

Contract Averaging Make-Whole Methodology and Recommendation: Gerawan Farming, Inc.

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1 Summary

This report explains and uses the contract-averaging methodology (hereafter CAM) to assist the Agricultural Labor Relations Board (hereafter ALRB or Board) in determining a make-whole remedy for employees of Gerawan Farming, Inc. (hereafter Gerawan) (44 ALRB, No. 1, 2018). The CAM assumes that good faith bargaining would have yielded a Gerawan-UFW contract that reflected the average value of wages and benefits in UFW contracts that were in effect during the bad faith period of Jan 18, 2013 to June 30, 2013. First, the CAM calculates the change in the average general labor wage in UFW contracts between July 1, 2012 and July 1, 2013 and the value of fringe benefits in UFW contracts on July 1, 2013. Then the CAM expresses the wage increase and value of fringe benefits as a percentage of the average general labor wage on July 1, 2012.

The CAM developed in this report recommends that Gerawan employees be paid an additional 27.70% of their earnings during the make-whole period, so that an employee who earned \$100 during the make-whole period would be entitled to an additional \$27.70. An itemized description of the individual components of this make-whole calculation can be found in Table 1.¹

Table 1: Recommended make-whole remedy for Gerawan Farming, Inc., Jan 18, 2013 – June 30, 2013

Data item	Value	Percentage of July 1, 2012 base wage
Wage increase	\$0.06	0.65%
Robert F. Kennedy health insurance contribution	\$2.23	23.09%
Juan de la Cruz pension contribution	\$0.13	1.34%
Paid holidays	0.91	0.73%
Paid vacation	1.90%	1.90%
Total make-whole compensation		27.70%

Note: The base wage for these calculations is \$9.65 (when rounded to two decimal places), which represents the average non-entry-level general labor wage in UFW contracts as of July 1, 2012.

The individual components of the make-whole compensation percentage are as follows:

- **0.65%** is the increase in average general labor wages (approximately \$0.06) between July 1, 2012 and July 1, 2013 relative to the average general labor wage of \$9.65 on July 1, 2012.
- **23.09%** reflects the value of hourly Robert F. Kennedy health insurance contributions made by employers on July 1, 2013 (approximately \$2.23) as a percentage of the average general labor wage on July 1, 2012.
- **1.34%** represents the value of the average hourly Juan de la Cruz pension contributions on July 1, 2013 (approximately \$0.13) as a percentage of the average general labor wage on July 1, 2012.
- **0.73%** reflects the value of one half of the average 1.82 (or 0.91) paid holidays that occurred during the make-whole period, so that if a paid holiday is equivalent to $8 \div 1000$ hours or 0.80% of the average general labor wage on July 1, 2012, then $0.73\% = 0.91 \times 0.80\%$.
- **1.90%** represents one half of the average 3.80% of vacation pay for employees with 5 years of seniority during the make-whole period.

2 Background

The Agricultural Labor Relations Act (hereafter ALRA), which was enacted in 1975, aims to

¹ The data items presented below are rounded to two decimal places, but the actual make-whole percentage recommendations are calculated with data values that include up to 15 decimal places.

“ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations” (ALRB, 2021). Among other things, the ALRA requires employers whose employees are represented by a certified union to bargain in good faith with the union’s representatives. Under section 1160.3, the Board may order employers to make “employees whole, when the Board deems such relief appropriate, for the loss of pay resulting from the employer’s refusal to bargain” (California Legislative Information, 2021).

In order to develop a make-whole methodology, I conducted online searches in Google and Google Scholar in order to identify published resources related to ALRB make-whole methodologies. I identified the contract-averaging methodology (or CAM) and the comparable-contracts/costing-out methodology (hereafter CCCOM).

The Board first relied upon the CAM to estimate make-whole wages in the Adam Dairy case by calculating the average increase in wages using 37 UFW contracts that were in effect during the make-whole period (4 ALRB No. 24, 1978). They estimated the value of fringe benefits by using data from the Department of Labor containing information about the proportion of non-manufacturing employee compensation that was comprised of fringe benefits, which was 22% of \$4.01 or \$0.88 an hour (4 ALRB No. 24, 1978, p. 28, footnote 9). Adam Dairy workers were entitled to total compensation of \$4.01 an hour minus the compensation they received for each hour worked during the make-whole period.

