

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION

455 Golden Gate Avenue, Room 3166
San Francisco, CA 94102
(415) 703-4150H. THOMAS CADELL, JR., *Chief Counsel*

May 27, 1994

Spencer H. Hipp, Esq.
Littler, Mendelson, Fastiff, Tichy
& Mathiason
1690 West Shaw Ave., Suite 201
Fresno, CA 93711-3504**Re: Farm Labor Contractor Definition**

Dear Mr. Hipp:

I have received and reviewed your letter of April 18, 1994, regarding the definition of "Farm Labor Contractor" for purposes of enforcement of the provisions of Labor Code § 1682.

In your letter you contend that the analysis of this problem by Jose Millan, Senior Deputy Labor Commissioner, in a letter to Carl Borden of the California Farm Bureau Federation, did not address what you perceive to be a "conflict of law" problem. The "conflict", as you see it, is between the provisions of Labor Code § 1140.4(c) and § 1682(b).

You have submitted a "Vineyard Management Agreement" which purports to create some sort of "independent contractor" relationship between the "owner" of the land and the individual referred to as the "manager". The agreement provides that the Manager is to furnish the labor, equipment, materials and supplies and to do and perform all acts and services reasonably necessary to farm the vineyards in a good and farmer-like manner. The Manager is to consult with the owner and keep the owner advised on a monthly basis regarding the progress of the vineyards and all significant actions taken by the Manager during the growing season.

The "Agreement" also provides that the Manager is to pay all reasonable costs for, among other things, labor, materials, supplies, and transportation. Owner is obligated to "fully reimburse Manager for all actual costs" incurred in performing his duties. In addition, Owner is to pay Manager "administrative costs and management fee" based on the number of acres managed.

You contend that as a result of this agreement the Manager would be an "agricultural employer" under the ALRA and, thus, not a farm labor contractor.

Labor Code § 1682(b) defines a farm labor contractor as anyone who, for a fee, employs workers to render personal services in connection with the production of any farm products "to, for, or under the direction" of a third person. Note that it is not necessary, under this definition, for the farm labor contractor to be under the direction of the grower. It is simply necessary that the contractor employ workers in connection with the production of any farm products for the owner or any third person.

The term "fee" is defined at subsection (c) and has a broad meaning including the difference between the amount received by a labor contractor and the amount paid out by him to persons employed to render personal services and, further, includes any amount paid in connection with the rendering of such services.

The Agreement which you submitted clearly requires the Manager to direct the activities of the workers; hire and fire the workers, and pay the wages of the workers. The agreement also requires the Owner to reimburse the Manager for the wages. The Manager acquires no ownership interest in the land or the crop, but is only involved in the planting and cultivating of the crop and the costs involved in those services (which include, of course, the costs of employing the workers).

As the California courts have taught us, the provisions of the Farm Labor Contracting Act must be liberally construed to protect the farm laborer. *Johns v. Ward* (1959) 170 Cal.App.2d 780, 786.

On the other hand, the provisions of Labor Code § 1140.4, specifically excludes farm labor contractors as an "employer" and is designed to effectuate the purposes of the Agricultural Labor Relations Act. The exclusion of farm labor contractors for purposes of the ALRA reflects a deliberate legislative choice. The creation of stable collective bargaining relationships in agriculture is hindered by shifting employment and fluidity of the work force. To classify farm labor contractors, along with farmers and farmer associations as parties to collective bargaining would augment the difficulties for purposes of the ALRA. *People v. Medrano* (1978) 78 Cal.App.3d 198, 207.

As you can see, there is no conflict between the laws because, despite the fact that the farm labor contractor may "actually hire, supervise and pay the workers, becoming their actual employer the ALRA simply excludes him from the statutory definition of employer for purposes of the Act. *People v. Medrano, supra*, at 207. Thus, while for purposes of the ALRA the individual may be found to be an "agricultural employer", they meet the definition of § 1682.

The reason for the exclusion of farm labor contractors as employers for purposes of the ALBR is to effectuate the policy underlying the Act: Effectively establishing the right to collective bargaining in the agricultural industry. This has nothing to do with the protections offered workers by the licensing and bonding of farm labor contractors.

The case you rely upon to support your position (*Michael Hat Farming v. ALRB* (1992) 4 Cal.App.4th 1037) simply upholds the ALRB's definition of an agricultural employer under the ALRA. Thus, a Manager who signed one of the Agreements you attached could be an agricultural employer for purposes of the ALRB; but such a designation would have no effect on his status as a farm labor contractor under § 1682. Indeed, were it not for the exclusion provided by § 1140.4(c) most farm labor contractors would be employers, as the *Medrano* court impliedly acknowledged.

The *Michael Hat Farming* court could have recognized that there is less threat of shifting employment and fluidity of the work force (elements which augment difficulties in collective bargaining) where the Management Agreement type of employment is involved. Thus, the rationale underlying the exception from the classification of "employer" for farm labor contractors under the ALRB would not exist.

In passing, we should also note that there is no requirement under the farm labor contractor laws in California that the farm labor contractor work for more than one employer. Therefore, the fact that your hypothetical XYZ company does not provide picking crews to other growers is irrelevant.

Your reliance on the federal Migrant & Seasonal Workers Act for guidance in interpreting the provisions of the California Farm Labor Contractors Act is seriously misplaced. The federal law was enacted in 1983 while the State of California adopted the laws defining and regulating farm labor contractors in 1951. Looking to subsequent federal law to define the terms of established state law would make little sense in our view.

We do not agree that the farm labor contractor licensing provisions are intended only to prevent abuses which arise from the fact that farm labor contractors move from location to location. We do agree, however, that the law was intended, in part, to prevent abuses which are the direct result of the fact that the farm labor contractor has "no connection to those properties other than the labor provided." We need not point out that the Manager in the fact situation you present has no interest in the land or the crop under the terms of the Agreement. We believe that this observation in your letter lends further support to the rationale for requiring that persons in the situation of "Vineyard Managers" which you describe be licensed and bonded as farm labor contractors.

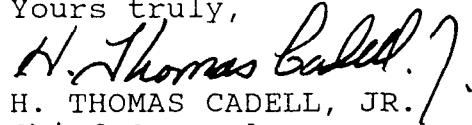
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I hope this adequately addresses the issues you raised in your letter of April 18th. I note that you inadvertently failed to provide Senior Deputy Millan or the Labor Commissioner with a copy of your letter so I am taking this opportunity to copy the interested parties.

Yours truly,



H. THOMAS CADELL, JR.
Chief Counsel

c.c. Victoria Bradshaw
Jose Millan