AGRICULTURAL EMPLOYMENT LAW AND POLICY

A Study of the Impact of Modern Social and Labor Relations Legislation on Agricultural Employment

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REGULATION OF FARM LABOR CONTRACTORS

Certain farmers and growers have regularly experienced difficulty in obtaining a sufficient supply of local seasonal agricultural labor.1/ This resulted, some time ago, in the emergence of a middleman, the farm labor contractor, as an important supplier of temporary farmworkers.2/ The traditional contractor recruits at distant points, hires, and transports a crew of workers to a farm pursuant to a contract with the farmer.3/ Often the farm labor contractor, often called "crew leader," supervises the work of the crew and acts as paymaster.4/ In some instances, the contractor controls housing and other of the workers' everyday needs.5/

Through the years the migrant community and farm operators have been plagued by certain farm labor contractors who have abused the power which came with the leverage their position afforded. It has been reported that in many instances the contractor "exaggerates conditions of employment when recruiting workers in their home base or fails to inform them of their working conditions at all; transports them in unsafe, vehicles; fails to furnish promised housing, or else furnishes substandard and unsanitary housing; operates a company store while making unitemized deductions from worker's paychecks for purchases; and pays the workers in cash without records of units worked or taxes withheld."7/ For example, in one case it was alleged that a contractors recruited a family in Texas for work in Wisconsin and failed to provide that work when the people arrived. Further, the contractor, in recruiting, allegedly failed to reveal a starting date, the duration of employment, transportation arrangements, insurance benefits, wage rates, the existence of a recruiting charge, and other conditions of employment. Promised housing was not provided.8/ Other reported cases reveal similar distressing stories.9/

Farm owners have also had their difficulties. It is reported that "the contractor would agree to arrive with a crew on a designated date, simply fail to show up because better opportunities presented themselves elsewhere. This would leave the farmer with no help to harvest his ripening crop. More common is the practice of leaving after the first picking when the second and third pickings became more difficult and consequently less profitable."10/

Historical Development

The 88th Congress, recognizing a need for federal legislation to regulate the activities of farm labor contractors operating on an interstate basis, passed the Farm Labor Contractor Registration Act.11/ (Hereinafter the 1963 Act.) The purpose of the 1963 Act was to afford protection to "migrant workers" from unscrupulous contractors.12/ Farm employers were also expected to derive benefit from the legislation. While a few states, including Colorado,13/ California,14/ Oregon, 15/ Washington,16/ and New York,17/ had previously passed regulatory measures, federal intervention appeared to be an absolute necessity.

The 1963 Act included a very broad definition of "migrant workers," one that encompassed many workers who did not travel in the traditional migrant streams. This was accomplished by classifying as "migrant workers" those whose primary employment was in agriculture as defined in the Fair Labor Standards Act, and those who on a seasonal or other basis performed agricultural labor as defined in the Social Security Act.18/ The full implications of this broad definition, which has survived several amendments to the 1963 Act and which includes many local day-haul workers who return to their homes each night, will be discussed later.

The 1963 Act required that any person, who, for a "fee," recruited, solicited, or transported 10 or more "migrant workers" for interstate agricultural employment first obtain a certificate of registration from the Secretary of Labor.19/ The applicant was required to file a sworn statement as to the manner in which he operated his business,20/ provide satisfactory evidence of financial responsibility,21/ and provide a set of fingerprints.22/ Upon receipt of the registration certificate, the contractor was required to display it to those with whom he intended to deal.23/ Further, he was

required to inform each worker of the area of employment, the nature of the work, transportation, housing, and insurance arrangements, wage rates to be paid, and the charges to be assessed by the contractor for his services.24/ Then, upon arrival at the place of employment, he was required to post the terms and conditions of employment as well as those for occupancy if he controlled housing.25/ Finally, he was required to maintain payroll records showing deductions and to provide workers with itemized statements.26/

The 1963 Act indicated circumstances under which the secretary could deny, suspend, or revoke registration. These included making false statements in the application for registration; misleading potential workers with respect to terms, conditions, or existence of work; breach of contract with the users of farm labor; breach of contract with the laborers; lack of financial responsibility; conviction of certain felonies; the recruitment of aliens illegally in the United States; failure to comply with Interstate Commerce Commission laws and regulations; and noncompliance with the 1963 Act or the regulations thereunder.27/ The purpose was to render certain abusive practices unlawful. In addition to risking revocation of registration, a contractor who was convicted of a violation of the 1963 Act or a regulation promulgated pursuant thereto could be fined up to $500.28/

Unfortunately, the 1963 Act had almost no impact. Noncompliance was the rule rather than the exception.29/ The U.S. Department of Labor (DOL) reported that of an estimated 6,000 crew leaders operating across state lines, fewer than 2,000 were registered.30/ In 1974, it was reported that since the inception of the 1963 Act only four persons had been referred to the Department of Justice for criminal proceedings and only one person had been convicted and sentenced.31/ It became apparent that further legislation would be required.

Several bills were introduced into the Senate and the House in early 1974 and after extensive legislative maneuvering the Senate on October 16, 1974, passed H.R. 13342 and sent it to the president.32/ On October 29, 1974, President Gerald Ford vetoed the bill.33/ While he noted the deficiencies of the 1963 Act and supported the effort to amend it, he expressed opposition to certain ramifications of an attached rider amending the Longshoreman and Harbor Workers Act.34/

Thereafter, Congress considered redrafted legislation which excluded the Longshoreman and Harbor Workers Act rider, but which dealt even more strictly with farm labor contractors. In late Novemer 1974, a bill passed both Houses and on December 7, 1974, the president signed into law the Farm Labor Contractor Registration Act Amendments of 1974.35/ Additional amendments were added in 1976 and 1978, in each instance altering the definition of farm labor contractor.36/ (Hereinafter the 1963 Act as amended through the 95th Congress will be referred to as FLCRA.)

Current Status of the Law

The current version of FLCRA continues to define "migrant worker" very generally as in the 1963 Act. Thus, day-haul workers who return to their homes after work each day may in certain instances be "migrant workers" protected by FLCRA. A "farm labor contractor" continues to be defined as "any person, who, for a fee, whether for himself or on behalf of another person, recruits, solicits, hires, furnishes, or transports migrant workers (excluding members of his immediate family) for agricultural employment."37/ Important exemptions from the definition are discussed later. Note that the current version of FLCRA no longer requires that there be 10 or more migrant workers involved for the crew leader to be a contractor under the statute. This opens up the possibility that the recruiting of one worker, under certain circumstances, can cause the recruiter to be classed as a "farm labor contractor" under FLCRA.

A number of specific exemptions from FLCRA eliminate certain persons from the "farm labor contractor" category and thus from the statutory requirements. A brief review of the exemptions is important because of the current controversy surrounding them.

