

# State Supreme Court weighs paid breaks for piece-rate workers

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TOPPENISH — Though they casually ate lunch with students and entertained questions from the public, the nine black-robed justices of the Washington Supreme Court did nothing Tuesday to tip their hand about how they might rule in a contentious labor case that could drastically change the way Central Washington's fruit growers pay employees.

The state's highest court, convening at Heritage University, peppered attorneys on both sides with questions dealing with economic theory, a lack of factual records and many other topics.

The case, *Demetrio v. Sakuma Bros. Farms*, asks the justices to decide whether employers must pay piece-rate employees — those compensated by productivity instead of hours — separately for rest breaks — that is, above and beyond the promised rate.

"I can't make any predictions," said Marc Cote, a Seattle attorney representing a class of seasonal workers at the Skagit Valley berry farm.

Sakuma's attorneys were just as unsure. "It's hard to tell," said Adam Belzberg, also a Seattle attorney.

The justices may take six months or longer to reach a decision, they said.

Roughly 300 spectators filled Smith Family Hall at Heritage to observe Tuesday's proceedings.

"It's probably an understatement to say this case has generated some interest in this community," Chief Justice Barbara Madsen said.

Their ruling could change the pay structure for tens of thousands of seasonal farm employees paid by the number of bins filled, trees pruned or thinned.

About 15 protesters from a union of Sakuma workers gathered before the hearing outside on the lawn, waving "Boycott Sakuma" signs.

The court heard oral arguments in a total of three cases Tuesday, including two in the morning.

In the Sakuma case, the justices were active. Most, if not all, of the nine justices seated on a raised table interrupted the attorneys with multiple questions.

For example, regarding the growers' contention that rest breaks are already folded into piece-rate wages, Justice Susan Owens asked, "How do we know if it is or isn't?"

Cote responded that there isn't really a way to know, which is one reason why they want it paid separately.

Later, Justice Mary Yu speculated that forcing growers to pay extra for rest breaks would just prompt them to offer a lower rate in the first place.

"Would that not, in effect, result in an overall reduction?" she asked.

Among the spectators was Ana Demetrio, the lead plaintiff. The 26-year-old mother of five from Mount Vernon has worked on and off at Sakuma for 12 years and said she feels overwhelmed by the attention the case has caused.

"For me, it just seems incredible," she said through an interpreter hired by Columbia Legal Services, a Seattle legal aid office that is representing the plaintiffs.

One issue, retroactivity — whether other farmers could be on the hook for back wages — encouraged Brendan Monahan, a Yakima attorney hired by several farm groups to file a friend-of-the-court brief.

The Sakuma workers and their employer already have settled past grievances in the federal lawsuit that started the case. Only future rest break wages are in front of the Supreme Court.

However, many fruit industry officials feared a ruling in Demetrio's favor would put other growers on the hook for back pay and penalties for three years, the statute of limitations for many wage disputes.

Justice Debra Stephens made comments that seemed contrary. "That's not the case in front of us," she said.

If the ruling goes in favor of the workers, Monahan said after the hearing, farm worker rights activists could try to make it retroactive with another lawsuit.

"But that's another lawsuit for another day," he said, relieved by Stephens' comment.

The justices came to Heritage, their third trip to the Yakima area in 30 years, through the traveling court program, designed to make the justice system more accessible to those who may not be able to visit Olympia. High school and community college groups used the event as a field trip.

The judges held a question and answer forum Monday and ate lunch and posed for photos with students Tuesday.

After the Sakuma oral arguments, which lasted 20 minutes for each side, Madsen invited questions from the public, as long as they weren't specific to Sakuma.

Frank Lyall, a Grandview area orchardist and president of the Yakima County Farm Bureau, asked the justices how much they weigh economic ramifications before making decisions.

Their answer: Some.

All justices care about the practical consequences of the cases they hear, said Yu, but they have to base their decisions primarily on interpretations of law and precedent. They have to exercise "intellectual discipline," she said, to stay within their "parameters and guidelines."

Lyall said after the hearing that he hopes they will weigh those ramifications more.

## **Related Information**

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How this case got to the state Supreme Court

In Washington, the rest-break case started in 2013 when seasonal workers at Sakuma Brothers Farms, a Skagit County berry producer, sued in U.S. District Court for underpayment, keeping poor wage records and not granting paid rest breaks under state wage laws and the federal Migrant and Seasonal Agricultural Worker Protection Act.

While admitting no wrongdoing, Sakuma Brothers settled the class-action case in June 2014 with the workers for \$850,000 — \$500,000 for the workers and \$350,000 in attorney fees. A total of 923 workers are eligible for claims to a share of the settlement, said Sarah Leyrer, an attorney with the Seattle office of Columbia Legal Services, a legal-aid group representing the workers.

The settlement, however, covered only past practices. The two sides failed to reach an agreement on whether Sakuma should pay piece-rate workers separately for rest breaks in the future.

The U.S. District Court certified that issue to the state Supreme Court because state courts have never tackled the topic and the outcome could have widespread ramifications on Washington employers and workers. In the handoff to the state's highest court, which will have the final say, the federal court posed two questions: Do farmers have to pay piece-rate workers separately for their breaks? And if so, how much?

