

(Gen.) FLCRA  
U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
Wage and Hour Division  
WASHINGTON, D.C. 20210



OCT 14 1977

This is in response to your letter of August 23, 1977 concerning the registration status under the Farm Labor Contractor Registration Act (FLCRA) of school teachers who recruit students to work for the ██████████ Association, Windsor, Connecticut during school vacation. The teachers organize the group of students, travel with them to the jobsite, and live with them in the labor camps in Connecticut and Massachusetts. These students are from out of state.

It is our understanding, from information you have provided in a conversation with a member of my staff, that the students are paid in conformance with applicable minimum wage standards and further, that the teachers are paid a weekly salary for performance of their duties, which include recruiting, hiring, furnishing and transporting students for agricultural employment.

You question whether the teachers, who are permanent employees of their local school board systems, are farm labor contractors within the meaning of the Act. Sections 40.2(b)(1) and (3) of Regulation 29 CFR Part 40 are cited in support of your contention the teacher-recruiters should be exempt from the registration requirement.

Section 3(b) of the FLCRA defines a farm labor contractor as "any person, who, for a fee, either for himself or on behalf of another person, recruits, solicits, hires, furnishes, or transports migrant workers (excluding members of the contractor's immediate family) for agricultural employment".

Section 40.2(b)(1) of the Regulation is aligned with FLCRA Section 3(b)(1), which excludes from the term "farm labor contractor" any nonprofit charitable organization, public or nonprofit private educational institution, or similar organization.

Based upon the facts provided the teachers recruit students "with the encouragement of their school principals", but such recruitment is on behalf of the Association. While engaged in such activity, therefore, the teachers are employed by the Association and its members and are not engaged in the farm labor contracting activity for a public or

2

nonprofit educational institution. The test, then, is whether the Association qualifies for the Section 3(b)(1) exemption. In other words, the Association itself must be a nonprofit charitable or similar organization. The facts provided do not support such a determination.

Section 3(b)(3) of the FLCRA (40.2(b)(3) of the Regulation) excludes any full-time or regular employee of "any entity referred to in paragraph 3(b)(1) . . . who engages in farm labor contracting activities solely for his employer on no more than an incidental basis". Thus, a determination as to the applicability of the 3(b)(3) exemption with regard to the teacher-recruiters must be governed by the registration status of the Association.

Even if the Association could claim the Section 3(b)(1) exemption, the teachers in question are not automatically entitled to the exemption under Section 3(b)(3). There are four tests which must be met: the person must be (1) an employee of a person referred to in Section 3(b)(1); (2) be a full-time or regular employee of such person; (3) engage in the covered farm labor contracting activities referred to in Section 3(b) solely for that employer and (4) participate in such activities on no more than an incidental basis. Since the teachers are full-time (permanent) tenured employees of their local school systems except while engaged in short-term recruitment for the Association and its members, they fail the second test and thereby lose the exemption. In addition, it is not clear whether the teachers are employees of a person referred to in Sections 3(b)(1) and 3(b)(2). Under those circumstances, a discussion on the ramifications of "incidental basis" is not relevant.

I hope this information will be helpful to you. Please let me know if we can be of further assistance.

Sincerely,

Warren D. Landis  
Deputy Administrator

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(2)