

Washington fruit company defends piece-rate pay

Supreme Court takes written arguments in wage case

By **DON JENKINS**
Capital Press

Farmers would have to abandon piece-rate pay if the Washington Supreme Court rules that workers must be paid separately for non-picking tasks, according to lawyers for a Wenatchee orchard operator and exporter.

The Dovex Fruit Co. argues that piece rates benefit skilled and industrious workers, but would be impractical if the court decides the practice violates the state's minimum wage law.

"It is not possible for employers to separately track and pay for every second of time that an employee is not



Dan Wheat/Capital Press File

Workers harvest apples. The Washington Supreme Court is hearing a case involving piece-rate pay for workers.

actually picking each piece of fruit, so they will be forced to abandon piece-rate pay altogether," the company claims in a brief filed with the court.

The court ruled two years ago that piece-rate farmworkers must be paid separately for 10-minute rest breaks. Although the court said it was merely interpreting the

law, the decision changed longstanding pay practices. Now, the court has been asked whether piece-rate workers must be paid separately for tasks such as moving equipment and attending meetings.

The court has not set a hearing date, but has begun taking written arguments. In an earlier filing, Seat-

tle lawyer Marc Cote, who represented workers in the lawsuit that won paid rest breaks, argued that piece-rate pay robbed employees of the fruits of their labors.

Dovex, the target of a class-action lawsuit over pay practices, laid out its defense in a brief filed May 22.

According to the company's brief, the court's ruling on paid rest breaks was well reasoned, but did not apply to this case.

While paid breaks encourage workers to rest for their health and safety, at stake in the new case, according to Dovex, is whether workers will have the chance to earn higher wages through piece rates.

The company argues its piece rates ensure that workers are paid at least the state's minimum wage, no matter what how much fruit they pick.

According to the brief, the

company records the time each employee arrives and leaves work. "Dovex tracks and records every second that a piece-rate worker spends working," the brief states.

At the end of the week, a worker's hours are added up. If the piece-rate pay falls short of the company's base hourly wage, the worker's pay is rounded up.

If the court strikes down the practice, farms will have no way to be sure they're complying with the state minimum wage law and will be forced to switch to hourly wages, according to the brief.

"Maybe this is what plaintiffs really want as a result of their claims, but it is not what the thousands of skilled pickers that return each year to Washington harvest necessarily want," the brief states. "These skilled pickers enjoy wages that greatly exceed minimum wage and the piece rate allows them to control

their earnings and time spent working in a way that straight hourly work does not afford."

The company states its base hourly pay exceeds the state minimum wage of \$11 an hour. The brief references the minimum \$13.38 an hour that farms must pay if they hire foreign workers on temporary H-2A visas.

The brief acknowledges piece rates benefit farmers. "Without the ability to reward efficient and skilled pickers, the time-sensitive harvest becomes less efficient and the employers' costs go up," it states.

If the court rules piece-rate workers must be paid separately for other tasks, justices also must decide how the pay will be calculated. The agriculture industry favors a flat wage, but the court in the rest-break case sided with workers who argued for pay based on their higher piece-rate compensation.

Nutrition company prevails in trade secrets dispute

By **MATEUSZ PERKOWSKI**
Capital Press

An Oregon livestock nutrition company has prevailed in a lawsuit over trade secrets against a former employee who was found to have intentionally destroyed evidence.

A federal judge has entered a default judgment against Yongqiang Wang, the former employee, as punishment for deleting emails and giving away a computer likely containing information related to trade secrets owned by Omnigen Research.

U.S. District Judge Michael McShane said the "extreme measure" of a default ruling against Wang was justified because he severely interfered with the orderly administration of justice in the case.

"These actions have deprived the plaintiffs of evidence central to their case and undermined the court's ability to enter a judgment based on the evidence," McShane said.

Roger Hennagin, the attorney representing Wang, said he could not comment on the ruling because he hasn't yet been able to discuss it with his client, who works in China.

The complaint against Wang was initially filed last year by Omnigen, a company founded by former Oregon State University professor Neil Forsberg and later sold to Phibro Animal Health for \$23 million.

The lawsuit accused Wang of planning to sell feed additives in China that were based on trade secrets stolen from Omnigen, a company that employed him between 2005 and 2013.

