

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ROBERT H. HICKAM,)	
)	Case No. 78-CE-8-D
Respondent,)	
)	
and)	10 ALRB No. 25
)	(4 ALRB No. 73)
UNITED FARM WORKERS OF)	(9 ALRB No. 6)
AMERICA, AFL-CIO,)	
)	
Charging Party.)	

SUPPLEMENTAL DECISION AND ORDER

On March 1, 1983, the Agricultural Labor Relations Board (ALRB or Board) issued a Supplemental Decision and Order in this proceeding (9 ALRB No. 6), in which we approved certain aspects of the General Counsel's makewhole specifications and modified certain aspects of the makewhole formula therein. In addition, we remanded the case to the General Counsel to recompute Respondent's makewhole liability in conformity with our Supplemental Decision and Order and further ordered that the record be reopened to allow Respondent to challenge the arithmetic computations in the revised specification.

A hearing was held before Administrative Law Judge (ALJ) James Wolpman on October 20, 1983. Thereafter, on January 3, 1984., the ALJ issued his Decision, attached hereto. Respondent timely filed exceptions to the ALJ's Decision and a supporting brief, and General Counsel 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 and the ALJ's Decision in light of the exceptions, supporting brief and reply brief, and has decided to adopt the makewhole specification as recommended.

ORDER

Respondent Robert H. Hickam, its officers, agents, successors and assigns is hereby ordered to pay to the employees named in General Counsel's Revised Specification, as corrected by the amendments to the employee list, the makewhole amounts specified therein, plus interest on such amount computed in accordance with the formula for calculating interest set forth in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

DATED: May 29, 1984

JEROME R. WALDIE, Member

JORGE CARRILLO, Member

PATRICK W. HENNING, Member

CASE SUMMARY

Robert H. Hickam
(UFW)

10 ALRB No. 25
Case No. 77-CE-8-D

ALJ DECISION

On remand from the Board, the makewhole specification was recomputed according to specific changes in methodology ordered by the Board. The ALJ reviewed the revised specification, approved certain amendments to the list of employees entitled to receive makewhole, and found the arithmetic calculations in the specification reasonably accurate.

BOARD DECISION

The Board adopted the ALJ's findings, conclusions, and recommendations in their entirety.

* * *

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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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
(9 ALRB No. 6)
(4 ALRB No. 73)

Appearances:

Robert Farnsworth of Sacramento and
John Moore of Delano, California
for the General Counsel

Spencer Hipp and
Michael Hogan of Fresno, California
for Respondent

Chris Schneider
of Keene, California
for Charging Party

Before: James Wolpman
Administrative Law Judge

RECOMMENDED DECISION AND ORDER ON REMAND

STATEMENT OF THE CASE

On March 1, 1983, the Agricultural Labor Relations Board issued its Supplemental Decision and Order in this matter. (9 ALRB No. 6.) In it the Board directed the General Counsel to prepare revised calculations of the makewhole amounts due and to submit them to the respondent for review. Any dispute over General Counsel's arithmetic computation was to be resolved by an Administrative Law Judge. (Id. at p. 17.) The matter was thereupon transferred to me (Board Ex. B), and Proposed Specification issued (Board Ex. A).

Thereafter, General Counsel prepared, filed and served a proposed Revised Specification. (Board Ex. C.) In preparing the Revised Specification General Counsel made a number of additions and deletions, corrected misspellings and eliminated duplications. These changes are detailed in the memorandum from Roger Smith to Luis Lopez dated April 29, 1983. (Board Ex. K.) All of these changes were included in the Revised Specification. (Board Ex. C.)

On June 27, 1983, Respondent filed its Response to the Revised Specification. (Board Ex. L.) In it Respondent questioned General Counsel's mathematical computations, objected to General Counsel's failure to provide Respondent with detailed worksheets, and protested the inclusion of additional names.

On July 12, 1983, I conducted a telephone conference call among the parties. Because the Board's order confined my authority to a review of arithmetical computations, it was agreed that General Counsel would file a motion with the Board to allow me to consider its modifications and that Respondent would likewise file a motion dealing with the methodological (as distinguished from arithmetical)

problems it had with the revised makewhole specification. In addition, General Counsel informed Respondent that, because its computations had been performed on a programable calculator, there were no detailed worksheets which could be turned over for examination and review.

The motions to expand the scope of the remand were duly filed and responded to. (Board Exs. D, E, G & H.) The Board granted General Counsel's motion and directed that I consider:

[E]vidence which relates to the agricultural employee status of Respondent's employees for the purpose of adding names, deleting names, and/or correcting any and all errors in the list of agricultural employees attached to our Decision and Order in 9 ALRB No. 6 as Appendix E. (Board Ex. F.)

