

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SAN JOAQUIN TOMATO	)	Case No.	93-CE-38-VI
GROWERS, INC., A California	)		(20 ALRB No. 13)
Corporation,	)		(38 ALRB No. 4)
	)		(38 ALRB No. 12)
Respondent,)		
	)	ORDER REMANDING GENERAL	
and	)	COUNSEL'S SECOND REVISED	
	)	MAKEWHOLE SPECIFICATION	
UNITED FARM WORKERS	)	TO CORRECT INTEREST	
OF AMERICA,	)	CALCULATION	
)		
<u>Charging Party.</u>	)	Admin. Order No.	2013-12

On January 15, 2013, the General Counsel (GC) issued a second revised makewhole specification pursuant to the December 12, 2012 decision and order of the Agricultural Labor Relations Board (Board) in *San Joaquin Tomato Growers, Inc.* (2012) 38 ALRB No. 12. Respondent San Joaquin Tomato Growers, Inc. (Respondent) filed an answer to the second revised makewhole specification on February 4, 2013. Upon reviewing the second revised makewhole specification, the Board is satisfied that the makewhole principal was calculated in accordance with the Board's approved methodology; however, the Board finds that it cannot issue a final decision and order in this matter because it appears that the interest on the makewhole principal owed has been calculated incorrectly.

In *San Joaquin Tomato Growers, Inc.* (2012) 38 ALRB No. 12, which addressed the GC's 2012 revised makewhole specification, the Board found that the GC had improperly changed the calculation of interest based on the National Labor

Relations Board's (NLRB) decision in *Kentucky River Medical Center* (2010) 356 NLRB No. 8. In this decision, the NLRB adopted a new policy under which interest on backpay would be compounded on a daily basis, replacing the simple interest method previously utilized. The Board pointed out that in a subsequent decision, *Rome Electrical Services, Inc.* (2010) 356 NLRB No. 38, the NLRB clarified that the new policy announced in *Kentucky River Medical Center* did not apply to cases that were already in the compliance phase on the date that decision issued. The present case has been in the compliance phase since the Court of Appeal affirmed the Board's decision and order in 1995, so the Board found that *Kentucky River Medical Center* does not apply to the interest calculation in the revised makewhole specification.

The Board therefore remanded the revised makewhole specification for calculation of interest pursuant to *E. W. Merritt Farms* (1988) 14 ALRB No. 5. The GC represents that the interest on the makewhole principal due was recalculated pursuant to *E. W. Merritt Farms, supra*, 14 ALRB No. 5. However, Exhibit "A" submitted by the GC in support of the second revised makewhole specification, contains two charts prepared by Certified Public Accountant (CPA), Kenneth Creal showing the results of calculations applying the Board's approved makewhole formula, and also showing the total amount of interest due on the makewhole principal. The subtitle of both charts is "Summary of Wages and Compounded Interest Calculations by Year" (emphasis added). In the third section of each chart, "Interest Due on Wages," the subject lines read "Interest...compounded quarterly from check date using the [short term Federal rate]" (emphasis added).

The proper calculation of interest under *E.W. Merritt Farms, supra*, 14 ALRB No. 5 is interest applied to the makewhole principal for each quarter using a simple interest formula, not interest compounded quarterly, which is the formula that was apparently used in the second revised makewhole specification.

Exhibits “A”, “B” and “C” submitted along with the second revised makewhole specification show only final totals for the makewhole principal and interest, so the Board was not able to check the interest calculations to confirm how interest was calculated; however, the terms used on the charts are sufficient to raise questions about the calculations.

PLEASE TAKE NOTICE that the Board remands this matter again for calculation of interest pursuant to *E. W. Merritt Farms, supra*, 14 ALRB No. 5, i.e. simple interest calculated quarterly using the short term Federal rate. The Board requests that a spreadsheet showing complete quarterly interest calculations for all workers be attached to the third revised specification. The Board also requests that CPA Kenneth Creal submit a declaration clearly setting forth the method used for calculating interest owed on the makewhole principal for each worker.

Pursuant to California Code of Regulations, title 8, section 20292, the parties shall have the opportunity to file an answer to the specification, which also shall be filed with the Board in accordance with Regulation 20164. Any denials of the facts alleged in the revised specification shall be limited to claims that the specification does not fully or accurately reflect the Board’s Order herein and/or that mathematical errors were made. Parties shall not raise again arguments made in the previous Answer to the

Revised Makewhole Specification or the Answer to the Second Revised Makewhole Specification. Thereafter, the Board shall issue a final order in this matter that is subject to review pursuant to Agricultural Labor Relations Act section 1160.8.

By Direction of the Board.

Dated: February 27, 2013

J. ANTONIO BARBOSA
Executive Secretary, ALRB