	3.50	3.50	3.50	3.73[3]	3.85	3.85	3.85	3.85	3.85	3.85	3.85
Missakian	3.50	3.50	3.50	3.50	3.50[4]	3.85	3.85	3.85	3.85	3.85	3.85	3.85
Canata	3.50	3.50	3.50	3.50	3.50	3.85	3.85	3.85	3.85	3.85	3.85	3.85
Kotchevar	3.55	3.55	3.55	3.55	3.55	3.55	3.55	3.55				
Saucelito	3.45	3.45	3.45	3.45	3.45	3.45	3.45	3.75	3.75	3.75	3.75	3.75[7]
Bozanich	3.50	3.50	3.50	3.50	3.50	3.85	3.85	3.85	3.85	3.85	3.85	3.85
Total for Qtr.		105.00			104.18			98.90			92.10	
Avg. for Qtr.		105.00 ÷ 30 = 3.50			104.18 ÷ 29 = 3.59			98.90 ÷ 26 = 3.80			92.10 ÷ 24 = 3.84	

Contracts	Jan.	1980 Feb.	Mar.
Radovich	3.85	3.85	3.85
Caratan			
Barbic	3.85	3.85	3.85
Cesare	3.85	3.85	3.85
Tex-Cal	3.85	3.85	3.85
Missakian	3.85	3.85	3.85
Canata	3.85	3.85	3.85
Kotchevar			
Saucelito	4.00	4.00	4.00
Bozanich	3.85	3.85	3.85
Total for Qtr.		92.85	
Avg. for Qtr.		92.85 ÷ 24 = 3.87	

FOOTNOTES

1. 3.30 May 1-5; 3.50 May 6-30 - avg. for May 1978 3.47.
2. 3.50 starts May 6.
3. 3.50 to May 11; 3.85 May 11-30 - avg. May 3.73.
4. 3.50 to May 10 by contract; next rate to take effect Sept. 1 - 3.50 is apparent rate until Sept. 1.
5. May 1978: May 1-5=3.30, May 6-10=3.50; May 78 avg.=3.47; May 79: May 1-10=3.50, May 11-30= 3.85; avg. May 1979 = 3.73.
6. 3.55 to Sept. 6; could only have gone up thereafter.
7. Contract goes to Dec. 11; next rate is effective Jan. 1 - 3.75 was apparently paid through December.
8. April 21-31 only - avg. for April 1977 maybe less than 3.15.

APPENDIX A (Cont.)

Summary of

Average hourly general labor wage

Year	Quarter	Average Hourly General Labor Wage
1977	3	$3.25
	4	3.33
1978	1	3.31
	2	3.40
	3	3.48
	4	3.50
1979	1	3.50
	2	3.59
	3	3.80
	4	3.84
1980	1	3.87

PIECE RATE PERCENTAGE INCREASES

APPENDIX B

Year	Qtr.	Avg. hrly. gen. labor rate	Hrly. gen. labor rate paid	% diff.
1977	3	$3.25	$3.00	8.33%
	4	3.33	3.00	11.00
1978	1	3.31	3.00	10.33
	2	3.40	3.00	13.33
	3	3.48	3.00/3.10[1/]	16.00/12.25
	4	3.50	3.10	12.90
1979	1	3.50	3.10	12.90
	2	3.59	3.25	10.46
	3	3.80	3.25/3.35[2/]	16.92/13.43
	4	3.84	3.35	14.62
1980	1	3.87	3.35	15.52

[1/] Respondent began paying $3.10 per hour during the payroll period ending 9/27/78.

[2/] Respondent began paying $3.35 per hour during the payroll period ending 9/27/79.

MAKEWHOLE RATE FOR GENERAL LABORERS

APPENDIX C

Year	Qtr.	Average General Labor Hourly Rate	Average General Labor Hourly Rate Plus Fringe Benefits	Average General Labor Hourly Rate Plus Fringe Benefits Less Mandatory Payments
1977	3	$3.25	$4.17	$3.91
	4	3.33	4.27	4.00
1978	1	3.31	4.24	3.97
	2	3.40	4.36	4.09
	3	3.48	4.46	4.18
	4	3.50	4.49	4.21
1979	1	3.50	4.49	4.21
	2	3.59	4.60	4.31
	3	3.80	4.87	4.56
	4	3.84	4.92	4.61
1980	1	3.87	4.96	4.65

VOLUNTARY FRINGE BENEFITS PAID

APPENDIX D

Year	Employee	Christmas Bonus	Vacation	Total
1977				
	Pat McCain	$ 50.00	$	$ 50.00
	Harold Meek	1000.00	300.00	1300.00
	Tim Meek	100.00		100.00
	Doyle Stroud	200.00		200.00
	Fred Stroud	1000.00	300.00	1300.00
	Gloria Verdin	100.00		100.00
	Hubert Wyrick	500.00	300.00	800.00
1978				
	Agustin Almerol	$ 50.00	$	$ 50.00
	Darshan Gill	100.00		100.00
	Harold Meek	1000.00	320.00	1320.00
	Gloria Verdin	100.00		100.00
	J.C. White	100.00		100.00
	Hubert Wyrick	500.00	320.00	820.00
	Fred Stroud	1000.00	320.00	1320.00
1979				
	Agustin Almerol	$ 100.00	$	$ 100.00
	Darshan Gill	200.00	150.00	350.00
	Harold Meek	1250.00	340.00	1590.00
	Tim Meek	100.00		100.00
	Fred Stroud	1250.00	340.00	1590.00
	Gloria Verdin	100.00		100.00
	J.C. White	100.00		100.00
	Edward Wright	50.00		50.00
	Hubert Wyrick	750.00	340.00	1090.00