The first exemption extends to nonprofit charitable organizations and to certain educational institutions.38/ It has been urged that this exclusion should be read to extend to agricultural cooperatives, but the courts have generally refused to so interpret the statute.39/

The second exemption extends to farmers who "personally" engage in recruiting and related activities solely for the purpose of supplying workers for their own operations.40/ The term "personally" was added by the 1974 Amendments and this has been interpreted to mean that agents and employees do not qualify under this particular exclusion. Further, farm corporations arguably cannot do anything "personally" since they must act through agents and employees. This has created confusion since there is a view that at a minimum family farm corporations ought to be exempt when the "farmer" recruits solely for

its own purposes. It has been argued that Congress in the 1974 Amendments was clearly attempting to eliminate any suggestion of an exemption for large agribusiness corporations.41/

The third exemption extends to full-time or regular employees of entities referred to in the first two exclusions, with the 1974 Amendments adding "who (employee) engages in such activity solely for his employer on no more than an incidental basis."42/ As might be suspected, the phrase "on no more than an incidental basis" has been one that has created problems of interpretation resulting in litigation. Also, the courts have been called upon to determine when one is an employee as opposed to being an independent contractor. In Usery v. Golden Gem Growers, Inc.,43/ an individual drew a salary and fringe benefits from the farmer employer, but was also in charge of recruiting crews for field work. In that connection he was compensated on a percentage basis for each box picked by the crew. The individual supervised the crew and constituted the liaison between the farmer and the workers. The court held that this individual was really functioning as an independent contractor and as a farm labor contractor. Thus, he could not qualify for the exemption and should have been registered.

The fourth exemption, added by the 1974 Amendments, made intrastate (as well as interstate) recruiting and related activities subject to regulation and then exempted intrastate activity carried on solely within a 25-mile radius of the permanent residence of the recruiter and for no more than 13 weeks a year.44/ Thus, in theory, a farmer who recruits a crew or a single worker for his own use and then, for a "fee" transports the worker(s) 26 miles to a neighboring farm would be required to register and comply in all respects with FLCRA. Note that the "fee" does not have to be a profit, but can constitute nothing more than a recovery of expenses.45/

The fifth exemption has to do with activity related to obtaining certain legal aliens.46/

The sixth exemption covers any full-time or regular employee of a person who is registered under FLCRA.47/

The seventh exemption removes from the category of farm labor contractors under FLCRA, common carriers and certain of their employees.48/

The eighth exemption prevents the extension of the registration scheme to custom combine, hay harvesting and sheep shearing operations.49/

The ninth exemption applies to certain poultry operations where the employees are not away from their domicile other than during working hours.50/

The tenth and final exemption, resulting from considerable pressure from the seed industry,51/ prevents the application of FLCRA to recruitment and related activities aimed at obtaining full-time students and other persons, whose principal occupation is not farm work, to detassel and rogue hybrid seed corn and sorghum. The exemption also appears to operate when the recruiting is for "other incidental farmwork for a period not to exceed four weeks in any calendar year."52/ The employment must be of a sort that does not require the workers to be away from their permanent place of residence overnight. There is also a proviso that nullifies the exemption if the contractor uses persons under age 18 to operate his vehicles to provide transportation to workers. The exemption presents the interesting question as to whether "incidental" is intended to refer to work that is incidental to detasseling and rogueing operations only, or whether it stands separately and means incidental farmwork of any description.

If one engages in recruiting or related activities with respect to "migrant workers" and none of the exemptions apply, such person must register under FLCRA and comply with its terms. FLCRA's registration requirements, obligations, and prohibitions have been elaborated on in regulations promulgated by the Secretary of Labor pursuant to statutory authorization.53/ Revised regulations, issued on June 29, 1976, include current procedural and substantive requirements.

A registrant must designate the secretary as his agent to accept service of process,54/ must demonstrate financial responsibility or produce insurance meeting stated requirements,55/ must submit proof that vehicles meet stated safety requirements,56/ must demonstrate that housing, if it is to be furnished, meets specific standards,57/ must provide a full set of fingerprints,58/ and meet certain other requirements. A farm labor contractor who is required to register must provide the secretary with any change of address within 10 days, change in status of motor vehicles, change in housing facility arrangements and other matters.59/

In addition to the disclosures required under the 1963 version of the act, the contractor must

disclose to workers the period of employment, the existence of a strike or other labor dispute, and any commission arrangement that exists with retailers or others who may sell goods to workers.60/ These disclosures must be made to the workers in a language in which they are fluent and must be given in advance of their traveling to the job site.61/ These requirements provide the heart of the protection to workers under FLCRA.

While the causes for revocation of registration are substantially the same as in the 1963 Act, contractors who violate FLCRA may now (1) be subject to a civil penalty of not more than $1,000 for each violation,62/ (2) lose the facilities and services available under the Wagner-Peyser Act,63/ (3) suffer revocation or suspension of registration,64/ and (4) be subjected to criminal prosecution for willful violations.65/ First conviction may bring a fine of up to $500 or a prison term of not more than one year, or both.66/ Conviction for a subsequent violation may be punished by a fine not to exceed $10,000 or a prison term not to exceed three years, or both.67/

If a farmer employer or the farm labor contractor discharges a "migrant worker" in retaliation for asserting rights under FLCRA, the U.S. District Court is authorized to reinstate the worker with back pay or damages.68/ While the burden of proof of retailiatory motive is on the worker, he has the resources of the DOL behind him, as the secretary, after appropriate investigation, is required to bring the action.69/ In Flores v. Fulwood Farms of Florida, Inc.,70/ a preliminary injunction against eviction from company housing and termination of gas and electric service was granted where it appeared that these acts were being threatened in retaliation for asserting complaints under FLCRA.71/

Under the 1974 Amendments, a farmer who uses a farm labor contractor must determine if the contractor possesses a registration in full force.72/ If a farmer knowingly employs the services of an unregistered contractor, the Secretary of Labor has the power to deny the facilities and services provided under the Wagner-Peyser Act for a period of three years.73/ The farmer may also be subjected to a civil penalty of not more than $1,000 per violation, whether it occurred knowingly or not.74/

Also under the 1974 Amendments, both farm labor contractor and farm employer must keep copies of all payroll records required to be maintained under federal law.75/ Even if the contractor is handling the payroll, as is often the case, the farm employer is clearly required to obtain copies of all records and information which the contractor must accumulate together with copies of information the contractor must give to the "migrant workers." The statute requires the contractor to give a detailed account of earnings and deductions when acting as paymaster.76/

The possibility of a farmworker, damaged by a violation of FLCRA, obtaining money damages in a civil action has been a matter of some interest since Congress first moved to regulate this area in 1963. Under the 1963 Act, there was no express provision creating a right to bring such an action. Some argued that one who violated the statute, be he farmer, registered farm labor contractor, or unregistered farm labor contractor, ought to be susceptible to an action on the theory that there is sufficient congressional intent manifested to allow the courts to hold that there is an implied federal cause of action. The 10th Circuit, however, refused to recognize such a cause of action under the 1963 version of the Act. The court stated in Chavez v. Freshpict Foods, Inc.:

> This court will not fashion civil remedies from federal regulatory statutes except where a compelling federal interest of a governmental nature exists or where the intent of Congress to create private rights can be found in the statute or in its legislative history.77/

The 1974 Amendments specifically created a private right of action for any person aggrieved by an intentional violation of FLCRA.78/ Federal jurisdictional amounts and diversity of citizenship are not required nor is there any necessity for exhausting administrative remedies.79/ Given the wording of the statute, there would seem to be no reason why farmers, registered contractors, and unregistered contractors are not all potential defendants. The 1974 Amendments, however, apparently eliminated any possibility of an implied civil cause of action for negligent violation of the FLCRA.

