STATE OF CALIFORNIA GEORGE DEUKMEJIAN, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
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IN REPLY REFER TO:

Legal Section

March 8, 1989

Kenwood C. Youmans
Seyfarth, Shaw, Fairweather
& Geraldson
2029 Century Park East, Ste. 3300
Los Angeles, CA 90067

Re: Reporting Time Pay

Dear Mr. Youmans:

The Labor Commissioner has asked me to respond to your letter of February 22, 1989, wherein you request a clarification regarding the exception to reporting time pay for an interruption of work "caused by an Act of God or other cause not within the employer's control."

Your letter relates the following fact situation:

> Your client operates a citrus packing plant which is one hundred percent mechanical which suffers mechanical breakdowns which have the effect of shutting down the entire operation. You ask the Division to assume, for purposes of our response, that the firm has a reasonable maintenance program and takes other precautions such as employing mechanics and maintaining spare parts on the premises, to avoid mechanical breakdowns.

You ask whether the company is obligated to pay reporting time pay if it is unable to provide employees with at least half of their usual or scheduled day's work because of a mechanical breakdown. You point to the provisions of subd. 5(C)(3) and ask if those provisions may be utilized to exempt the employer from the requirement of paying reporting time pay of at least one half of the employee's regularly scheduled shift.

The language of subd. 5(C)(3) provides an exemption if "The interruption of work is caused by an Act of God or other cause not within the employer's control." Obviously, the type of breakdown described above is not the result of an Act of God as that term is generally used, thus the question becomes, what is meant by the term "or other cause not within the employer's control."

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The term "Act of God" is defined by Webster's New Collegiate Dictionary as: "An inevitable accident; such an interruption of the usual course of events that no experience, foresight, or care which might reasonably be expected could have foreseen or guarded against it."

The concern in adopting an approach such as your letter suggests is that it would require the employer, employees, and perhaps ultimately, the Division, to judge each instance of mechanical breakdown to determine whether it reasonably could have been avoided or whether the maintenance program was reasonable on a case-by-case basis.

The Industrial Welfare Commission has required the DLSE to use objective standards to determine what is "reasonable" under a number of provisions of the Orders. If the IWC had so desired, they could have so worded the provisions of subd. 5(C)(3) to require DLSE to objectively determine whether the cause was "not reasonably within the employer's control." They did not do so, which leads us to the conclusion that the IWC intended that the term "not within the employer's control" meant that the cause was not even remotely within the employer's control. A mechanical failure which, according to your letter, often occurs, is obviously subject to someone's control; and the employer would appear to be the obvious choice.

For the reasons stated, we feel that mechanical breakdown can not be construed to be an exception to the obligation of the employer to pay reporting time pay.

I hope this adequately addresses the questions you raised in your February 22nd letter. I'm sorry to say that the Division did not have any written material on this particular issue and I know of no case law on the subject.

Yours truly,

H. Thomas Cadell, Jr.

H. THOMAS CADELL, JR.
Chief Counsel

c.c. Lloyd W. Aubry, Jr.
James Curry
Simon Reyes

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