APPENDIX E

Larry Adams
Petrolino Adams
Cornelio Agbayani
David Agras
Jose Luis Agras
Raul Agras
Aurora Aguilar
Eugenio Aguilar
Eugenio Aguilar
Federico Aguilar
Fenerilo Aguilar
Fernando Aguilar
Gilberto Aguilar
Joel Aguilar
Jorge Aguilar
Luis Aguilar
Manuel Aguilar
Maria R. Aguilar
Nancy Aguilar
Ramon Aguilar
Suzanna Aguilar
Jesse Aguirre
Alfredo Negrete Aguirre
Carmelo (Carmela) Aguirre
Concha Aguirre
Juan Aguirre
Juan Aguirre
Librado Aguirre
Rosallo Aguirre
Silvia Aguirre
Pasquala Aguna
Juan Alatorre
Antonio Alcantar
Ernesto G. Alcantar
Genero Alcantar
Jenaro Alcantar
Juan Alcantar
Mike Alcantar
Octairo (Octaviando) Alcantar
Pedro Alcantar
Merce Alcalan
Agustin M. Almerol
Ana Almerol
Norma Alonzo
Juan Alvarado
Louis M. Alvarado
Isidoro Alvarez
Jose Alvarez, Jr.
Maria C. Alvarez
Salvador Alvarez
Eliseo Amescua
Bob Anderson
Benjamin Andrade
Efrain Andrade
Hector Andrade
Rafael Angiano
Ruben Armenla
Ignacio Arias
Jose Arista
Juana Arista
Sibing M. Arreddndos
Ramon H. Arteaga
Agustin Avalos
Jesus Avalos
Santiago Avalos
Jose Avila
Alberto Baca
Anastacio Baca
Bernardino Baca
Emilio Baca
Juan Baca
Delfin Balanay
Alberto Balderas
Aurelio Baldivia
Desiderio Baldovinos
Frederic Bali
Rosa Bahena
Rosario Banuelos
Jesus Barajas
Felix M. Barsena
Jose Luis Barsena
Florencio Barajas
Rosario Barajas
Mel Barker
Ignacio Barragan
Felix Barrera
Agapito Barraza
Guadalupe Barrientos (Barrietos)
Jaime Barrientos
Jose Basquez
Melvin Bates
Steven Bates
Roberto Bautista
Carmen Bautista (Cuevar)
Antonio B. Bejarand
Carmen Bejarand
Paulino M. Bejarand
James Edward Bell
Severo Bonilla
Sergio Borallo
Jackie R. Bowen
Gilberto Bricena
Felipe Butac
Glenn Burdge

Martin Cabral
Martin Cabral
Adolfo Cabrera
Luis Cabrera
Francisco Cabrera
Vidal Calderon (Sanchez)
Margarite Calderon
Jose Callo
Alfonso Camacho
Avel Camacho
Bulmaro Camacho
Estaban Camacho
Fidilina Camacho
Preciliano Camacho
Teresa Camarena
Alfonso Campos
Clemente Campos
Edilberto Campos
Gerardo Campos
Luis Campos (Acosta)
Manuel Campos
Marta Campos
Miguel Canal
Joseph Cante
Armando Cardenas
Daniel Cardenas
Faustino Cardenas
Faustino Cardona
Manuel Carillo
Gorge Carillo
Gelasio Carpio
Donnie Carter
Virgil Carter
Arturo Casas
Cruz Casas
Felisiano Casas
Isideo R. Casas
Juan Casas
Rosa Casas
Juan Castaing
John L. Castaing
Ismael Casillas
Jose Castaneda
Genoveva Castaneda
Manuel Castaneda
Ramon Castaneda
Filemon Castarena
Maria E. Castellanos
Benito Castillo
Eugenia Castillo
Manuel Castillo
Maria Castillo
Francisco Castreson
Luis Castro
Artimid Ceballos
Asencion Ceballos
Eloy Ceballos
Efren Ceballos
Espiridion Ceballos
Ignacio Ceballos
Joaquin Ceballos
Jose Luis Ceballos
Leonardo Ceballos
Ramon Ceballos
Reynaldo Ceballos
Rumaldo Ceballos
Victoriano Ceballos
Erminio (Ermenio) Ceja
Maria D. Ceja
Arnoldo Cervantez
Arnoldo Cervantez
Francisco Cervantez
Esquiel Cervantez
Manuel Cervantez
Maria Cervantez
Maria Cervantez
Ricardo Cervantez
Torivio Cervantez
Noel Chaparro
Reyes Chaparro
Eugenio Chavez
Jaime Chavarim
Alberto Cisneros
Bernabe Cisneros
David Cisneros
Delfino Cisneros
Florentino Cisneros
Bumaro Cisneros
Martin Cisneros
Pedro Cisneros
Ventura Cisneros
Elvira Cobarrubias
Ramon Cobarrubias
Guadalupe Contreras
Jose Contreras
David Contreras
Lucio Contreras
Lucio Contreras
Miguel Contreras
Paula Contreras
Faustino Cordona
Luis Cordova
Alberto Corona
Fidel Corona

Javier Corona
Mario Corona
Jose Corona
Ramon Coronel
Irma Cortinas
Jose (Joe) Cortinas
Oscar Cortinas
Margarito Cortinas
Margarito Cortinas (Ruiz)
Elva Correa
Benjamin Correa
Agustin A. Costa
Sam Cree
Sandra Cree
Manuel Cruz
Benjamin M. Cuevas
Ben R. Cuevas
Eriberto Cuevas
Eustolio Cuevas
Gregorio Cuevas
Juan Cuevas
John F. Davila
Fidel De Leon
Juanita De La Cruz
Manuel Delgado
Pedro Delgado
Javier Delgadillo
Cipriano De Tejada
Juan M. De Tejada
Federico Diaz
Lorenzo Diaz
Guadalupe Diaz
Efren M. Diaz
Maria Diaz
Flor Diza
Antonio Dimas
Gregorio Dominguez
Lucio Dominguez
Rafaela Dulafox
Joe Duran
John Duvall
Primitivo Echeveste
Nick Eibeck
Paulo Eros
Benito Epolito
Mirna Escamia
Amelia Escamilla
Antonio Escamilla
Araselli Escamilla
Samuel Escandez
Ruben Escara
Ambrosio Espinoza
Eloy C. Espinoza
Fortino Espinoza
Lupe Espinoza
Tomas Espinoza
Felix Estrella
J. Estrella
Manuel Estrella
Augreulio Farias
Francisco Farias
Delfina Farias
Candelario Farias
J. M. Farias
Lidia Fernandez
Eudoro Figueroa
Zinaida Figueroa
E. K. Fisher
J. D. Fisher
Kirk Fisher
Ismael Flores
Lazaro Flores
Jesus A. Flores
Maria A. Flores
Rafael Flores
Virginia Flores
Federico Florez
Maria Ana C. Florez
Laverne Forrester
Felipe G. Franco
Felix J. Franco
Roberto Franco
Jeff Allen Frazier
Antonio Gaitan
Juan Gaitan
Bernando Galeana
Estevan C. Galvan
Juan Galvez
Rudy Gamboa
Roberto Gamboa
J. Gann
Adolfo Garcia
Agustin Garcia
Alfonso V. Garcia
Angel Garcia
Augreulio Garcia
Carlos Garcia
Domingo Garcia
Elias Garcia
Francisco Garcia
Gilberto Garcia
Graviel Garcia
Herasmo Garcia
Jorge Garcia