The statute provides that the court may award "damages up to and including an amount equal to the amount of actual damages, or $500 for each violation, or other equitable relief."80/ Is the $500 a "cap" on the amount that can be recovered? Courts that have had occasion to address the question do not see any limit in spite of certain legislative history that suggests the contrary. In Aranda v. Pena,81/ the court indicated that the $500 is available as an alternate liquidated damages figure and in no way limits the possible recovery for actual damages. It is not reasonable to anticipate any disagreement with the analysis in Aranda.

Enforcement

The 1974 Amendments added significant civil and criminal penalties for violations.82/ On paper, at least, FLCRA was given teeth. However, its effectiveness continues to be hampered by certain vagaries in the statute itself, and by the level of enforcement efforts. Under the 1974 Amendments, which took effect on December 7, 1974, the Secretary of Labor is required to monitor and investigate farm labor contractor violations and to make an annual report to the Congress.83/ Available data, some through fiscal 1977 and some through calendar 1977, indicate increased enforcement efforts.

The DOL indicates that, as of November 1975, enforcement efforts remained at about the same level as prior to the 1974 Amendments.84/ Prior to 1974, the act had been administered by the Manpower Administration of the DOL, which placed five professional investigators in three migrant streams each year to search out violations in an undercover method.85/ This practice was discontinued in 1972,86/ when the responsibility for enforcement was given to the Bureau of Employment Standards.87/ At the close of 1975, it appeared that the professional staff vested with the duty of supervising the enforcement of the act had been reduced to two individuals located in Washington, D.C.88/ However, it was indicated that steps were being taken to train approximately 1,000 investigator-compliance officers of the Wage and Hour Division of the Bureau of Employment Standards to investigate farm labor contractor matters, along with their other duties.89/

Impatience with the administration of the amended act is manifested in the 1976 litigation in Guerrero v. Garza,90/ a classic case of workers who had been recruited in Texas by an unregistered contractor and who had come to Wisconsin expecting housing and work. Neither was available. Action was taken against the Secretary of Labor and others seeking injunctive and declaratory relief. It was asserted that the secretary had failed to carry out his duties under the amended act. In particular. that he had failed to monitor and investigate on his own initiative the activities of the Garzas and other contractors; had failed to apply sanctions to the Garzas and others; and had failed to act with sufficient speed in processing plaintiff's complaint against the Garzas. The court held that as to the first two allegations, the plaintiff had standing to pursue them. However, it was held that the plaintiffs did not have standing to challenge the federal defendants' failure to investigate the complaint more promptly. Running through the case is the suggestion that the federal practice had been to investigate only when complaints had been filed. In other words, routine monitoring and investigating had not been a part of the enforcement practice.

The 1978 hearings on various proposed amendments revealed that enforcement activity was up considerably and that for fiscal 1977 almost 87 percent of the investigations were directed investigations, rather than follow-ups on complaints.91/ For fiscal 1977, there were more than 2,320 investigations, including 1,260 farm labor contractors, 390 employees of such contractors, and more than 670 users of contractor services.92/ For calendar year 1977, the first period during which civil penalties were assessed, the penalties totaled $627,135 and involved 698 investigations.93/

The number of registrations had also climbed sharply by the end of calendar 1977. From the preamendment period when about 2,000 contractors were registered, the total rose to 9,707 for calendar 1976 and to 12,506 for calendar 1977. The latter figure includes 8,212 farm labor contractors and 4,294 full-time or regular employees.94/ About 500,000 agricultural workers were members of registered crews in calendar 1977.95/

Also, during 1977 the secretary issued final orders in 90 administrative actions involving revocations, refusals to issue or renew, and suspension of registration certificates.96/

While these improvements are noteworthy, one witness, representing farm labor interests, testified in 1978 that it was his view that the DOL and the Employment Standards Administration still treats the amended act like "a poor cousin."97/ The witness continued by asserting that even though the level of enforcement has risen somewhat "the Department still gives FLCRA almost no attention."98/ While the enforcement manpower is doubtless much less than desired, it is not really fair to say that the amended act is getting "almost no attention." As Donald Elisburg, assistant secretary of labor, testified in the same hearings:

> We have approximately budgeted positions in staff years for this law under the current fiscal year, approximately 37 1/2 staff years, but that is divided among our entire investigative working force and around the country. For example, we expect to have the equivalent of 30.1 full-time staff years of investigation time during this fiscal year 1978, but that is spread among many of our 1,100 compliance officers. So some might be the equivalent of fulltime for 3 months on farm labor investigation, some might only put in a few hours, it depends where

> there are growing seasons and where the need is. But at one time or another, we have available the compliance staff in the Wage Hour Division. Of their budgeted hours and budgeted investigation time, we have 37 1/2 staff years budgeted for that.99/

The question remains, as Congressman W. G. Hefner put it, whether the federal government has bitten off more than it can chew in its efforts to regulate farm labor contractors.100/

Recent Developments

Efforts to further amend FLCRA were made in the 95th Congress. The only bill to emerge as law created an exemption for the seed industry as discussed previously. However, the unsuccessful bills deserve attention since the issues raised have not been resolved and can be expected to resurface in the future. Recent cases that are related to the problems that the Congress was considering must also be discussed. This discussion will focus, therefore, on current policy debates over the particulars of the exemption scheme of FLCRA, recordkeeping requirements, and insurance regulations.

Exemptions

Great concern has been expressed by farmers, farm corporations, agricultural cooperatives, day-haul operators, and other users of "migrant labor" that FLCRA has achieved a scope of coverage far beyond what was required by the problems that motivated the Congress to move in this area in 1963. It has been suggested that the original congressional intent has been twisted by the DOL and the courts to create a situation where registration is required in many instances where it serves no purpose whatsoever. There is little doubt that the unusual definition of "migrant worker" in FLCRA has led to the regulation of far more than the traditional farm labor contractor. The scheme affords protection to many local seasonal workers, persons who have never been in the migrant stream. Under some views, registration is required not just by "middlemen" acting as farm labor contractors, but also by certain of the ultimate users of farmworkers and their employees. No doubt there will be an ongoing policy debate over whether this is justifiable. Several bills were introduced into the 95th Congress seeking to bring the debate to a head, but in the end only one relatively minor piece of legislation was reported out of committee and enacted into law.

Recall that "migrant worker" is broadly defined to include individuals whose primary employment is in agriculture as defined in the Fair Labor Standards Act or who perform agricultural labor as defined in the Social Security Act on a seasonal or temporary basis.101/ "Farm labor contractor" is defined to mean 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 his immediate family) for agricultural employment.102/ Most of the efforts to amend the FLCRA in the 95th Congress focused on changing the exclusions which take certain persons out of the broad definition of farm labor contractor. Some attention, however, was given to changing the definition of migrant worker. Both sets of bills will be discussed.

The following discussion focuses on sole proprietors, farm corporations, employees of farmers, agricultural cooperatives, and day-haul operators who may be affected by FLCRA.

Sole Proprietors. A farmer who personally recruits a crew for his own use does not have to register. However, he must do so if he receives a "fee" for transporting that same crew to another farmer across state lines or outside a 25-mile intrastate radius. The "fee" involved may be nothing more than a recovery of expenses.

Several of the bills in the 95th Congress were designed to reduce the likelihood of necessity to register in such circumstances. The term "fee" was defined in certain of the bills to mean money or other valuable consideration in excess of the actual cost of providing services.103/ Thus, transportation costs collected from another farmer would not be characterized as a fee. In the context of one farmer dealing directly with another, this change would probably not have been objectionable, but because the change would have had further ramifications, discussed later, it was strongly opposed by the DOL. Another proposal would change the radius exemption to 75 miles and eliminate the week-per-year limitation.104/ Again, such a change would have had ramifications beyond one farmer dealing directly with another and thus was also opposed by the DOL.

