

Law Offices of
California
Rural Legal
Assistance
Foundation

MAIN OFFICE

2210 "K" Street, Suite 201
Sacramento, California 95816

Tel: (916) 446-7901
Fax: (916) 446-3057
Web: <http://www.crlaf.org>

Amagda Perez
Executive Director

Mark Schacht
Deputy Director

BOARD OF DIRECTORS

Ramon Arias
San Francisco

Silvia Garcia
San Diego

Manuel Magana
Palmdale

Richard Pearl
San Francisco

Alberto Saldamando
San Francisco

Rosario Vasquez
Los Angeles

PROJECT OFFICES

Delano

*Center on Race, Poverty &
the Environment*

Fresno

*Center on Race, Poverty &
the Environment*

California Rural Citizenship Campaign

Madera

California Rural Citizenship Campaign

Modesto

Rural Health Advocacy Institute

Oceanside (San Diego County)

The Border Project

Sacramento

California Rural Citizenship Campaign

Education Project

California Housing Law Project

Pesticides & Worker Safety Project

Labor & Employment Law Project

San Francisco

*Center on Race, Poverty &
the Environment*

Oakland

Labor & Civil Rights Litigation Project

Labor & Employment Law Project

Summary Version: Contact CRLAF For Full Report

FARM LABOR CONTRACTOR ABUSES IN CALIFORNIA

*A Survey Of Rural Law Offices' Recent
Cases Reveals Widespread Lawless Conduct;
Greater Accountability Of Farm Operators
That Utilize FLCs Appears Justified*

Mark S. Schacht
Deputy Director

Labor and Employment Law Project

405 14th Street, Suite 300
Oakland, CA 94612
510-835-2478, x-2

2210 "K" Street, Suite 201
Sacramento, CA 95816
916-446-7901, x-18

Email: email@markschacht.com

Sacramento, California
May 1, 2000

Table of Contents

I.	Overview & Summary of Survey Results	Page 3
II.	Cases Involving Wage & Hour Violations	Page 4
III.	Cases Involving Retaliatory Job Actions	Page 29
IV.	Cases Involving Illegal Workplace Practices	Page 41
V.	Cases Involving Other Illegal Business Practices	Page 77
VI.	Conclusions	Page 88
	A. Other Objective Indicators of Widespread FLC Violations	Page 88
	B. Farm Operators Know When Their FLCs Cannot Comply With Legal Requirements	Page 88
	C. New Legal Accountability of FLC-Employing Farm Operators Is Necessary and Warranted	Page 89
VII.	Appendix	
	A. US DOL Raisin Grape Survey Results	Page 90
	B. US DOL Region 9 Transportation Data	Page 91
	C. Los Angeles Times 4/19/00 Story on Recent California Enforcement Data	Page 92

I. Introduction & Overview of the Survey

In recent weeks, the State of California has reported that last year it imposed the lowest total fines in its history for labor violations in the agricultural industry. Grower organizations have called the results proof that “stepped up enforcement” has resulted “in greater compliance.”

CRLA Foundation, which represents farm worker clients every day all over rural California, strongly disagrees with this conclusion.

To bring out more facts about existing labor conditions, CRLA Foundation decided two weeks ago to conduct a survey of attorneys in the approximately 20 rural legal services and community-based public interest law offices that are known to represent farm workers. (These offices are located in every major production region, from the Mexican border to the Sacramento Valley.)

Unfortunately, most offices were unable to respond, given the time constraints we gave them for completing the survey: less than one week, with no advance notice. However, attorneys in 4 offices in the San Joaquin, Coachella, and Salinas valleys were able to provide short summaries of some of their recent cases involving labor law violations in farm operations utilizing farm labor contractors. These preliminary results provide important insights into the problems experienced by farm workers who work on such farms.

