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June 9, 1989

Mr. L. George Daniels
General Manager
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1601 Exposition Boulevard, FB-7
Sacramento, CA 95815-5103

Dear George:

Thank you for your letter of May 22, 1989 in which you seek further clarification of my letter of April 21, 1989 (copy attached).

In your letter you have refined the example of a cut flower operation on which you seek guidance regarding coverage under Order 13 or Order 14 as follows:

"Flowers are grown in a field or in a greenhouse. Employees harvest the flowers and place them in field containers or on flat-bed carts. The cut flowers are taken to another location where first bunching is performed. First bunching may be performed in a field, in a greenhouse, sun shed or in a shed connected with a greenhouse. In first bunching, employees bunch the cut flowers into bunches appropriate for the species. After being bunched, the flowers are placed in containers of water. Final or further grading or sorting is then performed on the bunched flowers by the same or another grower, the wholesalers or supermarkets. Obviously, in some cases, before final grading or sorting the bunched flowers may be transported to wholesalers or supermarkets."

Your May 22 letter is based on difficulties with my April 21, 1989 letter with regard to grading room example #1. My understanding of your grading room example #1 was that the grading done in that example was for all intents and purposes the only grading done and the flowers were then sent to market where they were sold retail. In such a situation, it seems to me, allowing the first bunching or field grading provision in Order 14 to cover all of the grading and sorting done in your grading room example #1 would swallow up the final grading and packing for shipment which is normally considered work under Order 13. However, as I pointed out in my April 21, 1989 letter, each case must be determined on its own facts and minor differences can lead to different results.

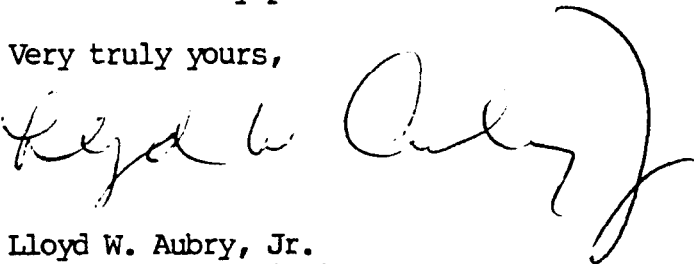
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The example set forth above from your May 22, 1989 letter recognizes the point that I was trying to make in my April 21 letter. Orders 13 and 14 contemplate a process or a continuum of activities. Thus, the activities set forth in your letter must be addressed as part of a series of activities in the process of harvesting the flowers and getting them ready for market. Clearly, the field grading permitted under Order 14 is meant to be preliminary and is not meant to be so extensive as to swallow up all the grading and sorting processes. Order 13 has been defined as final grading and packing for shipment. Your example in the May 22, 1989 letter recognizes this concept by defining the field grading under Order 14 as "first bunching". First bunching implies that there will be further bunching or grading and sorting, such that the first bunching will not become, in effect, the final and only grading and sorting.

Accordingly, in response to your letter, "first bunching" would normally involve work under Order 14 as long as the further grading and sorting that is performed by either the same or another grower, the wholesaler or the supermarket, is significant enough that the first bunching or field grading allowed by Order 14 has not swallowed up the requirement that final grading be performed under Order 8 or Order 13.

Thank you for your interest in this issue. I hope this clarifies the position set forth in my previous letter.

Very truly yours,



Lloyd W. Aubry, Jr.
State Labor Commissioner

LWA:md

Enclosure

cc: James Curry
Simon Reyes
Tom Cadell
Regional Managers
Karla Yates