Donald Elisburg, assistant secretary of labor, during hearings on the various bills, made the following statement:

> Where a few small individual farmers have made casual arrangements on a local

> basis to share the services of a common work force it is not the practice of Wage and Hour Division to allocate scarce resources to ascertain whether or not they are engaging in farm labor contractor activities.105/

Members of the congressional committee asked how an individual farmer would know whether he was "large" or "small" and thus whether he should comply with the FLCRA. The question has merit. Either the registration requirement applies or it does not and to suggest that some need not be concerned about it because of present enforcement policies, encourages disrespect for the law generally. Further, there is no guarantee that present enforcement policies will continue unchanged. While this may be likely, given budgetary constraints, it still leaves an air of uncertainty that is undesirable. While the bills introduced in the 95th Congress may not have been appropriately drafted to deal with the problem, revised legislation could be drafted to address it without producing the feared side-effects.

Farm Corporations. Another concern that various bills attempted to address is the status of the farm corporation. Many such corporations are family owned and operated and are really nothing more than family farm operations which for business, tax, and estate planning reasons have been incorporated. FLCRA says that a "farm labor contractor" is a "person" who engages in certain described activities.106/ "Person" is defined to include individuals, partnerships, associations, joint stock companies, trusts, and corporations.107/ However, when the exemption for a farmer who "personally" recruits, etc., is read, the view advanced by the DOL is that the farmer in this context must be an individual or a member of a partnership.108/ The reasoning is that a corporation works entirely through its employees and thus cannot "personally" recruit, etc. The phrase "solely for his own operation" is also given significance in developing the argument that the Congress really did not intend the exemption to extend to corporate activities. The proposed amendments that would have removed the term "personally" would have undermined the DOL's position and thus such amendments were opposed.109/

As might be expected, litigation has resulted over the status of farm corporations under FLCRA and farm corporations have had success in winning decisions that registration is not required. One of the first of the cases is Jenkins v. S & A Chaissan & Son, Inc.,110/ where a motion to dismiss was granted to a corporation charged with violations of FLCRA. The court took the view that the legislative history reveals a congressional intent to regulate "middlemen" who have been the source of problems for farmworkers and farmers alike and that Chaissan was clearly not such a "middleman." Further, the court notes that Chaissan in its direct use of USTES did not receive a "fee" since the use of a fully subsidized employment service does not generate a benefit to Chaissan that can be labeled a "fee." The court conceded that the addition of the term "personally" by the 1974 Amendments was designed to eliminate an exemption for large farms that recruit directly, but the court devised no test for drawing the line between the "large farm" and "those which are run essentially as small businesses."111/ It is interesting to note that in Jenkins there is no clear indication in the court's opinion as to whether Chaissan is a family owned and operated farming corporation. The fact that certain of the owners had the surname Chaissan, according to the title of the case, indicates this as a possibility. In any event, the operation was alleged to be a substantial one, using some 90 farmworkers to harvest about 225,000 bushels of apples which would yield an estimated gross income of $733,500.112/

In Marshall v. Heringer Ranches, Inc.,113/ four brothers incorporated a family operation in 1973 and took stock holdings of equal value. The court granted summary judgment dismissing the corporate defendant in an action growing out of an alleged failure on the part of the corporate employer to determine that Heringer and Fernandez, both employees, possessed valid registration certificates. The court granted the motion in part on the theory that Heringer and Fernandez were not employees of a "farm labor contractor." Thus, the court reached the question as to the necessity of the corporation to register in this case. It was held that the exemption reaches the corporation in this instance since it was supplying workers for its own operation. In addition, there was no "fee" accruing to the corporation.114/ The court cited Jenkins 115/ and an opinion letter of the Wage and Hour Division,116/ but offered no analysis as to how the case at bar fit, merely concluded that it did.

The DOL and certain labor interests have argued that under the present state of the law, as interpreted in a Wage-Hour Opinion Letter, October 3, 1977,117/ the family farm corporation is exempt where the corporation remains under effective control of an individual whose authority is equivalent to that possessed by a sole proprietor.118/ This, according to the DOL and certain farm labor sources, is as it should be since abuses are not usually found in such operations. However, the same parties oppose the extension of an exemption to corporate farming generally since this would allow large agribusiness operations, using full-time recruiters, to avoid registration and FLCRA compliance. Abuses are feared where the corporate employer operates on a large scale and an impersonal basis.

However, in the recent decision in Marshall v. Green Goddess Avocado Corp.,119/ the DOL's position was rejected. The Ninth Circuit indicated that the purpose of FLCRA is to regulate middlemen who are

capable of exploiting both farmers and "migrant workers," thus there is no intent to make FLCRA applicable to the direct activities of even the largest agribusiness corporation. The decision noted that if such a corporation hires employees who are more than incidentally involved in farm labor contractor type activities, the FLCRA requires such employees to register and comply even if they are regular and full-time employees of the corporation. Therein, it is argued, lies the protection for "mirgrant workers."

Not all decisions have exempted a large corporation recruiting directly and solely for its own purposes as Cantu v. Owatonna Canning Co., Inc.120/ illustrates. The corporation was charged under FLCRA with violations perpetrated by two full-time officers of Owatonna, including misrepresenting the term of employment; forcing workers to labor 12 hours a day, seven days a week without overtime at wages below the minimum level; absence of adequate pay records; short changing farmworkers on pay slips; and employing children in the field under 12 years of age. Further, the labor housing provided was alleged to be so unsanitary that it caused eye infections and contagious diseases. The allegations also suggested that the drinking water was contaminated and caused illness to the children of the workers. The corporation had employed some 1,500 farmworkers over a three-year period. The District Court refused to dismiss the complaint, finding no exemption for corporations under the existing terms of FLCRA.121/

The Cantu case is of considerable interest because it demonstrates reasons why FLCRA should not be limited in its application to traditional itinerant farm labor contractors. Yet, under the Cantu approach, problems remain since the present version of the FLCRA does not discriminate between the large agribusiness employer and the family farm corporation although most parties in and out of government agree that under any interpretation such a distinction should be made. The courts are then in the difficult position of attempting to draw a line that does not exist in the language of the FLCRA while having as the only "official" statement the wage and hour opinion letter discussed above, hardly suitable authority to rely on in interpreting an act of Congress.

Employees. Considerable controversy has surrounded the status of employees of farmers who, as part of their duties, recruit and transport crews of farmworkers. Presently, an exemption applies to the farmer when he personally recruits for his own operation.122/ An additional exemption is designed to apply to full-time or regular employees who recruit for their unregulated employers "on no more than an incidental basis."123/ Several bills sought to change this by eliminating the phrase "on no more than an incidental basis" and by adding that the full-time or regular employees be "bona fide."124/ "Bona fide regular employee" was to be defined as an employee who is regularly employed on a seasonal basis.125/ Thus, a foreman hired on a seasonal basis to recruit and transport a crew for a "fee" would not be an employee who would have to register under FLCRA.

