

# Rest break, bonus pay still disputed in WA

By DAN WHEAT  
Capital Press

ELLENSBURG, Wash. — The state Department of Labor & Industries is resolving issues of rest-break and bonus pay for piece-rate farmworkers though guidance policies that amount to back-door rule making, labor attorneys say.

Adam Belzberg and Sarah Wixson, Seattle labor attorneys, spoke at the annual labor conference of WAFLA, formerly the Washington Farm Labor Association, at Central Washington University in Ellensburg, Feb. 18.

Belzberg defended Sakuma Brothers Farm, a Burlington berry farm, in a class-action lawsuit that established that employers have to pay workers for rest breaks regardless if they are paid hourly or piece rate.

Piece rate is the practice of paying workers by quantity of work, such as number of bins of apples picked, and often results in more money than hourly pay for fast workers.

Unresolved is whether workers receiving piece rate



Dan Wheat/Capital Press

A worker picking Kanzi apples at Mountain View Orchard, East Wenatchee, Wash., last September. Pickers usually are paid piece rate, so much per bin they pick that is more than minimum wage. How they are paid for rest breaks remains unresolved in the aftermath of litigation.

can be paid minimum wage for rest breaks. The attorney general saying they can't because that's a disincentive for workers to take a break, Belzberg said.

"To us that makes no sense

at all," he said. "We believe you can pay a lower rate for nonproductive time."

L&I is siding with the AG and plans to issue final guidelines the first week of April, he said.

"The department is clearly on a path to making back-door rules through the guise of policy guidance," he said.

Growers often pay bonuses at the end of harvest as incentive to keep pickers with them

through harvest. Some are now replacing piece-rate pay with hourly pay, plus end-of-season bonuses.

L&I says such expected or non-discretionary bonuses trigger more rest-break pay, Wixson said. Spontaneous or discretionary bonuses don't have to include rest-break pay, she said.

That could result in "countless class-action lawsuits," Belzberg said.

Wage and hour issues "are low-hanging fruit" for farmworker attorneys because they get double damages and attorney fees if they win, Belzberg said. "So you can get \$1 for your client and get all your fees paid," Wixson said.

They recommended employers enforce 10-minute, paid rest breaks for every four hours of work. To eliminate a rest break for five minutes less than four hours, risks violation, they said.

It's rather ironic, Belzberg said, that while farmworker attorneys insist on the changes, many farmworkers who were switched to an hourly rate plus a bonus last season

would rather go back to piece rate.

"Columbia Legal Services is educating workers that they are entitled to rest breaks. So it's a huge education curve on both sides and there will be a lot of scrutiny for a number of years if not forever," Wixson said.

Employers must pay at least minimum wage for orientation, training and travel between fields, they said. They advised against stacking rest breaks together into one, 20-minute break between eight hours of work and said breaks must be separate from unpaid meal breaks.

"What do you do when workers don't want to take breaks or meals?" one grower asked.

"What do you do when they don't want to wear protective equipment? This is on you. It's your money. Be the boss, be the boss, be the boss," Wixson replied. "Drill these things into the heads of your crew leads. If they don't enforce them, you won't know until you are sued."



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*KYG Discussion panel: L to R, Lewis County 4-H Delegates Nereida Soto, Nora Zander, Rose McDonald (not pictured, our 4-H KYG Party candidate, Mara Soto); invited panel guests: Lewis County Assessor and Lewis County Republican Party Vice Chair Dianne Dorey; Lewis County District 1 Commissioner Edna Fund; Lewis County Democratic Party Chair Carol Brock, and WSU Lewis County Extension Chair and past Centralia City Council At-Large challenger Sheila Gray (facing backward). Photo taken by Pam Watson. WA State 4-H reference site <http://4h.wsu.edu/conferences/kyg/index.htm>*

"Decision 2016: Elections & Political Parties," 4-H Know Your Government aims to educate youth in 9th-12th grades through hands-on civic education in elections, parliamentary procedure, and building a running platform for candidates. Each year, Washington State 4-H offers Know Your Government (KYG) to youth in every county in the state. The four themes rotate so youth can cycle through them during their high school career.

The titles change each year with four-year rotations, including: Elections & Political Parties, the Judicial System, How a Bill Becomes a Law, and Politics in the Media. Over 200 youth travel across Washington State annually to participate in the conference in Olympia as the final piece to all of the hard work that many of them start in November at the county level.

We focused on learning about parliamentary procedures, building our planks, selecting our candidate for the 4-H KYG Party, and met with a panel of our local elected officials and the chairs/vice-chairs of our local Democratic and Republican Parties. After additional meetings, our four Lewis County 4-H delegates met with others from around the state for Decision 2016, in Olympia, WA, on Feb. 13-16.

*Pam Watson, WSU Lewis County Extension 4-H Agent*

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