This CRLA Foundation White Paper reports on a total of 114 of these offices’ cases, involving more than 3,000 farm workers. The report period mainly covers the 1998 and 1999 harvest seasons, and the beginning of the 2000 season. More detail about each case can be found in separate sections of this report, which reprint the attorneys’ responses on the CRLAF report forms we provided them.

The major types of violations found by the survey are described briefly below.

Wage & Hour Violations (p. 4):

Failure to pay minimum wages; failure to pay overtime wages; payment with bad checks; failure to pay when due; illegal deductions from pay; illegal charges for tools; excessive charges for transportation; cheating on piece rates promised to be paid; failure to provide itemized paystubs; failure to pay final payroll; and failure to pay at all.

Retaliatory Job Actions (p. 29):

Firings for: complaining about being sprayed by pesticides; questioning work assignments based on a medical condition; requesting work breaks; requesting an increase in salary; requesting pay for periods where workers were required to remain on call; reporting serious workplace injuries; refusing to use a short-handled hoe; refusing to enter a field recently sprayed with pesticides;

filing workers' compensation claims; and complaining about dirty field toilet facilities. Workers were also denied the right to return to a job because of: taking pregnancy leave; and taking family medical leave.

Illegal Workplace Practices (p. 41):

Forcing workers to labor with driverless tractors in the fields, sometimes resulting in death; failure to provide toilets, handwashing facilities and drinking water and cups; illegally exposing workers to toxic pesticide spray; use of unsafe farm vehicles for transportation of workers in the fields; and forcing workers to use illegal short-handled hoes.

Other Illegal Business Practices (p. 77):

Use of child labor; sexual harassment; refusing to allow workers to seek medical care after the whole crew has been exposed to toxic pesticides; firing workers after workplace injuries and refusing to pay medical bills; making false promises of high wages during interstate and international recruitment; operating without proper FLC and/or drivers' licenses; use of "false front" family members to avoid liability and loss of licenses; furnishing 'replacement workers' willing to work for lower wages and benefits; and fraudulent filing of bankruptcy to avoid payment of workers' claims.

II. CASES INVOLVING WAGE AND HOUR VIOLATIONS

The survey reported, from a partial list of cases in just four offices, at least 30 cases of minimum wage violations, involving more than 570 workers. This contrasts sharply with the State of California's finding of 28 cases of minimum wage violations during 1998 and 1999 in the entire state. (Source: 4/19/00 LA Times article reproduced in the Appendix at p. 92.)

The survey also reported 28 cases of other kinds of wage-related abuses, involving 1,261 farm workers.

The actual survey forms returned by the attorneys involved in these cases are reprinted on the pages below.

Note: in the interest of keeping this report below 100 pages in total length, a number of cases have been summarized at the end of this and other sections. Persons interested in receiving the full report should contact CRLA Foundation; please expect to pay \$15 per copy of the report, to defray printing, mailing and costs of handling.

III. CASES INVOLVING RETALIATORY JOB ACTION (INCLUDING DISCRIMINATION)

California's key 18 crop production counties have had double-digit unemployment (or even higher) for much of the last decade.

Farm workers know well that intense competition for jobs leaves every worker vulnerable, and that to complain puts you at special risk of immediate discharge either as retaliation for daring to assert your rights and/or to make an example of you to other workers.

The cases reported in this section demonstrate the exercise of unchecked and arbitrary power by farm labor contractors to instantly replace any worker, for any reason. Indeed, the evidence shows that they exercise this power frequently, and often because workers complain about poor work conditions or seek benefits that many other Californians take for granted.

The survey responses document at least 10 separate cases of discrimination, retaliation or refusal to rehire involving more than 80 workers.

The actual survey forms returned by the attorneys involved in these cases are reprinted on the pages below.

IV. CASES INVOLVING ILLEGAL WORKPLACE PRACTICES

Agriculture is one of the most dangerous occupations in California, and the survey reported at least 14 cases of forced use of driverless tractors, involving 395 workers; at least 12 cases of forced use of short-handled hoes, involving 240 workers; at least 4 cases involving pesticide exposure, affecting 31 workers; and at least 16 cases of failure to provide toilets, and/or drinking water, and/or hand washing facilities, involving 654 workers.