Those who advocated these amendments quoted the remarks of Senator Gaylord Nelson, delivered during the debates on the 1974 Amendments:

> Mr. President, the purpose of this provision is to prevent farm labor contractors from avoiding registration by becoming the employee of each and every grower for whom they recruit and hire migrant workers, while at the same time providing an exemption under the Act for the regular employee of a grower whose duties may include recruiting and hiring solely for this employer.126/

In his testimony during the 1978 Hearings, Congressman John J. McFall indicated that he could see no point in having the farmer's foreman register. He pointed out that the DOL, in case of a complaint, can always locate the farm and is not dealing with an itinerant farm labor contractor. Congressman McFall decried the necessity of a foreman keeping voluminous records required under FLCRA and having to supply copies to his employer, the farmer.127/

In his testimony, Donald Elisburg, assistant secretary of labor, indicated that to enact the proposed amendment would create a situation where the basic purpose of the act would be evaded since farmers could simply hire a farm labor contractor, call him an employee who is regularly employed on a seasonal basis, and thus qualify him for the exemption.128/ Even if such an employee's activities related only to recruitment, the proposed amendments would not require registration.129/

These bills did not become law, thus we are left with a situation where the courts will have to determine who is a "full-time" or "regular employee" and whether or not his activities solely on behalf of him employer in gathering or transporting a crew were on more than an incidental basis. The lack of precision in the law leaves much to be desired.

Some indication of the complexity of the problem emerges in two recently reported cases. In

Marshall v. Herringer Ranches, Inc.,130/ Herringer and Fernandez were full-time employees of a farm corporation that was not required to register. They engaged in recruiting crews for the corporate employer, but the court concluded that there was no obligation under FLCRA that they register. The court so found on the basis of three separate theories. First, the court said that it made no sense to say that the corporation need not register and then to say that its employees must. Since the corporation can operate only through its employees, the requirement of registration, if imposed on employees, would destroy the exemption for the corporation.131/ Such reasoning could give rise to the anomalous situation where employees of a corporation could escape registration, where employees of a sole proprietorship might not. The remaining two rationales are more workable given the scheme of the statute. As to Herringer, who owned 25 percent of the stock of the family corporaation, the court concluded that his activities in recruiting, etc., were "solely for his own operation." Thus, the exemption for the "farmer" who "personally" engages "solely for his own operation" ought to have application to Herringer. "Any other conclusion would exalt form over substance."132/ The third basis for the decision was that uncontradicted evidence demonstrated that Herringer spent less than 5 percent of his time "hiring" and "transporting" and Fernandez spent less than 10 percent of his time on such activities.133/ Thus, as a matter of law these men were engaged as employees in "such activity on no more than an incidental basis."

In Jenkins,134/ officers of the farm corporation were held to be entitled to dismissal on the theory that the corporation was not required to register and that they were acting as "agents"135/ of the corporation and not as middlemen in the recruitment process. Here the basic theory is that FLCRA is designed to regulate middlemen and not farmers. Such a view, if carried to its logical conclusion, would exempt all employees of exempt farmers. This simply does not jibe with the language of the statute, though it may be in tune with certain of the legislative history. The analysis in Marshall 136/ is more sophisticated to the extent that it looks at the percentage and type of activity of the employee and to the extent that it attempts to give a special status to an owner-employee of a farm corporation.

Unfortunately, the FLCRA and the cases leave more questions than answers. Should all servants of a corporation which itself is not required to be registered be exempt from registration? If so, what standard should be applied to determine which corporations need not register? Should a special status be given to employee-owners of corporations that are not required to register? Would this open a loophole whereby a contractor could be given a small ownership interest in a corporation and then be taken on as an employee? Should the "no-more-than-on-an-incidental-basis" test be applied to all employees of corporate and noncorporate entities regardless of their ownership status? Should the full-time or regular employee test be routinely applied? Some conclusions are suggested in the Recommendations section which follows.

Agricultural Cooperatives. Several bills were designed to give some relief to agricultural cooperatives. The argument was made that if a farmer can "personally" engage in recruiting for his own operation without having to register, why should the situation be any different if several farmers band together. form an agricultural cooperative, and have as part of its function recruiting and related activities to gather crews for the use of the individual members, all of whom are farmers?137/

In this connection, it was proposed that the exemption for nonprofit charitable corporations be expanded to cover "bona fide non-profit agricultural cooperatives" engaged in labor contracting activities solely for their own members.138/ Strong opposition to these changes was voiced. One witness for farm labor interests indicated in a prepared statement:

> The potential abuse of farm workers increases under a cooperative recruitment arrangement. Where a contractor recruits for several growers at once, the contractor has an incentive to over-recruit, anticipating a need to shuffle workers among different growers and different crops on an "as needed" basis. These needs create situations ripe for fraudulent recruitment with respect to the terms and conditions of employment.139/

A fear was also expressed that groups of crew leaders would form cooperatives and become employees of them in an effort to escape the provisions of FLCRA. That maneuver has apparently already been tried. At the time of the 1978 hearings, it was reported that four cases were pending in the U.S. District Courts in Texas and nine in the 9th Circuit. In all the cooperative form had been used to attempt to circumvent FLCRA. It was further reported that in the California cases the lower courts had held, in all instances, that the cooperative associations were participating in labor contracting under the act.140/

In the Jenkins 141/ case, one of the defendants was a cooperative association. There was some dispute as to the extent of its activities, but the court indicated that even if Valley Growers' activities, had been limited to filing a job order with U.S. Training and Employment Service on behalf

of its grower members, there would be no basis on which to dismiss the FLCRA claim brought against it. The court noted that by engaging in recruiting on behalf of its membership, the cooperative assumed the role of "middleman" and that is precisely the role that Congress intended to regulate. Further, the court found that a "fee" was received if the cooperative assessed charges for these services against its grower members. The court did not discuss the impact of general profits that the cooperative received from doing business with these members and whether such profits might also constitute a "fee" under the statute. In the end, the court indicated that the mere fact that the cooperative is not in the traditional image of a farm labor contractor does not detract from the fact that it clearly meets the statutory definition of a farm labor contractor.142/

In Usery v. Coastal Growers Association,143/ a cooperative had recruited crews for various members. The cooperative took the position that it did not have to register as a labor contractor because it exacted no "fee" for the services rendered. The court, however, found that the membership fees paid to the cooperative by various growers was a sufficient "fee" to meet the requirements of the FLCRA and that registration was required.

In light of the concerns expressed over granting an exclusion to agricultural cooperatives, it is unlikely that changes such as those proposed in the bills before the 95th Congress have much chance of passage in the foreseeable future.

Day-Haul Operators. Substantial efforts were made to substantially free day-haul operations from FLCRA regulation. Currently, the 25-mile-intrastate-radius rule and the 13-weeks-a-year limitation have the effect of putting many day-haul operators under the registration requirement. In many areas, workers are hauled from their homes and neighborhoods in cities to farms that lie more than 25 miles from the contractors' permanent place of residence. Also, many day-haul operators are likely to conduct their operations for more than 13 weeks out of the year. One proposed amendment called for the radius to be raised to 75 miles, for the application of the exclusion within that radius even if state lines were crossed and for the total elimination of the 13-weeks-a-year restriction.144/ Under such a plan, the contractor could operate year-round in one or more states within a 75-mile radius of his permanent place of residence and not have to register.