Irma B. Garcia
Jose Garcia
Jose C. Garcia
Jesus R. Garcia
Juan F. Garcia
Macedonia Garcia
Mariom Maria Garcia
Mary Garcia
Manuel Garcia
Miguel Garcia
Monica Garcia
Nicolasa Garcia
Rafael Garcia
Ramiro Garcia
Robert Garcia
Rudy Garcia
Salvador Garcia
Juan Garza
Darshan S. Gill
Bob Glass
Antonia Gomez
Oscar Gomez
Palmira Gomez
Pedro Gomez
Raul Gomez
Ricardo Gomez
Ricardo B. Gomez
Ricardo V. Gomez
Alfie Gonza
Antonio Gonzalez
Antonio Gonzalez
Antonio Gonzalez
Antonio O. Gonzalez
Benny Gonzalez
Candelario M. Gonzalez
Esther Gonzalez
Felimon Gonzalez
Javier Gonzalez
Jesus Gonzalez
Juan Gonzalez
Gil Gonzalez
Macario Gonzalez
Mario Gonzalez
Martin Gonzalez
Merced Gonzalez
Noelia Gonzalez
Pedro Gonzalez
Petra Gonzalez
Ramon Gonzalez
Ramiro Gonzalez
Refugio Gonzalez
Sergio Gonzalez
Angela Grado
Jose Gramillo
Parinajil S. Grewal
Roy Griffen
Bret Grissom
Keith Grissom
San Juana R. Grifawa
Manuel Guerro
Luciano Solorzano Guereca
Daniel Guisar
Evaristo Guisar
Miguel Guisar
Delfino M. Guillen
Jose Gutierrez
Justino Gutierrez
Rafael Gutierrez
Ramon Gutierrez
Antonio Guytan
Salvador Guzman
Trinidad A. Guzman
Floyd C. Hendrix
Paul M. Hendrix
Philip Hendrix
Alfonso Hernandez
Carlos Hernandez
Eliseo Hernandez
Felix Hernandez
Fernando Hernandez
Gregorio Hernandez
Guadalupe Hernandez
Jose Manuel Hernandez
Luis Hernandez
Luis Hernandez
Manuel Hernandez
Maria Alva Hernandez
Nicolos Hernandez
Robert (Roberto) Hernandez
Rogelio Hernandez
Rolando Hernandez
Rosario Hernandez
Lyle Hicks
Benito Hipolito
Clemente Huerta
Rafael Huerta
Mary Huff
Avel Hurtado
Rosa Hurtado
Glenn Hyatt
Jorge Ibarra
Pedro Iglosias
Juan Isaias
Leonardo Isaias

APPENDIX E (Cont.)

Salvador Isaias
George Isam
James Jackson
Ignacio Jiminez
Imogene Johnson
Jesus Juarez
Juarelyn (Jareln or Juaren) Juarez
Pedro Juarez
Rito Juarez
Rodrigo Jula
Manuel Jurado
Olivia Jurado
Jose Lagras
Roberto Landerson
Florintina Lara
Guillermo Lara
Jesse Lara
Jesus Lara
Jose Lara
Patricio Lara
Timotea Lara
Pedro Lemós
Angel A. Leon
Juan Leon
Felipe Lemos
Inez (Ines) Lisen
Lucio Liseo
Alfonso Liseo
Agustin Lopez
Alfredo Lopez
Alfredo Lopez
Anicelo Lopez
Apolinar Lopez
Asencion Lopez
Betty Lopez
Cerefino Lopez
Cimitrio Lopez
Claudia Lopez
David Lopez
Edalin Lopez
Elias Lopez
Emeliano Lopez (Aguilar)
Francisco Lopez
George Lopez
Gerardo Lopez
Goel R. Lopez
Guadalupe Lopez
Gustavo Lopez
Javier Lopez
Jesus Lopez (Zantello)
Joaquin Lopez
Jose Lopez
Juan Lopez (Aguilar)
Juan Lopez
Leonardo Lopez
Margarita Lopez
Martin Lopez
Martin Lopez
Raymundo Lopez
Simitrio Lopez
Tiburcio Lopez
Vicente Lopez
Zerefin Lopez
Jose Loso
Nicolas Loza
Leonideo Lozano
Teodocio Lozano
Luisa Lucio
Maria P. Lucio
Frank Lupercio
Francisco Macias
Gonzalo Madrigal
Jose Madrigal
Luis N. Madrigal
Rogelio G. Madrigal
Aurelio Magana
Ismael Magana
Lacadio A. Magana
Pedro Magana
Sacramento Magana
Simon Magana
Asencion Maldonado
Benjamin Maldonado
Efren Maldonado
Jesus Maldonado
Manuel Maldonado
Nohemi Maldonado
Rigoberto Maldonado
Rosalua V. Maldonado
Victoria Maldonado
Hardip Manjal
Karmail S. Manjal
Jesus Manzano
Juan Maravilla
Maurillo Marcos
Adelaida Marmolejo
Antonio Marquez
David Marquez
Jesus Marquez
Jesus Marquez, Jr.
Jose Marquez
Jose H. Marquez
Jose M. Marquez
Juan M. Marquez

APPENDIX E (Cont.)

Juanita Marquez
Leonar Marquez
Linda M. Marquez
Madel Rosio Marquez
Maria Marquez
Maria A. Marquez
Matco Marquez
Pedro Marquez
Remigio Marquez
Roberto Marquez
Wesley Martin
Alberto Martinez
Andy Martinez
Antonio Martinez
Ben Martinez
Cornelio Martinez
Elias Martinez
Elios Martinez
Ernesto Martinez
Felipe Martinez
Fernando Martinez
Gloria Martinez
Hilario Martinez
Iduvinio Martinez
Javier Martinez
Justino Martinez
Lucio Martinez
Manuela Martinez
Maria E. Martinez
Miguel Martinez
Mike Martinez
Rogelio Martinez
Silvia Martinez
Jose Mavillanueva
David Maxiscal
Pat McCain
Ray McCain
Herman McCammon
Chris Medina
Dionicio Medina
Mark Medina
Raudel Medina
Ricky Joe Medina
Ladislado Medrano
Brian Meek
Harold Meek
Mack Meek
Tim Meek
Eloy Mejia
Francisco Mejia
Guadalupe Mejia
Jesus Mejia
Narciso Mejia
Manuel Melo
Ana C. Mendez
Graciela Mendez
Jesus Mendez
Jesus Mendez
Jose Mendez
Juan Mendez
Lorena Mendez
Luis Mendez
Luis Mendez
Maria Mendez
Maximiliano Mendez
Miguel Mendez
Nactivida Mendez
Paula Mendez
Bicente Mendoza
Daniel A. Mendoza
Evaristo Mendoza
Jorge Mendoza
Jose Mendoza
Juan Mendoza
Simon Mendoza
Teresa Mendoza
Vicente Mendoza
Guadalupe Meras (Meros)
Guadalupe Meras (Meros), Jr.
Refugio Meras (Meros)
Abundio Mercado
Alberto Mesa
Agustin Meza
Andres Meza
Angel Meza
Antonio Meza
Bernardo Meza
Bulmaro Meza
Celestino Meza
Consepcion Meza
Guadalupe Meza
Facundo Meza
Jorge Meza
Leopold D. Meza
Lorenzo Meza
Mariano Meza
Miguel Meza
Pedro Meza
Pedro Meza
Saturino Meza
Rodolfo Miranda
Ed Moler
Trinidad Molina
Aurelia Mondaca

APPENDIX E (Cont.)

