

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENTLEGAL SECTION
Montgomery Street, Suite 3220
San Francisco, CA 94105
(415) 975-2060H. THOMAS CADELL, JR., *Chief Counsel*

March 4, 1997

Betty Stone
Executive Vice President
California Floral Council
P.O. Box 925
Half Moon Bay, CA 94109-0925

Dear Ms. Stone:

Thank you for your letter of November 13th and your continued interest in this matter which, as you know, is of mutual concern.

As you point out in your letter, the underlying issue raised in this ongoing controversy is the relationship between IWC Orders 13 and 14. As we have discussed, the dilemma faced by the Department is articulating an enforcement policy which not only reflects our concern that the law not unnecessarily interfere with continuing changes in the California cut flower industry, but also continues to recognize the real differences between Orders 13 and 14.

Our recent meeting and tour of the flower farms near Half Moon Bay has helped us better grasp the process and the problems faced by some of the farmers and workers in the flower-growing industry. As we discussed, it is the Department's position that the most important element in determining whether the work is to be considered under Order 13 or Order 14 is whether the packing work done on the product is designed to prepare that product for market or whether further significant processing is necessary before the product may enter the market. The tour also pointed up the unusual nature of the flower industry and the unique use of the workforce which is a result of these factors. Nonetheless, as I pointed out in my letter of April 21, 1989, while there is a "gray area involving the packing provisions of the Orders;" it is clear that the Industrial Welfare Commission clearly intended a difference between Order 13 and Order 14.

The specific question raised in your letter of November 13th was whether packing flower products at the growing location and sending this product directly to retail florists who, in turn, unpack the bunched and field graded product, add other purchased plant materials and repack (design) the product for market

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constitutes activities under IWC Order 14. This letter does not address the handling of flowers from other growers because, of course, such work would be under Order 8.

As to whether this field grading can be done at the growing location "regardless of the structure" needs some clarification. As the Division of Industrial Welfare (DIW) concluded in 1969:

"All operations connected with the growing of flowers in fields or greenhouses are covered by Order 14. The first grading and bunching operations are also covered by Order 14 regardless of where they are performed, since practices vary from grower to grower. These operations can be and are performed in the fields in some locations. They are also performed in sun sheds, greenhouses and sheds adjacent to greenhouses. The place of performance does not change the operations which are, basically, a continuation of harvest." (Letter of December 12, 1963 from Beatrice Christensen, Assistant to the Chief of DIW, to Tom Richardson of the California Farm Bureau Federation)

The DIW, the agency then enforcing the IWC Orders, recognized that in the cut flower industry the field grading and first bunching remained a continuation of the harvest and where this work was performed (so long as it remained on the growers property) was immaterial. The key was whether the grading was preliminary bunching or constituted final sorting normally done in a packing operation. As with the DIW, we recognize that cut flowers are a unique operation and that practices used in this operation have evolved. The contents of this letter are meant to apply only to the cut flower industry. Other industries will have to be examined on a case-by-case basis.

In responding to your question, then, we must ask whether the "bunched and field graded product" constitutes "first bunching" and "field grading" as those terms have historically been defined or whether the bunching and grading would, without further significant processing, make that product ready for market.

The procedure usually used in the cut flower industry for "first bunching" is to group the product into bunches. In the case of roses, for instance, it is our understanding that the bunches are composed of 25 stems. Other varieties of flowers are bunched in different numbers. The product is then shipped in this field-graded form either to packing plants for further processing for the market or, as in the example you give, directly to florists who significantly process the product further before selling at retail.

You suggest in your letter that the addition of purchased plant materials should be a key consideration in determining whether the work is "first bunching" or "field grading" subject to Order 14 or "final grading and packing for shipment" subject to Order 13. The addition of purchased plant materials might be part of the process utilized in preparing some cut flower product for the retail market, but the lack of purchased plant materials in the final product does not, in and of itself, determine, in and of itself, that any prior work is "field packing" subject to Order 14.

As we witnessed during the tour of the "dried wild flower" facility, the flowers are picked in the field adjacent to the warehouse and storage facilities. Because of the nature of the flower, drying of the picked flowers by allowing them to lie in the fields after harvest (as is done with some agricultural products), is not appropriate. The same crews which pick the flowers in the adjacent field, load the flowers on trays which are carried to the storage area and placed on portable shelving. These shelves are placed in walk-in air dryers for a three- or four-day period. The use of this drying technique is necessary in order to insure that the coloring of the flowers is protected. The time taken by the crews to place the harvested flowers in the dryers is estimated at not more than forty minutes of the scheduled workday.