Another bill would have created an exemption for a farm labor contractor who operated within the suggested 75-mile radius, but would have kept the week restriction, raising it to no more than 26 weeks a year.145/

A third approach was designed to create an exemption for a farm labor contractor who engaged in the specified activities solely for the purpose of supplying workers who return each day, after work, to their permanent residences.146/

Strong testimony in favor of such changes came from Congressman W. G. Hefner. He discounted the need to regulate day-haul activities and asserted that the current state of the law is actually destroying jobs for local workers in his state, North Carolina. Congressman Hefner indicated:

> Local agricultural workers, under these circumstances, are not subject to the exploitation and abuse often felt by true migrant workers. If they are, which I do not feel is the case, they have effective remedies under State Laws. And most important, they have the economic freedom, which migrants do not, to simply refuse to work for someone who does not treat them fair and square.
>
> The effect of these requirements when they are enforced has been to deny local workers the opportunity to work, if they choose to, in the fields and orchards of whatever work may be in their State. The North Carolina Employment Security Commission has estimated that the number of day-haul workers available in some parts of the State has dropped by as much as four-fifths. This state agency should know, too, because it is often called upon to fill this void with migrant labor from other States.147/

These statements deserve consideration. If there is in fact encouragement of the use of traditional migrant labor in substantial numbers in North Carolina and other states, the amendments must be taken seriously, for further traffic in the migrant streams surely should not be encouraged. However, it may be very difficult to pin down a cause and effect relationship here and unless that can be done with some degree of certainty for a number of locations across the country, a cautious approach to the day-haul amendments is called for.

Other witnesses at the 1978 hearings indicated a strong need to continue to restrict the day-haul

exemption. Donald Elisburg, assistant secretary of labor, indicated that an expansion of the exemption would have its greatest impact in Florida, Texas, and California where investigations had turned up widespread violations of FLCRA by day-haul operators.148/

Another witness who spoke on behalf of farmworker interests made reference to 1973 and 1974 hearings and the mass of evidence that revealed abuses by day-haul operators including fraudulent recruitment, failure to deduct social security taxes, failure to provide pay records, failure to provide toilet, sanitation, and potable water facilities, employment of children illegally, arbitrary dismissals, blacklisting, absence of first aid equipment, use of substandard vehicles, and additional problems.149/ The witness concluded:

> Congress had abundant evidence of the need to subject day-haul operations to the protection of the Act. Conditions have not improved since 1974 and those protections must not now be eroded.150/

What may exist here is a case of the current law doing a great deal of good in some locations in the United States, but causing some fairly serious problems elsewhere. However, it is virtually impossible, by statute or regulation, to sort out the "good" states and the "bad" states or the "good" metropolitan areas and the "bad" metropolitan areas. Thus, unless the problems that exist in North Carolina are demonstrated to be commonplace across the country and the result of current regulation of day-haul operations, the better part of wisdom dictates the exercise of great caution when considering an expansion of the scope of the day-haul exemption.

Recordkeeping

Consternation has been expressed by farmers over the recordkeeping requirements of FLCRA. Currently, farmers who use contractors are required to receive and store copies of all the employee records the contractor is required to keep.151/

Testimony during the 1978 hearings indicated that the requirement often puts farmers in a difficult position since the farmer is in violation of FLCRA if he does not get such records. If this happens or seems likely to happen, the farmer has a choice between violating the FLCRA or refusing the workers and losing his crop.152/

Concern was also indicated that the requirement of producing such records in duplicate places an inordinate burden on small contractors.153/ Further, it was argued that it is normally easier for the DOL to check the contractor's records rather than those retained on the farms. It was suggested that as many as 50 to 100 growers would have to be contacted to get the records for a single crew for a normal citrus harvest season.154/

A representative of the Florida citrus industry states that the "record swapping provisions boggle our minds."155/ It was suggested that since the crew leader must notify the DOL within 10 days after a move, there ought to be no problem in locating the contractor if a check of his records is desired. Those who fail to give the required notice of new location could be subjected to very rapid revocation proceedings.156/

Donald Elisburg, assistant secretary of labor, stated:

> We oppose these changes. As you know, farm labor contractors are highly mobile and it is frequently difficult to locate records which may be necessary to pursue enforcement actions where violations have occurred. By requiring the users to obtain and maintain these records, we are able to facilitate enforcement of the act. Also, the users of the contractor services are, together with the contractor, joint employers of the farmworkers. By placing an obligation on the users, the act helps to assure that farmworkers are treated fairly and in a manner consistent with the law.157/

Importantly, the requirement that the farmer be provided with a copy of various records is in and of itself a way of prodding certain crew leaders into making the original records. Pressure from the farmer who knows he must demand such records may be as helpful as anything in rooting out total or partial noncompliance with basic recordkeeping requirements in some cases. Given this consideration and the position of the DOL, it seems that any attempt to change the recordkeeping requirements of FLCRA is likely to have little success in the foreseeable future.

Insurance

The 1963 Act included a requirement that as a prerequisite to registration the applicant had to

demonstrate financial responsibility or give proof of insurance coverage with respect to vehicles used to transport "migrant workers."158/ The 1974 Amendments elaborated on this, requiring coverage at the same level required under the Interstate Commerce Act for those involved in the transportation of passengers.159/ The secretary was given the power to promulgate regulations requiring a lesser level of coverage if coverage in amounts available to common carriers turned out not to be readily available to farm labor contractors.160/ Current regulations require a $100,000/$300,000/$50,000 policy for a vehicle designed for 12 or fewer passengers, and a $100,000/$500,000/$50,000 policy for a larger piece of equipment.161/

One bill introduced in the 95th Congress was designed to make state workers' compensation the exclusive remedy for injured workers where benefits are available to "migrant workers."162/ The DOL strongly objected to such an amendment, pointing out the wide variations in state workers' compensation laws on matters such as benefit schedules and exclusionary schemes affecting agricultural employment.163/ Concern has also been expressed over the lack of coverage under workers' compensation schemes while workers are being transported from one employer to another, lack of coverage for family members being transported, and lack of property damage coverage.164/ In promulgating existing regulations, the secretary deemed it infeasible to incorporate varied and unclear state laws into the federal requirements. Thus, when current regulations were finalized in July 1976, no provision was included offsetting vehicle liability insurance with workers' compensation coverage.165/

Farm labor contractors, on the other hand, feel they are being required to incur an unneeded expense by paying for both workers' compensation coverage and liability insurance that is designed to extend coverage even in the case of employment related accidents. Can the "migrant worker" who is injured on the job, however, recover against his employer personally and thus get the insurance coverage? If workers' compensation coverage exists, the injured employee can typically not pursue a negligence action against the employer. Since the insurance pays only where the employer is exposed to liability for his negligent acts, the premiums paid for employee coverage buy nothing. Even if the "migrant workers" were able to pursue a money judgment under the civil relief provisions of FLCRA, in addition to collecting workers' compensation benefits, the typical insurance policy required under the regulations would afford no coverage in the event a judgment was entered against the employer.

The problem seems to be an unwillingness to make the effort to work out a scheme coordinating the coverage required under the regulations and the local workers' compensation coverage. Wide variations in state workers' compensation laws raise a practical obstacle making the effort to coordinate coverage "administratively infeasible."166/

Recommendations

The status of the farmer who "personally" recruits a crew for his own use, and later transfers it to a neighbor for a "fee" ought to be clarified. There seems to be little point in regulating this kind of activity and if the Congress, by virtue of the level of funding for enforcement, does not intend to do so, this ought to be clearly stated in the statute. The receipt of a "fee" by a farmer who originally recruited the crew for his own use ought not to trigger the application of FLCRA.