Gerardo Mondaca
Guadalupe Mondaca
Maria Mondaca
Merey Mondaca
Reynaldo Mondaca
Rodolfo Mondaca
Salvador Mondaca
Jorge Montenegro
Andy Agenaga Montoya
Larry Moody
Apolonio Mora
Elisto Mora
Francisco Morales
Guadalupe Morales
Esiquel Morella
David Moreno
Jose R. Moreno
Nicanor Moreno
Raymundo Moreno
Tranquilino Moreno
Decidirio Munos
Francisco Munoz
Jose Murillo
Juan Murrillo
Juan Murrillo
Salvador Murrillo
Maria F. Naranjo
Hermina Narroquin
Ernesto Naso
Isabel Navarro
Manuel Navarro
Galdino Negrete
Antonio Nieto
Juan Nieto
Hans Peter Nohr
Guadalupe Nunez
Norberto Ocha
Abel Ojeda
Golanda Olivera
Golanda Olivera
Guadalupe Olivera
Guadalupe Olivera
Jesus Olivera
Jose Olivera
Maria Olivera
Rafael Olivera
Otis H. O'Neal
Loreto Oros
Benjamin Orosco
Jesus Orosco
Joaquin Orosco
Manuel Orosco
Ramiro Orozco
Alejandro Ortega
Ciro Ortega
Manuel Ortega
Manuel Ortega
Armando Ortiz
Efren M. Ortiz
Manuel Ortiz
Matilde Ortiz
Jaime Osequeda
Gilbert Ozuna
Alvino Padilla
Nestor Padilla
Dolores Palacios
Luis Palacios
Luis Palacios
Martin Palacios
Rafaela Palafoy
Jose R. Palos
Reginia Parlida
Jaime Patron
Natalio Paz
Ronnie Pearson
Odelia Pena
Angel Perez
Fidencio Perez
Gregorio Perez
Jariel H. Perez
Pascual Perez
Francisco Pimentel
Benjamin C. Placencia
Francisca Platas
Juan Platas
Luz Platas
Angelina Polito
Savino Ponce
Federico Preciado
Rafael Preciado
Guadalupe Pulido
Guadalupe Quesada
Dean Rader
Donald Rader
Lueiso Rames
Ruso Rames
Delfino Ramirez
Ernesto Ramirez
Gabino Ramirez
Guadalupe Ramirez
Irene Ramirez
Jesus Ramirez
Jesus Ramirez
Jose M. Ramirez

Juan Ramirez
Margarito Ramirez
Miguel Ramirez
Agapito Ramos
Arnoldo Ramos
Carmen Ramos
David Ramos
Francisco Ramos
Gregorio Ramos
Guadalupe Ramos
Jesus Ramos
Jose Má Ramos
Ricardo Ramos
Roberto Ramos
Jose Ranjel
Arnulfo Raya
Gilberto Raya
Elias Renteria
Isaura Renteria
Aurelia Reyes
Firmina Reyes
Gloria Reyes
Gregorio Reyes
Jose Reyes
Raymundo Reyes
Cresenciano Reyna
Reymundo Reyna
Jesus Reynaga
Gary Reynolds
George Reynolds
Marcelino Riabon
Eladid Rico
Luis Rico
Sebastian Rico
Maria L. Rios
Angel Rivas
Isabel Rivas
Modesto Rivas
Alfonso F. Rivera
Andres F. Rivera
Erica Rivera
Huriel Rivera
Jose Rivera
Lenaida A. Rivera
Leopoldo Rivera
Salvador F. Rivera
Rogelia Roblera
Antonio Robles
Juan Robles
Jose Rodarte
Benjamin Rodriguez
Bernabe Rodriguez
Francisco P. Rodriguez
Hector D. Rodriguez
Isabel J. Rodriguez
Jesus Rodriguez
Jesus M. Rodriguez
Jose Rodriguez
Jose P. Rodriguez
Mariano Rodriguez
Mary Rodriguez
Pedro Rodriguez
Rodolfo Rodriguez
Rosario Rodriguez
Virgie Rodriguez
Mike Rogers
Eugenio Rogue
Antonio Rojas
Jose Rojaz
Adrian Romero
Guillermo Romero
Juan Romero
Santos Rosado
Margarita Rosales
Eluterio Rosas
Jesus Rosas
Antonio Rueda
Eladio Rueda
Maria Rueda
Javier Ruiz Ramirez
Maximino Ruiz
Pedro Ruiz
Richard Ruiz
Pedro Sabedra
Serafin Sabreda
Jose A. Saberanes
Filimon Salas (Salaz)
Juan Salas
Alfredo Salasar
Jose Salasar (Valensuela)
Anastacio Salaz
Ramon Salazar
Angel Saldana
Apolinar Saldana
Salvador Saldana
Alejandro Salgado
Marino Salgado
Nahu Salgado
Criserio Sanchez
Isabel Sanchez
Juan Sanchez
Juan Sanchez
Juan E. Sanchez
Juvencio Sanchez

APPENDIX E (Cont.)

Miguel Sanchez
Seferino Sanchez
Sergio Sanchez
Sergio Sanchez
Vicente Sanchez
Baldeu K. Sandhu
Karnail S. Sandhu
Jose M. Sandoval
Josefina Sandoval
Luciana V. Sandoval
Mike Sandoval
Victoriano Sandoval
Victoriano Sandoval
Victoriano Sandoval
Victoria Santellan
Lorenzo G. Santiago
Gene Scrimshire
Agustin Seballos
Glijio Seballos
Leonardo Seballos
Carmen Sendejas
Refugio Sepeda
Alfredo Silva
Florencio Silva
Oscar Silva
Bunaro Sisneros
Selestina Sisneros
Bill Smith
Don Smith
Agapito Solano
Esequiel Solano
Roberto Solorio
Loures Solorzano
Sergio Solorzano
Guadalupe Soto
Juan Soto
Manuel Soto
Ramiro Soto
Rick Sparks
Doyle Stroud
Fred Stroud
Erivesto Suarez
Imelda Suarez
Javier Suarez
Jesus Suarez
Maria Suarez
Ramiro Suarez
Baljit K. Sunner
Darren Tapia
Florencio Tapia
Ignacio Tapia
Jessie Tapia
Jose Luiz Tapia
Modesto Tapia
Olivia Tapia
Rogelio Tapia
Sergio Tapia
Harlan Taylor
David Temoris
A. Tobar
Abel Torres
Antonio Torres
Arturo Torres
Florencio Torres
Francisco Torres
Jose Torres
Jose Torres
Jose Torres
Jose Torres
Jose Luis Torres
Juventino Torres
Martin Torres
Pedro Toscano
Maguisio Toscallo
Concepcion Tovar
Encarnacion Treyes
Carlos Trujillo
Jesus Trujillo
Medrejildo Trujillo
Jesus Ubencio
Santos Uranda
Luciana Urena
Luciana Urena
Luciano Urena
Alberto Vaca
Bernardino Vaca
Benjamin Valadez
Javier Valadez
Jose Luis Valadez
Aurelio Valdivia
Salvador Valdounds
Javier Valencia
Jose Valenzuelas
Cixto Valles
Benjamin Vargas
Cerafin Vargas
Jose A. Vargas
Mario Vargas
Rafael Vargas
Sacramento Vargas
Sacramento Vargas
Trinidad Vargas
Celia Varjas
Jose Vasquez

APPENDIX E (Cont.)