Background on Illegal Use of Driverless Tractors

In recent years, large numbers of California farm workers have been run over, seriously injured, or killed by “driverless” tractors, and CAL-OSHA has made it clear that the practice is illegal. Nonetheless, growers and FLCs have been saving money on crew costs by utilizing a driverless tractor to pull trailers in the fields during various harvests. The tractor “runs” in deep field furrows, and generally at a slow enough rate for workers picking along side it to place produce into crates or boxes on a trailer or platform towed by the tractor.

While the hazard to a worker attempting to leave or mount a tractor immediately in front of a large, cleated revolving tire appears obvious, experts recognize numerous additional risks including the possibility of slipping on mud, debris or crop residue on the platform, the lack of sure footing on the ground, and the hazards from trailing towed, mounted or semi-mounted equipment (where workers performing harvesting or packing tasks between or on top of towed equipment are also at high risk of injury).

Background on Illegal Use of Short-handled Tools

25 years ago, the California Supreme Court issued its landmark ruling in Carmona v. Division of Industrial Safety, 13 C.3d 303, 118 Cal.Rptr. 473 (1975) that led to the banning of short handled tools for weeding and thinning agricultural crops in the state of California. The Court relied on uncontroverted medical testimony that the use of such short handled tools for weeding and thinning resulted in irreparable back injury and permanent disability.

Short-handled tools are designed in such a way that they can only be used by workers engaged in weeding in a stooped, bent-over posture. Using such tools to weed and thin crops causes “great physical agony and considerable disability.” (Carmona, at 13 Cal.3d 303, 307.) Used over a substantial period of time, short handled tools “cause abnormal degeneration of the spine, resulting in irreparable back injury and permanent disability.” The resulting aging of the spine accelerates the arrival of the point where a person can no longer work because of pain.

Background on Illegal Field Sanitation Practices

Violations of the field sanitation standards (codified at 8 Cal.Code Regs. Section 3457) through

the failure to provide potable drinking water, toilets, hand washing facilities with potable wash water, or in situations where these items are unusable or inaccessible, are classed as serious violations by the California Division of Occupational Safety & Health. (Division of Occupational Safety and Health/Policy & Procedure Manual C-46, "Field Sanitation and Agricultural Safety and Health", April 28, 1993 revision at p. 4.)

These violations are deemed serious because there is a substantial probability that serious physical harm will occur, e.g., skin infection, urinary tract infection, dehydration, or heat stress.

Furthermore, the California Legislature has made violations of these requirements misdemeanors because it recognized that significant health problems are caused by an absence of field sanitation facilities, including: the creation of unsanitary conditions in the fields, including increased risk of bacterial infections; heat stroke; dehydration; urinary tract infection; immediately-infective communicable diseases; and agrichemical-related illnesses.

The actual survey forms returned by the attorneys involved in these cases are reprinted on the pages below.

Note: in the interest of keeping this report below 100 pages in total length, a number of these types of cases have been summarized at the end of this section.

V. CASES INVOLVING OTHER ILLEGAL BUSINESS PRACTICES

In this section of the report, there are summaries of 10 separate cases involving the following types of illegal business practice: use of child labor; sexual harassment; firing workers after workplace injuries and refusing to pay medical bills; making false promises of high wages during interstate and international recruitment; furnishing ‘replacement workers’ willing to accept lower wages and working conditions; excessively dilatory payment of final wages (designed to discourage workers from collection of substantial amounts of money); and fraudulent filing of bankruptcy to avoid payment of workers’ wage claims.

The actual survey forms returned by the attorneys involved in these cases are reprinted on the pages below.

VI. CONCLUSIONS

In agriculture, the labor contractor system has been regulated at the state level since 1951, and at the federal level since 1963 (where, in 1983, a form of joint "employer," "transporter," and "houser" liability was created as a reform measure).