Omnigen's feed additives, which counteract hemorrhagic bowel syndrome in cattle, are used by roughly 20 percent of the U.S. dairy herd, and the company hoped to expand its reach to China.

Wang obtained "sham" patents in China from confidential information he accessed while working for Omnigen and secretly launched two companies, Mirigen and Bioshen, to sell the additives in that country, the complaint alleged.

In a counterclaim against Omnigen, Wang denied relying on his former employer's trade secrets and claimed Forsberg unjustly enriched himself by failing to share profits with Wang, as earlier promised.

According to McShane, the case was "plagued" by evidence problems "from its inception," with Wang deleting more than 4,000 files from his computer despite a preliminary injunction requiring him to preserve evidence.

While many of the files were recovered, some documents that were probably relevant to the case were permanently destroyed, the judge said.

Simplot seeks injunction against supply disruption

Ownership of several food processing companies at stake in legal battle

By **MATEUSZ PERKOWSKI**
Capital Press

The J.R. Simplot agribusiness company is seeking a preliminary injunction against a potential food supply disruption stemming from a dispute with business partner Frank Tiegs.

Simplot and Tiegs are engaged in a legal battle over the control of two jointly owned food processing companies: Gem State Processing of Heyburn, Idaho, and Pasco Processing of Pasco, Wash.

Ownership of the National Frozen Food Co. of Seattle, a subsidiary of Pasco Processing, is also at stake in the litigation.

Tiegs, a large-scale Washington farmer and business owner, filed a lawsuit claiming that Simplot effectively forfeited ownership of Pasco Processing due to a deadlock over whether to infuse the company with a \$6 million capital contribution.

Simplot has filed a counterclaim alleging that Tiegs has grossly mismanaged Pas-



Mateusz Perkowski/Capital Press File

The National Frozen Foods Co. facility in Albany, Ore. The company is part of a joint venture between the J.R. Simplot Co. and farmer Frank Tiegs and is now the subject of a lawsuit.

co Processing and Gem State Processing to his own financial benefit by forcing them to buy excessive amounts of poor-quality crops from his farming affiliates.

Although Tiegs' takeover of Pasco Processing is invalid, he has nonetheless claimed to lenders and employees to have sole ownership of the company, according to Simplot.

These claims have been used to "intimidate critical witnesses" employed by the National Frozen Food Co. while Tiegs has threatened to

"cut off Simplot's supply of critical products" with little time to find alternative sources, the company argues.

Simplot has asked U.S. District Judge Rosanna Malouf Peterson for a preliminary injunction prohibiting Tiegs from taking any action based on his claim of full ownership of Pasco Processing.

Pasco Processing supplies roughly 42 percent of Simplot's "vegetable and specialty inventory," which equates to about \$54 million in sales for the company, said Michael

Johnston, vice president of manufacturing and supply chain at Simplot, in a court filing.

Since the conflict erupted, the facility is has provided "dismal service levels" and may soon stop supplying Simplot altogether, he said.

"If Tiegs were to act upon his threat to cease production for Simplot, it would quite literally put Simplot out of the vegetable and specialty businesses, result in multi-million-dollar losses, and have a devastating effect on Simplot's customer rela-

tionships because of failure to meet contractual obligations," Johnston said.

Joe VanLeuven, an attorney representing Tiegs, said that Pasco Processing does not plan to cut off food supplies to Simplot.

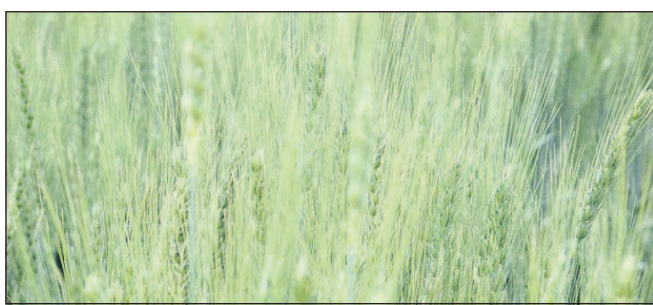
The processing facility's operator — Washington Potato Co., which is owned by Tiegs — has agreed to continue supplying Simplot through the end of its fiscal year in early September and is willing to negotiate a new supply agreement beyond that date, VanLeuven said.

"It's very frustrating to read this in a motion when the reality is so different," he said.