Nicandro Vasquez
Rafael Vasquez
Martin Veas
Esteban Vedolla
Leopoldo Vedolla
Humberto R. Vega
Javier Vega
Ricardo R. Vega
Javier Velasquez
Manuel Vera
Consepcion Verdin
Enrique Verdin
Epifanio Verdin
Gloria Verdin
Rigoberto Vidales
Mauricio Villa
Robert Villa
Samuel Villa
Virginia Villa
Rosario Villalobos
Salvador Villalvazo (Villalvaso)
Rogelio Villegas
Jose Villenueva
Jesus Villicana
Jose Villicana
Juan Villicana
Ricardo Villicana
Alfredo Virgen
Humberto Virgen
Umberto Virgen
Silverio Virgen
Victor Virgen
Fidel Vurgos
Leon Walker
Bobbie Ward
Clayborn T. Ward, Jr.
Clayborn T. Ward, Sr.
Dovie Ward
Eric Ward
James Ward
Virginia Ward
Joanne Watte
Steve Westerman
J. C. White
Edward Frances Wright
Joyce O. Wyatt
Junior Arthur Wyatt
Rubin Wyatt
Hubert C. Wyrick
Solomin (Salomin) Yantiner
Heraclio Zavala
Reyes Zavala
Jose Zeata
Angel Zebedra
Vera D. Zepeda
Maria Zervantes

STATE OF CALIFORNIA

BEFORE THE

AGRICULTURAL LABOR RELATIONS BOARD

Agricultural Labor Relations Board
NOV 23 1981
RECEIVED

In the Matter of: ROBERT H. HICKAM, Respondent and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party	Case No. 4 ALRB No. 73 (78-CE-8-D) MAKE WHOLE SPECIFICATION DECISION OF THE ADMINISTRATIVE LAW OFFICER

Appearances:

Judy Weissberg, Esq.,
for the General Counsel;

Little, Mendelson, Fastiff, & Tichy
by Michael Hogan, Esq.,
and Spencer Hipp, Esq.,
for the Respondent;

Deborah Miller, for the United Farm
Workers of America, AFL-CIO, Charging Party

before: Leonard M. Tillem
Administrative Law Officer

I. STATEMENT OF THE CASE

This case was heard before me in Fresno, California, on March 17 and 20, 1981. The hearing was held pursuant to an order of the Agricultural Labor Relations Board to effectuate its decision in Robert H. Hickam 4 ALRB No. 73 that Respondent should make his employees whole for any losses occasioned by his refusal to bargain in good faith for the period commencing March 23, 1977 and ending at such time that Respondent begins to bargain in good faith and continues to bargain to a contract or a bona fide impasse.

The formula to be used by the Regional Director to calculate the amount due to the injured employees is to be based on comparisons of wages and benefits under UFW contracts for similar operations in Hickam's area, with the wages and benefits actually paid by Hickam, in the manner specified in Adam Dairy 4 ALRB No. 24 and Perry Farms 4 ALRB No. 25.

On February 10, 1980, the Regional Director proposed a formula, and ordered Hickam to respond to it in brief, and at a hearing to be held before an Administrative Law Officer. Hickam has submitted an alternative formula claimed to better effect this calculation of the amount of the make whole award. The purpose of this hearing is to examine the formulae and decide if either, or both, are reasonable, and decide which best effects the Order of the Board.

The parties have stipulated that the record of the hearing of the related charge in 80-CE-105-D, et al., be incorporated into the record of this hearing, with objections reserved, and have requested that the Administrative Law Officer who heard 80-CE-105-D, et al, be

assigned to this hearing in order that this matter be expedited. This request was granted.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Jurisdiction for this hearing has been conferred upon the Regional Director by the Board in Robert H. Hickam 4 ALRB No. 73 (1978). Pursuant to that authority, the Regional Director ordered on February 10, 1980 that a hearing on this matter be held.

B. Res Judicata does not Preclude Application of Adam's Dairy to the Instant Case

Hickam claims in his brief that since Adam Dairy (supra) was decided after Hobert H. Hickam (supra), and that because the Fifth District Court of Appeal did not specifically consider the make whole remedy, that the Regional Director is not barred from considering something other than a pure Adam Dairy approach to the make whole specification. This may be true, but it is logically irrelevant to whether Adam Dairy is pertinent to this case. If the Fifth District Court of Appeal did not specifically approve the Adam Dairy make whole remedy, neither did it disapprove it. However, the Board has approved that make whole formula. Adam Dairy was decided by the Board before Robert H. Hickam; it is thus a precedent case before the Board insofar as it has not been disapproved by higher authority. The fact that Adam Dairy was decided after Hobert H. Hickam by the Fifth District Court of Appeal does not preclude application of Adam Dairy concepts for use in the instant case.

The Regional Director, after due consideration, had proposed an updated Adam Dairy/Perry Farms formula specifically tailored to the needs of this case. The fact that the director could have come up with something else (the make whole order directed him to consider alternatives to Adam Dairy) is irrelevant; the issue before us whether the formula he proposed is appropriate and reasonable. If Respondent disagrees with the finding herein, he make seek review.

C. Hickam's Ability to Pay is Irrelevant to the Make Whole Specification

Hickam claims that his delay in bargaining until 1980 was done in order to pursue an appeal of the Union's certification by technically refusing to bargain with it. J. R. Norton Co. v. ALRB 26 Cal.3d 1 (1979) precluded the per se use of the make whole remedy where an "employer lost a certification challenge because, so used, it would penalize the employer for insisting on his right to review the Union's certification." Norton did not preclude the use of make whole remedy altogether where an employer lost an election or certification challenge, but merely its per se use. Thus, the Board is not precluded from impossing a make whole remedy on an employer who loses such a challenge, if the Board felt such a remedy appropriate. The Board evidently felt a make whole remedy was justified here. It is legally within its rights to impose it; the Fifth District Court of Appeal did not overturn it.

The test given in Norton to see if a make whole remedy is justified in a certification challenge/technical refusal to bargain case is to see if, in the light of all the circumstances, the refusal

to bargain and appeal are used in good faith, or used as dilatory tactics to avoid dealing with the Union. In light of Hickam's conduct and statements, both before and since his appeal of the Union's certification,[1] it is apparent that Hickam would have done almost anything to avoid dealing with the Union. The Board could and did legitimately find that Hickam's challenge was dilatory; the Fifth District Court of Appeal, denied review (a ruling on the merits) because there was "substantial evidence on the record" to support the finding that Hickam acted solely to delay dealing with the Union, and specifically found that a make whole remedy was warranted in this case (GC-16).