In addition to the evidence provided in this report, other recent enforcement data support the conclusion that the labor contractor system cannot be adequately policed to prevent widespread lawless conduct, and that a new approach to grower accountability is warranted.

A. OTHER OBJECTIVE INDICATORS OF WIDESPREAD FLC VIOLATIONS

1. US DOL's Recent Enforcement Activity in the California Raisin/Grape Harvest Found More Than 50% of FLCs, and About 20% of Growers, Violating Federal Minimum Wage Requirements To Pay \$5.15 Per Hour

In September 1998, the United States Department of Labor released information regarding enforcement activities in the California Grape Industry. US DOL state that:

- minimum wage violations were found in 12 of 23 of the farm labor contractors investigated (over half of the cases); and
- minimum wage violations were found in 14 of the 66 grower investigations (about 20 percent of cases). (Source: see US DOL Summary in the Appendix, at page 90.)

What is not evident from these findings is that during one of the two months US DOL conducted its compliance activities, the state minimum wage was \$5.75 per hour!

2. US DOL Reports, in April 2000, That Over 96% of Farm Labor Contractors in Region 9 Are Not Authorized to Transport

Nearly 40 years after the first enactment of federal farm labor contractor requirements, and nearly 20 years after sweeping reforms, US DOL reports that over 96% of farm labor contractors in this region register without seeking a transportation authorized ("TA") endorsement (which requires a showing of compliance with federal transportation standards). (Source: Current enforcement statistics in US DOL Region 9 (CA, NV, AZ and HI). See text of the Email from US DOL to CRLAF in the Appendix, at page 91.)

What is shocking about this fact, is that state and federal authorities (e.g., CHP, DLSE, and US DOL) know that thousands of contractor vans are transporting workers every day in California.

B. FARM OPERATORS HAVE ACTUAL KNOWLEDGE THAT THE RATES THEY PAY THEIR CONTRACTORS DO NOT ALLOW FOR FULL COMPLIANCE WITH APPLICABLE STATE AND FEDERAL LAWS

Although growers purport to be unaware of the abuses perpetrated by FLCs in their farming

operations, at least two recent studies significantly undercut these claims.

A recent University of California survey of the Salinas Valley revealed that two-thirds of the growers using contractors were paying contractor fees so low that workers and the government could not be receiving contributions to mandatory benefits such as social security, workers' compensation or unemployment insurance --unless, that is, the workers were being paid substantially less than the minimum wage or the contractors were independently wealthy and in the business for the purpose of losing money. (Source: "Growers' Decisions to Hire Farm Labor Contractors and Custom Harvesters," Suzanne Vaupel, Cooperative Extension, University of California, Division of Agriculture and Natural Resources.)

An even more recent survey of the raisin-grape harvest in central California, completed by the state's Employment Development Department, showed that about one half of the growers were also paying contractors commissions too low to permit compliance with minimum wage and other legally-required obligations. (Source: "The Labor Market in the Central Raisin Industry: Five Years After IRCA," EDD, No. 92-4.)

C. NEW LEGAL ACCOUNTABILITY OF FLC-EMPLOYING FARM OPERATORS IS WARRANTED AND NECESSARY

Under current state and federal laws some degree of joint or direct employer liability exists in many current Grower/FLC relationships, either under traditional common law or statutory theories. However, every one of those relationships must be litigated to establish that liability.

Growers know that the outcome of such litigation is uncertain, costly to farm worker plaintiffs, and, in any event likely to take years, and huge amounts of plaintiff resources, to finally resolve. Consequently, such growers have no fear of being held accountable for FLC violations on their property connected with harvest of their crops, unlike growers who directly hire their workers (and who know and accept their liability).

This report urges the State Legislature to enact legislation that will eliminate these legal uncertainties in order to encourage such growers to exercise greater care and supervision of the FLCs they hire or utilize in their farm operations.