The time spent by workers loading the field trays on the portable shelving and placing that shelving in the dryer might be construed as Order 13 work. This is arguable, however, since Order 14, Section 2(C)(5) provides that agricultural occupations include:

The assembly and storage of any agricultural or horticultural commodity, including but not limited to, loading, roadsliding, banking, stacking, binning, and piling

Thus, the stacking of the flowers and the storage, either in the warehouse or in the dryer, could also arguably be brought under the provisions of Order 14. In either event, the time spent by the workers in the "gray area" work is quite small in comparison with the Order 14 agricultural work they perform. From a standpoint of enforcement, it would be difficult, if not impossible, to clearly define the duties and audit such an operation under these circumstances.

The small amount of time the workers are engaged in what might arguably be considered Order 13 work would not, under most circumstances, make any change in the wages owed to those workers. On the other hand, as we discussed during the tour, the placing of florists' wire in some of the flowers is clearly Order 13 work.

Since a separate group of workers are involved in performing these operations, there would be no problem from an enforcement perspective in making a determination as to the workers engaged in that activity and the amount of time spent on that activity.

The next location we visited was a hothouse operation growing flowers such as roses and carnations. In this operation the flowers are picked in the hothouse, placed in buckets of water and brought to a location adjacent to the hothouse where the first bunching takes place and the bunches placed in cold storage. This first bunching is, potentially, more complex than first bunching is usually thought of, but, as the Division of Industrial Welfare recognized long ago, the process is required because of the unique nature of flowers and the need to protect the delicacy of the bloom.

In the operation we saw, the cut flowers which are all of the same color (the result of each growing area being divided by color) are brought into the bunching location and placed on a conveyor belt which sorts the flowers by length of stem. The sorted flowers are then bunched in groups of 25, a rubberband is placed around the stems and the bunch is placed in a sleeve to protect the bloom. The stems are then trimmed to allow the flower to take water. The flowers, thus bunched, are put in boxes in cold storage.

If the above-described operation were performed in the field or at the location in the hothouse where the flower is cut (such as is the case with lillies) there is little argument that the bunching would be considered "first bunching." It is the delicate nature of the flower which requires the addition of the protective sleeve. The sleeve is not designed to follow the flower to the retail market, but is always removed when received at the next location. Roses and similar cut flowers are not sold by the grower by the bunch. The price in the market selling such flowers, as explained on our tour, is based on the stem, not on the bunch. Varieties of flowers are bunched by growers in different numbers. For instance, roses are bunched in groups of 25 while other varieties are bunched in groups of ten. Flowers are not normally sold at the retail level in groups of ten or 25, but are generally marketed by the dozen or singly by the stem. Thus, the bunching of these flowers is not intended to prepare the flowers for market.

Again, the key inquiry is whether the operations constitute "final grading and packing" and not field grading and shipment to the place of processing for retail consumption. The "first bunching" and "initial sorting and grading" which we witnessed at the hothouse location on our tour are within the definition of field grading and sorting which is outlined above.

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It is not necessary that any final grading be done on the grower's location. In other words, Order 13 activities are not part of every grower's operation; else there would be no reason for having an Order 8. In the instance where the field graded product is shipped directly to the florist, there clearly would be no Order 13 operations necessary. The florist's activities would be subject to Order 7 and would replace the work which might be done either under Order 13 or Order 8.

I would like to point out that while the above-described operations, which I understand, are typical of the flower industry, appear to fall within the coverage of Order 14, additional duties thrust upon the workers could take these operations out of Order 14 and place them in Order 13. As you described, some flower-growing operations include putting the flowers into bouquets or mixing the flowers to produce arrangements. Those operations would, obviously, be under Order 13 if performed on the growers property or Order 8 if performed elsewhere.

I hope this is responsive to your concerns and will alleviate some of the uncertainty that currently exists.

Very truly yours,

H. THOMAS CADELL, JR.
Chief Counsel

c.c. Lloyd W. Aubry, Jr., Director
John Duncan, Chief Deputy Director
Nance Steffen, Assistant Labor Commissioner
Greg Rupp, Assistant Labor Commissioner