The Board denied Respondent's motion on the ground that it, "failed to raise any issues which would warrant reconsideration of our Supplemental Decision and Order." (Board Ex. I.)

A hearing on the expanded Remand order was conducted by me on October 20, 1983, in Sacramento, California (see Board Ex. I), at which time a number of matters were stipulated to and testimony was received on the remaining issues.

The findings of fact and conclusions of law which follow are based upon the entire record, including my observation of the witness who testified, and upon careful consideration of the arguments of counsel.

STIPULATIONS

A number of issues were disposed of by agreement of the parties appearing at hearing:

1. The following names were duplicated in Appendix F to the Board's Decision and were therefore properly eliminated from the

Revised Specification:

Jose Salazar (Valensuela)
Bunaro Sisneros
Zerefin Lopez
Ricardo Gomez
Maria Ana C. Florez
Aurelio Baldivia
Genero Alcantar
John L. Castaing
Faustino Cardenas
Antonio Gonzales
(Tr. 6-7.)

2. Certain names were misspelled in the original specification and the misspellings were properly corrected in the Revised Specification to read as follows:

Jose A. Soberales
Jesus Vicencio
Rosario Herrera
(Tr. 7-8.)

3. Five workers were properly eliminated from the Revised Specification, four because they were employed in a commercial packing shed operation and one because he was a supervisor. Their names and the reason for the elimination of each are as follows:

Hector D. Rodriguez	Supervisor
Jesus Suarez	Packing
Ricardo P. Gomez	Packing
Felix J. Franco	Packing
Jeff Alien Fraizer	Packing
(Tr. 8.)	

FINDINGS OF FACT

1. In the course of making the calculations called for in the Board Decision, the General Counsel reviewed the payroll and production records which had been admitted into evidence at the previous backpay hearing and compared them with the lists of employees which had been used in formulating Appendix E to the Board's Decision.

2. In doing so, payroll and production records were found for a number of agricultural employees whose names had been omitted from Appendix E. (G.C. Ex. 1.)

3. Paul Garcia, the Board Agent in charge of preparing the Revised Specification for the General Counsel, thereupon reviewed the employee records and saw to it that the identities and earning calculations for each of these employees was included in the Revised Specification.

4. All of the changes and modification sought by General Counsel are contained in the Revised Specification.

5. In addition, the revised specification corrects all computational errors discovered by General Counsel in the course of preparing the Revised Specification.

6. The Respondent has presented no corrections to the Revised Specification other than those presented to the Board in its Motion for Reconsideration (Board Ex. G.)

7. Those corrections are not computational in nature, but reflect differences resulting from the sequential order of calculations and the method of rounding off. As such, they constitute differences in methodology which the Board considered and rejected in its denial of the Motion for Reconsideration. (Board Ex. I.)

CONCLUSIONS

1. I conclude that the following employees should be added to Appendix E:

Eugenio Aguilar
Gilberto Aguilar
Jesus Avalos
Robert Carpenter
Manuel Cervantes
Maria Cervantez
Manuel Delgadillo
Federico Diaz
Federico Diaz
Maria Espindola
Maria Ferrero
Norma Glaze

Guadalupe Hernandez
Felipe Lemus
Cimitro Lopez
Jose Lopez
Angel Meza
Patricia A. Moree
Gregorio Reynos
Vidal Sanchez
Leonides Solano
Pedro Suarez
Javier Vega
Miguel Vega

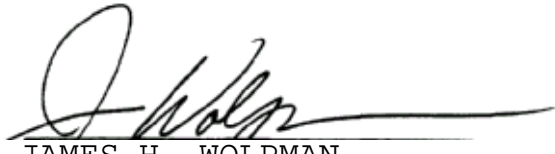
2. I conclude that the revised Specification accurately identifies each and every employee entitled to make whole pursuant to the Board's Supplemental Decision and Order at 9 ALRB No. 6.

3. I conclude that the Revised Specification accurately states the amounts of makewhole due to each employee therein.

RECOMMENDED ORDER

I hereby recommend that the Board, pursuant to Labor Code section 1160.3, order Respondent Robert H. Hickam, its officers, agents, successors and assigns to pay to the employees named in General Counsel's Revised Specification the makewhole amounts specified therein, plus interest on such amount computed in accordance with the formula for calculating interest set forth in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

DATED: January 3, 1984


JAMES H. WOLPMAN
Administrative Law Judge