The intent of the Congress as to whether FLCRA is designed to regulate the employment activities of the agribusiness corporations ought to be made clear. The danger of abuse is sufficiently documented to warrant regulation of recruitment and related activities even though the traditional middleman is not involved. However, the administrative determination not to apply FLCRA to the family farm corporation can be justified. The same rationale that provides the justification for not registering individual farmers who recruit personally for their own purposes is applicable. If there is to be a family farm corporations exemption, Congress should also make this clear. A similar problem comes up in other areas of the law that relate to the regulation of agriculture. Congress and many state legislatures have often failed to take into account the rapid rise in the use of the corporate form by family farm operations and have seldom drafted legislation with a conscious concern for such operations. Greatly increased attention to the family farm corporation is needed to add clarity to the law and to create policy that is as consistent as possible when applied to family farms, whether sole proprietorships, partnerships, or corporations.

Additional attention needs to be given to the uncertain status of employees who recruit exclusively for their farmer employer. The concerns of the DOL regarding the bills that were before the 95th Congress are understandable, but FLCRA should not apply to an employee who works for a farmer who is not required to register so long as the particular employee has no other employer during the current farming season. Whether such an employee's recruitment duties were "incidental" would not seem to be of any

importance. Such a change in the statute would probably not totally satisfy the concerns of farmers and their employees, but at least it would add a bit more certainty to the law and eliminate litigation such as that discussed above.

If the scope of FLCRA is to continue to extend beyond the regulation of the traditional itinerant farm labor contractor, as seems virtually certain, agricultural cooperatives should not have an exemption. Large-scale operations, whether in corporate or cooperative form, offer sufficient potential for abuse to require regulation. Further, the prospect of creating a loophole in FLCRA seems real enough to caution against the suggested exemption. It would be exceedingly difficult, indeed impossible, to distinguish legislatively between "good" cooperatives and "bad" cooperatives.

For the present, it seems unwise to expand the scope of the day-haul exemption. The 25-mile radius and the 13-week rules should remain unaltered. However, the incidence of violations by day-haul operators should be carefully monitored with a view to expanding the scope of the exclusion, deregulating or leaving the matter to the states if any of those alternatives become feasible in the future.

There seems to be no dispute about the requirement that the farm labor contractor maintain detailed records. However, there is a serious difference of opinion as to whether anything is accomplished by requiring the contractor to supply the farm employer with duplicate copies. It is true, of course, that unlike many other recordkeeping requirements this one does not impose a paperwork burden directly on the farmer. It is in actuality more of a storage function. Thus, while the Congress needs to become more sensitive to the continual expansion of recordkeeping requirements, this particular requirement, from the standpoint of the farmer, is less onerous than most. For the contractor, if a Xerox machine is not available, carbon paper can still be used with considerable efficiency. In the end, the DOL does bear an ongoing burden to demonstrate that this duplication of records is doing some good in the enforcement effort. If experience indicates that the farmers' copies are rarely resorted to, the farmers' present role should be eliminated.

For the moment, it seems that the DOL's position on the matter of insurance coverage required of registered contractors must be sustained. Once the problems with workers' compensation coverage for agricultural employment are resolved and the benefits available from state to state become reasonably uniform, the matter deserves review. Problems of this sort provide yet another argument for Congressional action in the workers' compensation area if the noncomplying states do not move quickly to implement the Essential Recommendations of the 1972 Commission.

One of the most constructive recommendations to come out of the 1978 hearings was made by a farm labor contractor. He suggested that improved performance and better compliance by farm labor contractors might be achieved through in-service training.167/ Such positive efforts have a way of netting far more for the dollar invested than the generally negative approach that is inherent in regulatory schemes. The regulations are necessary, of course, but a program of training and education for farm labor contractors could promote an understanding of the law and also help crew leaders to better deal with the many crew members who have serious financial, personal, health, motivational, and other problems.

Finally, FLCRA is in several respects a troublesome piece of legislation because of the way it is drafted. There are numerous vague phrases and provisions. There are provisions that most agree do not mean what they purport to say, at least when applied to certain fact settings. There is a need to rework the FLCRA to attempt to root out as many problem provisions as possible. In the meantime, the DOL could more favorably interpret the statutory language through the regulatory process.

Notes to Chapter 5

1. S. Rep. No. 1295, 93d Cong., 2d Sess. 2 (1974); S. Rep. No. 12906, 93d Cong., 2d Sess. (1974).
2. Ib.
3. Ib.
4. Ib.
5. Ib.
6. Ib.

7. Ib.

8. Guerrero v. Garza, 418 F. Supp. 182 (W.D. Wis. 1976).

9. De La Fuente v. I.C.C., 451 F. Supp. 867 (N.D. IH. 1978): See Hearings on Farm Labor Contractor Registration Act Before the Subcommittee on Education and Labor, 95th Cong., 2d Sess. 69 (1978). where the results of a 1978 investigation in Southern Florida are discussed. (Hereinafter cited as 1978 Hearings.).

10. See note 1 supra.

11. 7 U.S.C. §§2041-53 (1964).

12. Guerrero v. Garza, supra note 8.

13. Col. Rev. Stat. §§8-4-101 to 8-4-113 (1963).

14. Cal. Labor Code §§1682-1699.

15. Oregon Rev. Stat. §§658.405-.455 (1977).

16. Wash. Rev. Code §§19.30.010-19.30.900 (1978).

17. N.Y. Labor Law §212-a.

18. 7 U.S.C. §2042(d) (1976) which incorporates by reference 29 U.S.C. §203(f) (1976) and 26 U.S.C. §3121(g) (1976).

19. 7 U.S.C. §2042(a), (b); 2043(a) (1964).

20. 7 U.S.C. §2044(a)(1) (1964).

21. 7 U.S.C. §2044(a)(2) (1964).

22. 7 U.S.C. §2044(a)(3) (1964).

23. 7 U.S.C. §2045(a) (1964).

24. 7 U.S.C. §2045(b) (1964).

25. 7 U.S.C. §2045(c), (d) (1964).

26. 7 U.S.C. §2045(e) (1964).

27. 7 U.S.C. §2044(b)(1-10) (1964).

28. 7 U.S.C. §2048 (1964). It is to be noted that in the event the secretary chose the revocation option, the procedure set forth demands that he first give the violator a chance to voluntarily come into compliance. See S. Rep. No. 1295, supra note 1.

29. S. Rep. No. 1295, supra note 1 at 3.

30. Ib.

31. Ib.

32. 120 Cong. Rec. S-19308 (daily ed. Oct. 16, 1974).

33. H. R. Doc. No. 380, 93d Cong., 2 Sess. (1974).

34. Id. iii-iv.

35. P.L. No. 93-518 (1974). 88 Stat. 1652.

36. P.L. No. 94-259 §2 (1976), 90 Stat. 314; P.L. No. 94-561 §6 (1976), 90 Stat. 2643; P.L. No. 95-562 (1978).

37. 7 U.S.C. §2042(b) (1976).

38. 7 U.S.C. §2042(b)(1) (1976).

39. See e.g., Marshall v. Coastal Growers Ass'n, 598 F. 2d 521 (9th. Cir. 1979).

40. 7 U.S.C. §2042(b)(2) (1976).