Hickam claims that he would never have agreed to the rates in the comparative contracts that were used for the calculation of the make whole rate by General Counsel. In view of Hickam's bad faith, though, this defense is not valid. In Fiberboard Products Corp, 180 NLRB No. 142 (1969), a case cited by Hickam for the opposite proposition, the Board actually stated that "the fact that Respondent did not give the Union an opportunity to reach an agreement was found violative of the Act. Thus, any uncertainty with respect to what wage rates the back pay claimants would have received ... was created by Respondent, which bears the risk of that uncertainty". Hickam's bad faith is clearly what created the uncertainty here, and thus he must bear the risk of it.

Hickam claims that both R & H Masonry Supply, Inc., (1980-81) C.C.H. NLRB P. 17888, and Great Chinese American Sewing Co. v.

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[1]see 4 ALRB No. 48 and 4 ALRB No. 73, and the Opinion in 80-CE-105-D

NLRB, 99 LRRM 2347 (9th c. 1978) support his contention that his capacity to pay the make whole is relevant and should be considered. However, both of these cases instead stand for the proposition that an employer under a make whole remedy need only use the least burdensome manner of making the aggrieved employees whole. In both cases, the make whole remedy was upheld; the courts said that the companys need not (my emphasis) reestablish their terminated operations (at greater expense than the company could bear for the aggrieved employees, but need only make the employees whole until they were established in other comparable jobs. Hickam's case involved no terminated operations, rather continued or continuing operations for which he is to be subjected to make whole liability. Make whole for such a situation has been uniformly upheld.

Had Hickam lacked the ability to pay the Union's demands, all he had to do was open his books and prove it to the Union. This, however, must be done before unfair labor practices are committed; it cannot serve as a belated defense to an unfair labor practice charge or remedy. Such a defense, if allowed, could certainly lend itself to tremendous abuse by recalcitrant employers.

D. The Comparative Contracts Used for the Formulae are Appropriate

Hickam owns or controls approximately 262 acres in Tulare County devoted to agricultural activities. He is a custom harvester of several hundred more acres of table grapes and juice grapes. (see ALO decision in 80-CE-105-D, et al.).

The ranches covered by the comparative contracts submitted by General Counsel vary from 137 acres to 6,200 acres; seven of the ten

are under 500 acres; Barbic, Bozanich, Cesare, Missakian, Canata, Kotchevar, and Saucelito. Of the three that are larger, two use the same contract as three of the smaller ranches; Radovich and Caratan, are under the same contract as Barbic, Bozanich and Cesare. The last of the bigger ranches, Tex-Cal, pays wages identical or similar to three of the smaller ranches; Missakian, Canata and Saucelito. Clearly the relative size of an operation makes little difference when it comes to wage rates.

Hickam grows or has grown Emperors, Thompsons, Malagas, Ribiers, Flame Seedless, Peaches, Nectarines, Persimmons, Oranges, and Plums on his own leased or owned land. He custom harvests, Calmarias and Almarias in addition to the varities he himself grows. The lands he custom harvests also grow plums, oranges, and other unspecified tree fruits. The ranches covered by the comparative contracts grow several varities of table and wine/juice grapes, and several types of tree crops (GC-2), including those grown or harvested by Hickam.

Hickam has a peak harvest work force of over one hundred employees. The ranches covered by the comparative contracts have work forces varying between thirty-nine and five hundred fifty employees covered by the UFW contract.

Hickam is located in Tulare County. The ranches covered by the comparative contracts are located in Tulare County and neighboring Kern County. Crops, farming procedures and practices, and general ranch operations are very similar throughout both counties.

It is doubtful that any contract the UFW might have entered into with Hickam would have been very much different from the compara-

tive contracts. The wages paid under each contract for similar time periods are always similar and often identical. The differences are due to the different effective dates of the contracts. The new rates are always similar, although their effective dates may differ by a few months. Moreover these contracts represent an average of 48% of all UFW contracts in effect for over six months during the make whole period.

Hickam's objection that he could not have agreed to such a contract because of inability to pay its demands is conjectural and speculative, and is of no legal effect as discussed in Section C, supra. It is extremely likely that, had a contract been entered into between Hickam and the UFW, it's terms would have been quite similar to the comparative contracts used by the Regional Director here. Indeed, they were used by Hickam, himself, in developing his own formulation for the make whole remedy. Although he protested their use, he offered nothing in their place. These comparative contracts are, thus, appropriate, and are properly used in formulating the make whole specification in question here.

E. Analysis of the Formulae as Proposed

1. General Labor Rate

I find that it is reasonable to divide the year into quarters, as General Counsel has proposed, and find the average rate for each quarter. However, I find that General Counsel has failed to follow this proposed scheme. In order to get the average figure for quarters three and four of 1977 and quarters one and two of 1978, General Counsel has averaged all of these rates for these quarters. General Counsel found an average rate of $3.38 for these quarters. I

find an average rate of $3.25 for the third quarter of 1977;[1] $3.33 for the fourth quarter of 1977; $3.31 for the first quarter of 1978; and $3.40 for the second quarter of 1978. The average for all four quarters is $3.34. While all of these are greater than Hickam's proposed average of $3.24 for 1977, all but one are less than General Counsel's $3.38 figure. Such differences, although small by themselves, can be significant if multiplied. Thus, I find that each quarter's rate must be arrived at individually and applied to those of Hickam's employees who were paid in that quarter. The specification must be recalculated in this manner. Proper averages for each quarter are given in Appendix A.

2. Rates for Those Who are Paid More Than the General Hourly Rate

Hickam argued he paid rates higher than the hourly rate in $.25 increments, and that that should be the method used. Hickam also argues that all of the comparative contracts which mention a higher rate specifically are in $.25 increments. This is only partially true. Those contracts give the higher paid employees (e.g., steadies) an initial $.25 increment, but then all rates are increased proportionately to the general rate. Therefore, I find that proportional increases for steadies and other higher rates, as proposed by General Counsel, are reasonable and proper.

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[1]

Third Quarter	July 1977	Aug.1977	Sept.1977
Kotchevar	$3.15	$3.35	$3.35
Saucelito	3.15	3.30	3.30
Missakian	3.15	3.15	3.35

Sum of all nine figures = $29.25

$$\frac{29.25}{9} = 3.25$$

3. Fringe Benefits for Hourly Employees

General Counsel seeks to set fringers at 22% of the total wage package. I cannot agree. General Counsel's 22% figure comes from the national industrial statistics of Adam's Dairy, not the comparative counteracts offered by General Counsel. Hickam agrues for 9%; this may be a more accurate figure, but there is no evidence offered to substantiate this. The portions of the comparative contracts in evidence do not include the benefit articles necessary to calculate the proper percentage. In any case, the most that the UFW asked for in terms of calculable economic benefits was less than 15% of the total package.[2]

Thus 22% seems far too high. This part of the make whole specification must be recalculated to corespondent with the comparative contracts. This has not been calculated because the necessary data was not placed in evidence.

