GEORGE DEUKMEJIAN, Governor

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

1989.04.21

ADDRESS REPLY TO:
P.O. BOX 603
San Francisco, CA 94102

IN REPLY REFER TO:

April 21, 1989

L. George Daniels
General Manager
Farm Employers Labor Service
1601 Exposition Boulevard, FB-7
Sacramento, CA 95815-5103

Dear George:

This letter is intended to respond to your letter of February 21, 1989 in which you set forth two examples of how flower growers arrange the work in harvesting and grading flowers.

The two examples you set forth were as follows:

"Grading Room Example #1:

Flowers grown in the greenhouses or in an open field are harvested by hand crews and placed into five gallon plastic containers. The containers are taken to the grading room where graders sort the stems (flowers) by length, the tightness (opening) of the bud and the bud size. The stems are then bundled with a rubber band into 25 stems per bunch and the ends are trimmed off even. The bunches are then placed back into containers of water and stored in a refrigerator until they are prepared for shipment. As orders are received assemblers will take the bundled flowers out of the refrigerator by stem length, color and grade. They will check the bunches for uniformity and quality, replacing individual stems when needed. For the final step, before putting bunches into a box for shipment, the assembler wraps the heads (flowers) with a plastic sleeve. The plastic sleeve contains the company name and address.

Grading Room Example #2

The same process is used in this second example except the graders not only sort by size, stem length, etc., but also wrap the heads (flowers) with a plastic sleeve. The plastic sleeve contains the company name and address. The bunched flowers go into a refrigerator until they are packaged for shipment. The assemblers merely select the bunches for the order and place them in boxes for shipment."

In my view, the employees in example #1, who are called graders, should properly be classified as working under Order 13-80. My analysis is based on a comparison of the definitional provisions of Orders 13 and 14 as well as a significant concern for potential confusion in enforcement.

As you know, under Order 13-80 "Industries Preparing Agricultural Products for Market on the Farm,"

> "means any operation performed in a permanently fixed structure or establishment on the farm or on a moving packing plant on the farm for the purpose of preparing agricultural, horticultural, egg, poultry, meat, seafood, rabbit, or dairy products for market when such operations are done on the premises owned or operated by the same employer who produced the products referred to herein and includes all operations incidental thereto."

Order 14-80, dealing with agricultural occupations, permits a limited amount of "field packing" to be performed under that order pursuant to the definition set forth in Section 2(C)(4):

> "The harvesting of any agricultural or horticultural commodity, including but not limited to, picking, cutting, threshing, mowing, knocking off, field chopping, bunching, baling, balling, field packing, and placing in field containers or in the vehicle in which the commodity will be hauled, and transportation on the farm or to the place of first processing or distribution."

From the above, there is obviously a gray area involving the packing provisions of the Orders, making this a difficult issue to resolve fairly. However, contained in the Informational Guidelines on Interpretation of the IWC Orders is an attempt to further define the meaning of these provisions by industry. The Guidelines divided the following operations for the production and preparation for market of cut flowers between Orders 13 and 14. Order 14 includes:

> "Planting, growing, typing, debudding, cutting, field grading, bunching (last two operations done in fields, sun sheds, and sheds, connected with greenhouses)."

The following operations are covered under Order 13:

> "Final grading and packing for shipment, combining with any purchased plant materials in preparing for market."

In reaching the result that I mentioned above, I have tried to harmonize all of these provisions in a way that meets the intent of the IWC and does not create unnecessarily difficult enforcement problems.

Based on the language in Order 14, it seems to me that the idea of field packing is relatively narrow and its application should be confined to packing that is incidental and attendant to the harvesting of the product. In its description, the IWC permits field grading and bunching to be done in sun sheds and sheds connected with greenhouses. However, the language used is field grading or field packing, which I interpret to mean grading as part of

the harvesting process. In your example #1, in my view, it would be the harvesters who are picking the flowers that the IWC intended to allow to do field packing under Order 14-80. These harvesters may even be doing some segregating in the five-gallon cans. Once the harvesters have turned the flowers over to the graders, then it seems to me there has been a break in, or termination of, the harvesting process as contemplated by Order 14. This interpretation is buttressed by the placement of "field packing" in the definitional section of Order 14. It is placed between various actual harvesting techniques and "placing in field containers." The persons doing the grading are not directly involved in the "harvesting" process, as contemplated in Section 2(C)(4) of Order 14-80; rather, they are now grading in preparation for market which has been made a separate function and is covered by Order 13-80. Moreover, under the IWC Guidelines for Order 13-80, it would appear that the graders have, for all intents and purposes, actually done the final grading for market since the assemblers do very little except put the plastic sleeves on. I do not believe that merely replacing a stem here and there and putting on a plastic sleeve is the final grading under Order 13-80 contemplated by the IWC, thus rendering all the grading that goes before "field packing" under Order 14-80.

I mentioned above that enforcement confusion played a part in this interpretation. Assume for the moment that I interpreted the Order to mean that the grader in your example, as distinct from the harvester, could perform field grading under Order 14-80. Then, it seems to me, that to be consistent with the intent of the IWC, this grading could only be considered "field packing" under Order 14-80 if, in fact, no field grading had been done by the harvesters in the field. To implement such an interpretation would mean that in every case, DLSE enforcement personnel would have to determine whether or not any field grading or packing had been done by the harvesters before it could be determined whether or not the graders would be covered under Order 14-80 rather than 13-80.1/ Obviously, this would create a great deal of confusion and potentially inconsistent results in enforcement. Accordingly, I have decided that the IWC intended that field grading and packing should be narrowly construed and should be restricted to those people who are directly involved in the harvesting process including incidental grading attendant to, and as part of, the harvesting process performed in a sun shed or shed connected with a greenhouse.

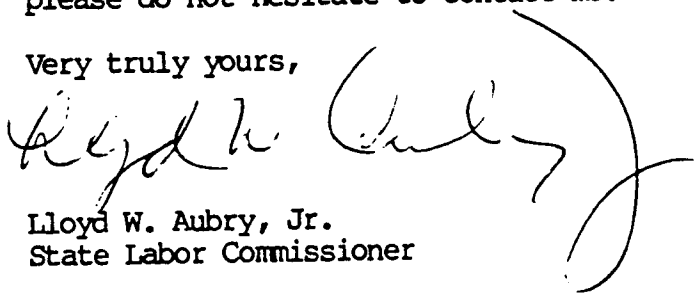
1/ Unless, of course, it is contended that field packing can be done by both harvesters and graders at the same time. However, I do not believe that the IWC intended field packing to be interpreted so broadly.

As noted above, in your example #1, the graders would be considered working under Order 13-80. The assemblers, as you stated in your letter, would also be covered by Order 13-80. Consistent with the interpretation in Example #1, the graders and assemblers in Example #2 would be considered working under Order 13-80.

As I know you are aware, there are many different fact variations in this industry. Each situation will have to be analyzed on its own merits and facts, consistent with the underlying principles set forth above. However, as you can see, seemingly minor variations in facts can lead to coverage under different Orders.

I hope this responds to your question. If you have any further questions please do not hesitate to contact me.

Very truly yours,



Lloyd W. Aubry, Jr.
State Labor Commissioner

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