In a 1984 decision in the Norton case, the Board adopted the CCCOM (10 ALRB No. 42, 1984, p. 20). The CCCOM only considers one (or a few) select contracts that are comparable to the one that would have been implemented between the union and the employer had good faith negotiations taken place. The CCCOM requires a separate benefit calculation for each individual employee, which in turn requires payroll records to (i) first determine whether each employee was eligible for each benefit in the contract(s) and (ii) determine the value of each benefit for each employee. Because no two contracts are identical, the CCCOM requires assumptions to determine which contracts are comparable. The Norton Board advised that the following factors should be considered when determining which contracts are considered comparable: the time frame, the size of the workforce, the type of industry employees were employed in, and the geographic location (4 ALRB No. 39, 1978, p. 3).

Martin, Vaupel, and Egan (1988, p. 100) argue that the CCCOM is “time-consuming and expensive” because it requires a careful examination of the employer’s payroll records for each employee, which may not be available. Martin, Egan, and Luce (1988, p. 5, footnote 9) explain that the CCCOM requires a separate six-step calculation for each employee, which requires a considerable amount of effort. Martin and Egan (1989) argue that the use of the CAM for both wages and fringe benefits greatly simplifies the make-whole calculation, reduces the cost of litigation, shortens the amount of time it takes to implement the make-whole remedy, and increases the likelihood that employers will be able to locate employees to make them whole. I found no comparable contract and relied upon the CAM developed by Martin and Egan (1989)

with a few modifications.

3 Contract-Averaging Methodology

3.1 Wage Increase

To estimate the increase in wages when the make-whole period is less than one year in length, as is the case for Gerawan, Martin and Egan (1989)'s CAM uses the UFW contracts that were in effect during the make-whole period to identify the average general labor wage that was in effect on two reference dates that are exactly one calendar year apart. By using these two reference dates, the CAM is implemented with data values that are comparable across contracts. The initial reference date is the first day of the month of July immediately preceding the make-whole period (July 1, 2012 in this case). The second reference date is the first day of the month of July that occurs either during or immediately after the make-whole period (July 1, 2013 in this case). The CAM calculates the percentage increase in wages by taking the difference between the average general labor wage in UFW contracts on July 1, 2013 and July 1, 2012 and dividing it by the average general labor wage on July 1, 2012.

3.2 Fringe Benefits

3.2.1 Robert F. Kennedy Health Insurance

Since almost all contracts provided health insurance, I assume that Gerawan would have made a contribution for health insurance benefits on behalf of each employee. In some cases, the Robert F. Kennedy (hereafter RFK) health insurance hourly contributions are reported for a particular year prior to the year during which the make-whole period takes place. When a contract specifies an RFK amount for a year prior to 2013, typically the contract will specify a maximum annual percentage increase. In those cases, I used the most recent hourly contribution data available. In some cases, employers made monthly contributions for RFK, which I did not consider because I do not have data on the number of hours worked by employees that would allow the conversion of monthly contributions into hourly values. I did not consider contributions made to non-RFK health insurance plans in my analysis.

3.2.2 Juan de la Cruz Pension

I only considered Juan de la Cruz (hereafter JDLC) hourly pension contributions.

3.2.3 Holiday Pay

Martin and Egan (1989) first determined the average number of paid holidays in the contracts, then the number of paid holidays that a typical worker would receive, and then the value of each paid holiday. Calculating the average number of paid holidays in the contracts is straightforward; however, employees are typically required to work a certain number of hours or days during the week or two immediately preceding the holiday in order to be eligible for holiday pay, so calculating the number of paid holidays the average worker would be eligible for requires payroll data that were unavailable to me. Martin and Egan (1989) assume that employees would qualify for half of the average number of paid holidays specified in contracts. I assume that employees would qualify for half of the average number of paid holidays during the make-whole period. Martin and Egan (1989) assume that employees work an average of 1000 hours per year and that

each paid holiday is worth 8 hours of pay, so that each holiday is worth 0.8% of the hourly rate of pay. I also adopt that assumption.

3.2.4 Vacation Pay

Martin and Egan (1989) assume that employees who were employed during the bad faith period would have qualified for half the vacation pay of an employee with 15 years of seniority. I assume that employees would have qualified for half the vacation pay of an employee with five years of seniority.

Once these CAM assumptions are made, the CAM calculates the average value of fringe benefits in UFW contracts on the first day of the month of July that occurs either during or immediately after the make-whole period (July 1, 2013 in this case). The fringe benefit values are then expressed as a percentage of the average general labor wage in UFW contracts on the first day of the month of July immediately preceding the make-whole period (July 1, 2012 in this case).