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[2]The first Union economic proposal (GC-66 from 80-CE-105-D) proposed that the company pay $.36 per hour for a medical plan, $.25 per hour for a pension plan, and $.10 per hour for the Martin Luther King Rural Education Fund. The general hourly wage proposed was $4.50 per hour. Thus, the total wage package was $5.21 per hour, of which only 14% were fringe benefits. (.71 ÷ 5.21 = .14).

A subsequent Union proposal (GC-74 from 80-CE-105-D) proposed $.36 per hour for a medical plan, $.18 per hour for a pension plan, and $.10 for the Martin Luther King Fund. The hourly rate proposed was $4.45. The total package is thus $5.09 per hour of which 13% is fringe benefits (.64 ÷ 5.09 = .13).

The final Union proposal of November 22nd (GC-113 from 80-CE-105-D) proposed $.36 per hour for the medical plan, $.18 for the pension plan, and $.05 per hour for the Martin Luther King Fund. The hourly rate proposed was $4.25 per hour. The total wage package is thus $4.84 per hour of which 12% is fringe benefits (.59 ÷ 4.84 = .12).

The final Union proposal, (GC-113) increased wages in 1981 to $5.00 per hour and $.38 per hour for the medical plan; the other benefits were to remain the same. Thus, in 1981, the total package would have been $5.61 per hour of which 11% would have been fringe benefits (.61 ÷ 5.61 = .11).

4. General Piece Rate

I find that an increase in proportion to the general hourly rate is reasonable. Few of the contracts mentioned specific piece rates. Those that do guarantee the basic hourly pay; those that do not (the majority) simply specify that piece rate shall rise in proportion to the basic hourly rate. Thus, at least, at a fundamental level, all the comparative contracts raise the piece rates in proportion to the hourly rates. Therefore, it seems quite equitable to calculate the make whole piece rates this way. (see Appendix B).

5. Thompson Piece Rate

Hickam argues that the make whole specifications should use the rate last proposed by him in the 1980 negotiations, which is the rate he actually paid, but converted from a rate per bin to a rate per ton. Hickam states that this amounts to more than the Union asked, and that thus there should be no make whole relief for the 1980 Thompson harvest. This might be valid if (1) there were figures available to allow an accurate calculation of bin weights for the 1980 harvest, but there is nothing in evidence for 1980, so bin weights for those years are conjectural; and (2) there had been prior contracts so that the parties would be negotiating from an already established rate instead of for the first rate to be established. Had there been contracts from 1977, the 1980 proposed rate might have been considerably higher.

Since most of the comparative contracts tie the piece rates to the general hourly rate, the most reasonable and straight forward way to compare rates for the make whole specifications would be to simply raise Hickam's Thompson rate in proportion to the amount that he should have raised his hourly rate (as calculated from the

comparative contracts) and compare that to what he actually did pay. This is the method suggested by General Counsel. This will keep the rates in the same form (per bin) that Hickam actually paid and will thus provide the most accurate comparison.

It seems reasonable to do this quarterly, as for the hourly rates. However, since the hourly rates need to be recalculated, so must the percentages by which the model piece rates will be calculated, since they are dependent upon the average basic quarterly hourly rate differentials. (see Appendix B)

6. Piece Rate Fringe Benefit Calculations

Hourly fringe benefits are calculated as a percentage of wages paid. There seems to be no rational reason why piece rate fringe benefits cannot be calculated in identical fashion. The percentage of the total wages represented by fringes must be recalculated as discussed in E 3, above. Again the data necessary to perform these calculations was not submitted into evidence.

7. Adjustments for Benefits Already Paid

Benefits already paid (apparently only vacation pay paid to some steadies) must be subtracted, as done by General Counsel and demanded by Hickam, from the amount of the make whole given.

8. Interest

I find that an interest rate of 7% is appropriate.

9. Conclusion

I find that, subject to the analysis above, the make whole specification submitted by General Counsel is reasonable and appropriate.

F. The Make Whole Remedy Applies to all Employees Found

in 80-CE-105-D, et. al., to be Hickam's Employees

Hickam argues that the six month's limitations period of Labor Code §1160.2 bars application of the decision with respect to the size of his bargaining unit in 80-CE-105-D to the make whole period of the instant case (4 ALRB No. 73).

Section 1160.2 is the equivalent of LMRA §10b and is to be treated as such. Delridge Farms v. ALRB 21 Cal.3rd 551, 557 (1978). Under either section, the right to file an unfair labor practice charge is extinguished if it is over six months from the complained of conduct. Baltimore Transfer Co., 94 NLRB No. 220 (1951).

The complaint here is based on Hickam's refusal to bargain in good faith, not because of his custom harvesting. Custom harvest doctrine merely establishes with whom Hickam failed to bargain in good faith.

The United States Supreme Court has established that §10b bifurcates: (1) where conduct within the six month's limitation period of itself constitutes the unfair labor practice, then events occurring more than six months prior to the charge may be used to further shed light on the complaint of conduct. Used thus, §10b will not bar use of events more than six months old; (2) where unfair labor practice can only be alleged by a reliance on events that are more than six months old, than the use of old events is more than just evidentiary; it is necessary to the unfair labor practice. The court will not "cloak with illegality that which is otherwise lawful" in violation of §10b of the NLRA. Machinists v. NLRB, 45 LRRM 3212, 3214-15 (1960).

It seems clear that the instant case is covered by

situation No. 1 as set forth in Machinists. The complaint is due to Hickam's refusal to bargain with the Union. Hickam's custom harvest activity is merely evidence of the size of the bargaining unit effected. The make whole remedy is to apply to all bargaining unit employees. The bargaining unit includes Hickam's custom harvest employees, as I found in 80-CE-105-D, et al.,

Most hotly contested issue of 80-CE-105-D, et al., was the size of Hickam's bargaining unit. This is the same bargaining unit the make whole remedy is ordered for. As explained above, there is nothing to prevent the application of the determination of the size of the bargaining unit as found by 80-CE-105-D, et al., to the make whole remedy ordered in 4 ALRB No. 73. Thus, Hickam's bargaining unit includes those employees who work for him on his own and solely controlled land, as well as those employees who work for him elsewhere as found in 80-CE-105-D, et al.

Appendix C of General Counsel's make whole specification must be modified to apply to only those employees found to be Hickam's agricultural employees by 80-CE-105-D, et al.

G. The Appropriate Period for the Make Whole Remedy to be Applied to Grant Interim Relief is July 23, 1977 to March 2, 1980

In 4 ALRB No. 73 (1978), Hickam was found to have violated the Act by refusing to bargain with the certified bargaining representative of his employees, and was ordered to make those employees whole for the losses they suffered as a result. The make whole period was to run from July 23, 1977 (the date of Hickam's initial refusal to bargain with the Union after its certification) until such time as Hickam began good faith bargaining that led either to a contract or

a bona fide impasse.

