Wage & Hour & Public Contracts Divisions
Washington, D.C. 20210

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April 8, 1970

An opinion has been issued by the Administrator of the Wage and Hour Division in response to a question whether certain firms engaged in providing citrus grove services for individual grove owners are "farmers" within the meaning of section 3(f) of the Fair Labor Standards Act:

Section 3(f) of the Fair Labor Standards Act, which defines agriculture, distinguishes its primary from its secondary aspects. Included in the definition of primary agriculture is farming in all its branches and the cultivation, growing and harvesting of any agricultural commodities. Included in the definition of the secondary aspects of agriculture are "any practices . . . performed by a farmer or on a farm as an incident to or in conjunction with such farming operations." I am advised that it is settled law in the Fifth Circuit that exemptions provided in the Act for employment in agriculture do not apply to employees engaged in such practices incident to farming operations unless the work is performed by a farmer or on a farm. Boyls v. Wirtz, 352 F. 2d 63 (C.A. 5); Wirtz v. Osceola Farms, 372 F. 2d 584 (C.A. 5).

Most employees of firms which provide grove care services are engaged in performing such tasks as cultivating, fertilizing, pruning, and spraying, and are engaged in primary agriculture within the meaning of section 3(f). I am informed that a specific question was raised by representatives of these firms in a recent meeting with the Solicitor of Labor as to whether an employee performing such services would be considered as employed in agriculture even though, because of equipment failure or inclement weather, he spends a portion of his workweek on or off the farm in repairing, lubricating, cleaning, or otherwise servicing the equipment he is using in the groves. In my opinion, such employment would be within the overtime exemption provided by section 13(b)(12) and possibly within the minimum wage and overtime exemption under section 13(a)(6) depending on the facts. As you know, when employees employed in agriculture do not qualify for section 13(a)(6), the $1.30 minimum rate is applicable. The foregoing would obtain whether or not the grove care firm itself would qualify as a farmer.

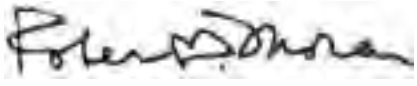
I am further informed that representatives of the grove care firms also expressed to the Solicitor their desire that the Department consider employees who are employed full time in the servicing and repair of the grove care equipment used in the tasks mentioned above to be employed in agriculture and eligible for the relevant exemptions. Such work when performed by employees who are not themselves engaged in the agricultural tasks performed with the equipment is, however, not "primary"

agriculture as defined in section 3(f) but comes rather within the "secondary" meaning as a practice performed "as an incident to or in conjunction with" farming operations. So long as the work of these employees is performed on the farms where the equipment is being used in primary agricultural operations, they are employed in agriculture within the meaning of section 3(f) because the work is done "on a farm" and is, as the Supreme Court stated in Maneja v. Waialua, 349 U.S. 254, "a subordinate and necessary task incident to its agricultural operations." However, where the repair and servicing work is not performed on a farm, but rather at a central repair shop by shop employees, the work is not within the definition of agriculture unless the employer is a "farmer." Thus, employers performing some agricultural operations on farms under contract with the farm owners have been held not entitled to apply the exemptions for employment in agriculture to their off-the-farm employees engaged in servicing the equipment with which operations on the farms are performed. See the Boyls and Osceola decisions cited above, and Goldberg v. Azucarera Co-op (D.P.R. 1961), 15 WH cases 166.

The Act does not define the term "farmer" and a determination of such a status must be made on the basis of all the facts in a particular case. The general rules followed by this office in making such determinations are set forth in 29 CFR 780.139 - 780.141. In brief, we have held that the term is an occupational title and that an employer must be engaged in activities characteristic of those pursued by persons ordinarily regarded as farmers in order to qualify for the exemption. The fact that it may perform "some of the functions of a farmer" does not justify its classification as a "farmer" where its "occupation may be more accurately described as property management." Baxter v. Savings Bank, 92 F. 2d 404 (C.A. 5). This principle is clearly applicable in both Boyls and Osceola because in the first of these cases aerial dusting with insecticides was the only farming operation performed and in the second, the employer's operation was limited to harvesting the crop. Here, however, the facts presented indicate that the grove care situation is significantly different. The grove owners have entered into agreements with the grove care contractors under which, in most instances, the latter have assumed exclusive responsibility for performing all the farming operations required in producing a crop of fruit from the owners' groves. Under these agreements, the grove care firm generally performs all operations ordinarily performed by farmers engaged in fruit farming up to the point when the crop is ready for harvest, and does so in essentially the same manner and to the same extent that an owner-farmer would do in his fruit-farming operations. The fact that the grove care firm does not harvest the fruit is, in Florida fruit-growing, of little significance on the question of status as a farmer in view of the wide-spread practice of fruit farmers to

sell their fruit on the trees and leave the harvesting to the purchaser. For these reasons, this office will look upon these grove care contractors who perform all the farming functions except the harvest as farmers within the meaning of section 3(f) of the Act and will consider their employees whose work is incidental to or in conjunction with their farming operations as exempt whether that work is performed on or off the farm.

Sincerely,



Robert D. Moran
Administrator