4 Contract-Averaging Analysis

4.1 Overview

I analyzed 27 UFW contracts that were in effect between Jan 18, 2013 and June 30, 2013. I only considered contracts between the UFW and employers who were engaged in crop production in California.² I also did not consider contracts that were developed by a mediator under Mandatory Mediation and Conciliation (or MMC).³ In all the calculations that follow, the final calculations have been rounded to two decimal places.

4.2 Wage Increase

I calculated the average general labor wage as of July 1, 2012 (approximately \$9.65) and July 1, 2013 (approximately \$9.71). In a few contracts, separate wage values were specified for entry-level and non-entry-level general laborers. I used the wage value of non-entry-level general laborers.⁴ The recommended make-whole wage increase is 0.65% ($0.65\% \approx \$0.06 \div \9.65).

4.3 Fringe Benefits

There were four common fringe benefits: RFK health insurance contributions, JDLC pension

² In order to determine whether employers were engaged in crop production in California, I conducted a Google search of each employer name. I identified two employers that were based in Oregon (Threemile Canyon Farms and Willow Creek Dairy) and one that was a construction company (Saramark, Inc.). I omitted these three contracts from my analysis.

³ I identified one contract as being negotiated under MMC (San Joaquin Tomato Growers, Inc.), which I omitted from my analysis. However, this contract did not have any usable data items, so it would not have affected my calculations even if it had been included.

⁴ Several contracts had wages that were specified for entry-level and non-entry level general laborers (Airdrome Orchards, Countryside Mushroom, Inc., Skalli Corporation d/b/a St. Supery Vineyards & Winery, C Mondavi & Sons, Scheid Vineyards, Inc., and S&J Ranches, LLC). Two of these contracts (Airdrome Orchards and Scheid Vineyards, Inc.) specified more than two general labor wages. In the case of Airdrome Orchards, I used the "General Ranch Work" wage for workers who had been with the company between 1 and 3 years. In the case of Scheid Vineyards, I used the wage for "General Labor" instead of the "General Labor Trainee" or "General Labor Probation" wage.

contributions, paid holidays, and paid vacations. Several other miscellaneous benefits were offered, including overtime pay, standby pay, travel time pay, break time pay, bereavement pay, jury duty pay, and various bonuses. Although these other benefits have value to employees, they are not consistently offered across contracts, and ad hoc assumptions for each type of nuanced benefit would be required to place a value on these benefits.⁵ As a result, I only consider the four common fringe benefits listed above.

4.3.1 Robert F. Kennedy Health Insurance

Employers who made hourly contributions to the RFK health insurance plan paid an average of \$2.23 per hour (when rounded to two decimal places), so that the value of RFK benefits during the make-whole period was 23.09% of the July 1, 2012 average general labor wage ($23.09\% \approx \$2.23 \div \9.65).

4.3.2 Juan de la Cruz Pension

Employers who made hourly contributions to the JDLC pension fund contributed an average of \$0.13 per hour (when rounded to two decimal places), which is equivalent to 1.34% of the July 1, 2012 average general labor wage ($1.34\% \approx \$0.13 \div \9.65).

4.3.3 Holiday Pay

There was an average of 1.82 paid holidays during the make-whole period. If the average employee qualifies for half of these paid holidays, they would be eligible for 0.91 paid holidays ($0.91 \text{ days} = 0.5 \times 1.82 \text{ days}$). If the average employee works 1000 hours per year and each paid holiday is worth 8 hours of pay, then each holiday is worth 0.80% ($0.80\% = 8 \div 1000$) of the hourly rate of pay. Therefore, the recommended make-whole percentage for paid holidays is 0.73% ($0.73\% \approx 0.91 \times 0.80\%$).

4.3.4 Vacation Pay

The average employee with five years of seniority would have received 3.80% of their earnings in vacation pay. The recommended make-whole compensation is based on half of this value, which is 1.90% ($1.90\% \approx 0.5 \times 3.80\%$).

5 Conclusion

The Gerawan make-whole period is January 18, 2013 through June 30, 2013. I analyzed 27 UFW contracts that were in effect during this period. I adopted the contract-averaging methodology developed by Martin and Egan (1989) to estimate the average wage increase for general laborers and the value of benefits that could have been negotiated between Gerawan and the UFW if there had been good faith bargaining. Based on the CAM, I recommend a make-whole remedy of 27.70% such that employees who earned \$100 during the make-whole period would be entitled to a \$27.70 payment.

⁵ For reference, Martin and Egan (1989) added an additional 4% to their make-whole calculation for these other miscellaneous benefits. They do not provide an explanation for how they came up with that value.