Before the ownership dispute, Simplot bought products from Pasco Processing but did not operate the facility, VanLeuven said. "Whether we're the sole owner or not, doesn't mean they're not a customer."

There's also no evidence of intimidation of witnesses employed by the National Frozen Food Co., he said.

An attorney for National Frozen Food Co. was simply notified that Simplot no longer had an ownership interest in Pasco Processing and that it's inappropriate for NFF employees to insert themselves into the dispute, other than to provide evidence in an impartial manner, VanLeuven said.



Capital Press File

The wet spring weather has delayed the planting of spring wheat in northern Idaho.

Weather delays Idaho spring wheat crop

By **MATTHEW WEAVER**
Capital Press

Northern Idaho wheat farmers are behind on their spring planting.

About 78 percent of the state's spring wheat crop was planted the week of May 15, compared to 99 percent the same time in 2016, according to the USDA National Agricultural Statistics Service. The five-year average for this time of year is 100 percent complete.

"We're way behind schedule," said Blaine Jacobson, executive director of the Idaho Wheat Commission.

Spring wheat was planted in southwest, southcentral and southeast Idaho, but the delays were in the biggest growing area, the prairies of northern Idaho, due to snow, rain and a late spring, Jacobson said.

Farmers were eligible for crop insurance beginning May 15. Growers have to decide whether to attempt a spring crop or take a crop insurance payment for prevented planting.

"There's a lot of worry about planting this late and how late the harvest would be, whether they would get it out of the field before the fall storms start," Jacobson said.

Jacobson expects an overall crop similar to last year's, if the northern region is able to plant. Winter wheat went in with good moisture, he said.

"It's been cool so far, which sometimes helps wheat grow," he said. "If it gets too hot too fast, it stunts it, but it's been really good growing conditions for the winter wheat so far."

For the same week, Washington's spring wheat was 95 percent planted, down from 100 percent last year. The five-year average for this time of year is 100 percent.

"With the excellent moisture and growing-degree days, the spring crop could catch up," said Washington Grain Commission CEO Glen Squires.

Squires believes wheat yields could be higher than USDA projections of 67 bushels per acre for the state.

Wash. farm hopes to plant hemp soon

WSDA set to issue licenses

By **DON JENKINS**
Capital Press

The Washington State Department of Agriculture was moving closer Wednesday to issuing the state's first licenses to grow hemp, embarking on an experiment to bring back a crop that's still classified as a controlled substance by the federal government.

WSDA's hemp coordinator Emily Febles said Wednesday that the state has received six applications to grow hemp. The state was processing the applications, but could issue a license later in the day, she said.

Washington lawmakers authorized hemp growing under the guise of a research program. The 2014 Farm Bill allows hemp to be grown under the supervision of state agriculture departments and universities.

Because hemp is a federally controlled substance, Washington had to receive permission from the U.S. Drug Enforcement Administration to import seeds from Canada, where hemp farming has been a regulated but legal activity for two decades.

Febles said a truck carrying the first shipment of hemp seeds is on its way to the WSDA's secure-storage facility in Spokane, where farmers will have to pick up the seeds and plant them within 24 hours.

Hemp entrepreneur Cory



Courtesy of Richard A. Howard/USDA NRCS

WSDA's hemp coordinator Emily Febles said Wednesday that the state has received six applications to grow hemp. The state was processing the applications.

Sharp said Wednesday business partner Palmer Farms tentatively planned to plant 70 acres Friday in Moses Lake and 5 acres on June 6.

"If everything goes correctly, we're planting Friday morning," he said. "The seeds are en route."

Sharp said he also has lined up farmers to plant 30 acres of hemp in the Tri-Cities and 10 acres in Mount Vernon.

He said he's still lining up financing to process hemp into either seeds or fiber or both, perhaps in Grant County.

"The processing facility is going to happen," Sharp said. "We will have too much hemp growing for us to not have a processing facility."

Washington will join several other states, including Oregon, that have hemp cultivation. WSDA has taken a cautious approach, following the limited freedom that the Farm Bill afforded hemp growers and processors.

According to WSDA, hemp growers and processors must be licensed by the state. State lawmakers, however, this year removed hemp for the state's controlled substances act, casting doubt on WSDA's ability to enforce licensing requirements. WSDA subsequently got authority from lawmakers to adopt a rule allowing it to fine unlicensed hemp farming. The rule has yet to be written.