Hickam conceded that the make whole period runs at least until March 2, 1980. On March 3rd, Hickam claims he began to bargain in good faith. Hickam was found not to have bargained in good faith in his 1980 negotiations in 80-CE-105-D, et al. Should that decision be appealed it may be quite some time before a final decision is rendered.

Thus, in the interests of relief for Hickam's employees, interim relief covering the period from July 23, 1977 to March 2, 1980 should be finally awarded at this time. The make whole period may be extended by the final disposition of 80-CE-105-D et al. If this is done, the employees may then get additional relief for the period after March 2, 1980.

H. Conclusion

The make whole specification is basically sound, with the exceptions noted in Section E and F above. Once the necessary modifications have been correctly made, the General Counsel's make whole specification is to be approved, and the make whole remedy awarded to the bargaining unit for the period of July 23, 1977 to March 2, 1980. The bargaining unit includes all employees found to be Hickams by 80-CE-105-D, et al.

DATED: November 19, 1981

Leonard M. Tillem
Administrative Law Officer

APPENDIX A

(see Footnotes on Page 2)

Contract	1977 Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Radovich	The 2nd Qtr. of 1977 (April, May, June) is included solely for the purposes of calculating Appendix B								
Caratan									
Barbic									
Cesare									
Tex-Cal									
Missakian	3.15[8]	3.15	3.15	3.15	3.15	3.35	3.35	3.35	3.35
Canata									
Kotchevar			3.15	3.15	3.35	3.35	3.35	3.35	35
Saucelito	3.15	3.15	3.15	3.15	3.30	3.30	3.30	3.30	3.30
Bozanich									
Total for Qtr.		22.05			29.25			30.00	
Avg. for Qtr.		22.05 ÷ 7 = 3.15			29.25 ÷ 9 = 3.25			30.00 ÷ 9 = 3.33	

Contract	1978 Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Radovich	3.30	3.30	3.30	3.30	3.47[1]	3.50	3.50	3.50	3.50	3.50	3.50	3.50
Caratan	3.30	3.30	3.30	3.30	3.47[1]	3.50	3.50	3.50	3.50	3.50	3.50	3.50
Barbic	3.30	3.30	3.30	3.30	3.47[1]	3.50	3.50	3.50	3.50	3.50	3.50	3 50
Cesare	3.30	3.30	3.30	3.30	3.47[1]	3.50	3.50	3.50	3.50	3.50	3.50	3.50
Tex-Cal					3.50[2]	3.50	3.50	3.50	3.50	3.50	3.50	3.50
Missakian	3.35	3.35	3.35	3.35	3.35	3.35	3.35	3.35	3.50	3.50	3.50	3.50
Canata	3.30	3.30	3.30	3.30	3.47[5]	3.50	3.50	3.50	3.50	3.50	3.50	3.50
Kotchevar	3.35	3.35	3.35	3.35	3.35	3.35	3.35	3.35	3.55[6]			
Saucelito	3.30	3.30	3.30	3.30	3.30	3.30	3.30	3.45	3.45	3.45	3.45	3.45
Bozanich	3.30	3.30	3.30	3.30	3.47[1]	3.50	3.50	3.50	3.50	3.50	3.50	3.50
Total for Qtr.		89.40			98.62			104.35			94.35	
Avg. for Qtr.		89.40 ÷ 26 = 3.31			98.62 ÷ 29 = 3.40			104.35 ÷ 30 = 3.48			94.35 ÷ 27 = 3.49	

APPENDIX A (Cont'd)

Contracts	1979 Jan.	Feb.	Mar.	Apr.	May	June	1979 July	Aug.	Sept.	Oct.	Nov.	Dec.
Radovich	3.50	3.50	3.50	3.50	3.50	3.85	3.85	3.85	3.85	3.85	3.85	3.85
Caratan	3.50	3.50	3.50	3.50	3.50							
Barbic	3.50	3.50	3.50	3.50	3.50	3.85	3.85	3.85	3.85	3.85	3.85	3.85
Cesare	3.50	3.50	3.50	3.50	3.50	3.85	3.85	3.85	3.85	3.85	3.85	3.85
Tex-Cal	3.50	3.50	3.50	3.50	3.73[3]	3.85	3.85	3.85	3.85	3.85	3.85	3.85
Missakian	3.50	3.50	3.50	3.50	3.50[4]	3.50	3.50	3.50	3.85	3.85	3.85	3.85
Canata	3.50	3.50	3.50	3.50	3.73[3]	3.85	3.85	3.85	3.85	3.85	3.85	3.85
Kotchevar												
Saucelito	3.45	3.45	3.45	3.45	3.45	3.45	3.45	3.75	3.75	3.75	3.75	3.75
Bozanich	3.50	3.50	3.50	3.50	3.50	3.85	3.85	3.85	3.85	3.85	3.85	3.85
Total for Qtr.		94.35			93.41			91.10			92.10	
Avg.for Qtr.		94.35 ÷ 27 = 3.49			93.41 ÷ 26 = 3.59			91.10 ÷ 24 = 3.80			92.10 ÷ 24 = 3.84	

Contract	1980 Jan.	Feb.	Mar.
Radovich	3.85	3.85	3.85
Caratan			
Barbic	3.85	3.85	3.85
Cesare	3.85	3.85	3.85
Tex-Cal	3.85	3.85	3.85
Missakian	3.85	3.85	3.85
Canata	3.85	3.85	3.85
Kotchevar			
Saucelito	4.00	4.00	4.00
Bozanich	3.85	3.85	3.85
Total for Qtr.		92.85	
Avg. for Qtr.		92.85 ÷ 24 = 3.87	

FOOTNOTES

1. 3.30 May 1-5; 3.50 May 6-30 - avg.for May 1978 3.47
2. 3.50 starts May 6
3. 3.50 to May 11; 3.85 May 11-30 - avg. May 3.73
4. 3.50 to May 10 by contract; next rate to take effect Sept. 1 - 3.50 is apparent rate until Sept. 1
5. May 1978: May 1-5=3.30, May 6-10=3.50; May 78 avg= 3.47; May 79: May 1-10=3.50, May 11-30= 3.85; avg. May 1979 = 3.73
6. 3.55 to Sept. 6; could only have gone up thereafter
7. Contract goes to Dec. 11; next rate is effective Jan. 1 - 3.75 was apparently paid through December
8. April 21-31 only - avg. for April 1977 maybe less than 3.15.

APPENDIX B

Year	Qtr.	% Change from Previous Qtr.	Thus multiply piece rate by:
1977	3	+3.17%	1.0317
	4	+2.56%	1.0256
1978	1	- .70%	0.9930
	2	+2.72%	1.0272
	3	+2.35%	1.0235
	4	+ .29%	1.0290
1979	1	+/- 0%	1.0000
	2	+2.87%	1.0287
	3	+5.85%	1.0585
	4	+1.05%	1.0105
1980	1	+ .78%	1.0078

to get new piece rate for this qtr.