41. Had the amended version been in effect, a different result would probably have been forthcoming in Salinas v. Amalgamated Sugar Co., 341 F. Supp. 311 (D. Idaho 1972).

42. 7 U.S.C. §2042(b)(3) (1976).

43. 417 F. Supp. 857 (M.D. Fla. 1976); see also Marshall v. Herringer Ranchers, Inc., 466 F. Supp. 285 (E.D. Cal. 1979), DeLeon v. Ramirez, 465 F. Supp. 698 (S.D.N.Y. 1979), Marshall v. Bunting's Nurseries of Selbyville, 459 F. Supp. 92 (D.Md. 1978).

44. 7 U.S.C. §2042(b)(4) (1976).

45. Usery v. Coastal Growers Ass'n, 418 F. Supp. 99 (D.C. Cal. 1976).

46. 7 U.S.C. §2042(b)(5) (1976).

47. 7 U.S.C. §2042(b)(6) (1976); while not required to register, such an employer must obtain an identification card and comply with the nonregistration aspects of FLCRA.

48. 7 U.S.C. §2042(b)(7) (1976).

49. 7 U.S.C. §2042(b)(8) (1976) as amended.

50. 7 U.S.C. §2042(b)(9) (1976) as amended.

51. 7 U.S.C. §2042(b)(10) (1976) as amended; 1978 Hearings, supra note 9 at 36, 433.

52. 7 U.S.C. §2042(b)(10) (1976) as amended.

53. 7 U.S.C. §2053 (1976).

54. 29 C.F.R. §40.13 (1978).

55. 29 C.F.R. §§40.14-.15 (1978).

56. 29 C.F.R. §40.19 (1978).

57. 29 C.F.R. §40.20 (1978), as revised 44 F. Reg. 44840 (1979).

58. 29 C.F.R. §40.12 (1978).

59. 29 C.F.R. §40.51 (1978).

60. 7 U.S.C. §2045(b)(6), (7), (8) (1976).

61. 7 U.S.C. §2044(b) (1976).

62. 7 U.S.C. §2048(b)(1) (1976).

63. 7 U.S.C. §2048 (1976).

64. 7 U.S.C. §2044(b) (1976).

65. 7 U.S.C. §2048(a) (1976).

66. 7 U.S.C. §2048(a) (1976).

67. 7 U.S.C. §2048(a) (1976).

68. 7 U.S.C. §2050b(b) (1976).

69. 7 U.S.C. §2040b(b) (1976).

70. 450 F. Supp. 1046 (M.D. Fla. 1978).

71. See also S.P. Growers Association v. Rodriguez, 17 Cal. 3d 719, 131 Cal. Rptr. 761, 552 P.2d 721 (1976).

72. 7 U.S.C. §2043(c) (1976).

73. 7 U.S.C. §2043(d) (1976).

74. 7 U.S.C. §2048(b) (1976).

75. 7 U.S.C. §2050c (1976).

76. 7 U.S.C. §2045(e) (1976).

77. 456 F.2d 890, 894 (10th Cir. 1972), cert. den. 409 U.S. 1042 (1972).

78. 7 U.S.C. §2040a (1976).

79. 7 U.S.C. §2050a(a) (1976).

80. 7 U.S.C. §2050a(b) (1976).

81. 413 F. Supp. 849 (S.D. Fla 1976).

82. 7 U.S.C. §2048 (1976).

83. 7 U.S.C. §2048 (1976).

84. Telephone interview with staff member Department of Labor, Nov. 21, 1975, 4:00 p.m.

85. Ib.

86. Ib.

87. Ib.

88. Ib.

89. Ib.

90. Supra note 8.

91. 1978 Hearings, supra note 9 at 64.

92. Id. at 50.

93. Id. at 73.

94. Id. at 50.

95. Id. at 50.

96. Id. at 50.

97. Id. at 129-130.

98. Id. at 129-130.

99. Id. at 68.

100. Id. at 24.

101. See note 18, supra.

102. 7 U.S.C. §2042(b) (1976).

103. H.R. 1092, 8894, 10053, 95th Cong., 1st Sess. (1977).

104. H.R. 8232, 95th Cong., 1st Sess. (1977).

105. 1978 Hearings, supra note 9 at 52.

106. 7 U.S.C. §2042(b) (1976).

107. 7 U.S.C. §2042(a) (1976).

108. The department's position is reflected in its unsuccessful argument in Marshall v. Green Goddes Av cado Crop., 615 F.2d 851 (9th Cir. 1980). See notes 117 and 118 infra and accompanying text for contrary position of department as to the family farm corporation.

109. 1978 Hearings, supra note 9 at 14-16.

110. 449 F. Supp. 216 (S.D.N.Y. (1978).

111. 449 F. Supp. 216, 228 (S.D.N.Y. 1978).

112. 449 F. Supp. 216, 228 note 17 (S.D.N.Y. 1978).

113. 466 F. Supp. 285 (E.D. Cal. 1979).

114. Consider the scope of the exemption discussed at note 42, supra and accompanying text.

115. Supra, note 109.

116. Opinion Letter, Wage and Hour Division, Employment Standards Division, Department of Labor, dated Oct. 3, 1977.

117. Ib.

118. 1978 Hearings, supra note 9 at 131-132 and 14-16.

119. 615 F.2d 851 (9th. Cir. 1980).

120. D. Minn. No. 3-76-CIV 374.

121. 1978 Hearings, supra note 9 at 132.

122. 7 U.S.C. §2042(b)(2) (1976).

123. 7 U.S.C. §2042(b)(3) (1976).

124. H.R. 8894, 10053, 95th Cong., 1st Sess. (1977); H.R. 10631, 10922, 95th Cong., 1st Sess. (1978).

125. Ib.

126. 1978 Hearings, supra note 9 at 6.

127. Id. at 17-19.

128. Id. at 55.

129. Ib.

130. Supra, note 114.

131. Supra, note 114 at 289.

132. Ib.

133. Id. at 289-290.

134. Supra, note 111.

135. The court must have been referring to servant-agent, rather than nonservant-agent.

136. Supra, note 114.

137. 1978 Hearings, supra note 9 at 122.

138. H.R. 8894, 95th Cong., 1st Sess. (1977); H.R. 10631, 10922, 95th Cong., 1st Sess. (1978).

139. 1978 Hearings, supra note 9 at 131.

140. Id. at 150.

141. Supra, note 111.

142. Supra, note 111 at 228.

143. 418 F. Supp. 99 (D.C. Cal. 1976).

144. H.R. 8232, 95th Cong., 1st Sess. (1977).

145. H.R. 8249, 95th Cong., 1st Sess. (1977).

146. H.R. 8234, 95th Cong., 1st Sess. (1977).

147. 1978 Hearings, supra note 9 at 24.

148. Id. at 54.

149. Id. at 130.

150. Id. at 131.

151. 7 U.S.C. §2050c (1976).

152. 1978 Hearings, supra note 9 at 18.

153. Id. at 31.

154. Ib.

155. Id. at 109.

156. Ib.

157. Id. at 58.

158. 7 U.S.C. §2044(a)(2) (1964).

159. 7 U.S.C. §2044(a)(2) (1976).

160. Ib.

161. 29 C.F.R. §40.14(a) (1978).

162. H.R. 10631, 95th Cong., 1st Sess. (1978).

163. 1978 Hearings, supra note 9, at 8 and 10.

164. Ib.

165. Id. at 10.

166. Ib.

167. Id. at 207.