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STATE OF WASHINGTON
BY *[Signature]*
DEPUTY

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

CASCADE FLORAL PRODUCTS, INC.; CONTINENTAL
WHOLESALE FLORISTS, INC., d/b/a CONTINENTAL FLORAL
GREENS; HIAWATHA, INC.; HOOD CANAL EVERGREENS;
PACIFIC COAST EVERGREENS, INC.; PUGET SOUND
EVERGREENS CO., INC.; MT. ST. HELENS EVERGREEN, INC.;
OLYMPIC EVERGREEN, INC.,

Respondents,

v.

DEPARTMENT OF LABOR & INDUSTRIES,

Appellant.

BRIEF OF APPELLANT

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I. INTRODUCTION

The Department of Labor and Industries (Department) appeals from a summary judgment entered by the superior court in a case involving Washington's Farm Labor Contractor Act, RCW 19.30.

This case concerns the question of whether the harvesting of evergreen foliage, (i.e., evergreen boughs, bark, salal, ferns) in the forest constitutes forestation work. If it is forestation work, then those individuals who pick, cut, gather, or otherwise harvest the evergreen foliage may fall within the protections of the Farm Labor Contractor Act, when they work with farm labor contractors¹ who act as middle persons between the agricultural employer and the worker. The Farm Labor Contractor Act requires the licensing of farm labor contractors and contains several worker protections, such as a mechanism for obtaining unpaid wages from labor contractors and others. Additionally, anyone who knowingly uses the services of an unlicensed farm labor contractor may be jointly and severally liable for liabilities under the Act, such as unpaid wages.

Here the Respondents, (collectively, Companies) are floral greens wholesalers and packing sheds in the specialized forest products industry

¹ A "farm labor contractor" is any person who recruits, solicits, employs, supplies, transports or hires agricultural employees for a fee. *See* RCW 19.30.010(2) and (3).

that are primarily involved in the harvesting, obtaining, packaging, and selling of evergreen foliage for use as greenery in floral arrangements and for other ornamental purposes. CP 571, 1375. They are regulated by the Specialized Forest Products Act, RCW 76.48. See CP 1385, 1373-1374. The Companies sought a declaration in the superior court that they were not “agricultural employers” covered by Farm Labor Contractor Act. In addition to regulating the farm labor contractors, the Act defines “agricultural employers,” as those engaged in “agricultural” or “forestation”² activities under RCW 19.30.010(4).

The superior court declared that the Companies are not subject to the Farm Labor Contractor Act, RCW 19.30, on the *sole* ground that they were not “agricultural employers” within the meaning of the Act. CP 8-11. This was based solely on the conclusion that harvesting evergreen foliage, in which the Companies were involved, does not constitute an “agricultural” or “forestation” activity under RCW 19.30.010(4). RP 26-27.

The effect of the superior court’s ruling is that people who harvest evergreen foliage for the Companies may not be entitled to receive the protections and remedies of the Farm Labor Contractor Act. These

² This brief refers to the language “forestation or reforestation of lands” in RCW 19.30.010(4) as “forestation” purely for simplicity purposes.

protections include requirements that farm labor contractors be licensed, provide bonds, have insurance for transporting workers, and honor their legal commitments regarding the terms and conditions of employment, compensation, and benefits. These remedies can include, among other things, payment for unpaid wages obtainable from unlicensed and licensed farm labor contractors, or from any person who knowingly uses the services of an unlicensed contractor.

The Companies here work with contractors, who hire workers to pick, clear, cut, and harvest evergreen foliage in the forest. Evergreen foliage includes brush, evergreen boughs, salal, ferns, bear grass, Christmas trees, Cascara bark, and other cut or picked evergreen parts, which are usually used for ornamental purposes. RCW 76.48.020(17); CP 571, 1374.

Under the Farm Labor Contractor Act, “forestation” “*includes but is not limited to,*” a wide-ranging non-exhaustive list of activities, such as “the planting, transplanting, tubing, precommercial thinning, and thinning of trees and seedlings, the clearing, piling, and disposal of brush and slash, the harvest of Christmas trees, *and other related activities.*” RCW 19.30.010(4) (emphasis added). This broad definition encompasses the harvesting of evergreen foliage. The legislative history and purpose behind

the statute, as well as the federal law interpreting a substantially similar statute, support this interpretation.

The superior court erred in narrowly reading the word “forestation,” by failing to give effect to the *inclusive* statutory language and failing to effectuate the manifest purpose of the Farm Labor Contractor Act – to protect workers in the farms and forest who are vulnerable to exploitation and abuses, including those who harvest evergreen foliage in the forest products industry. The Department requests that the Court reverse the superior court judgment and hold that harvesting evergreen foliage falls within the definition of “forestation” in RCW 19.30.010(4).

II. ASSIGNMENT OF ERROR

A. Assignment of Error

The trial court erred by entering summary judgment for the Companies and by declaring that the Companies are not “agricultural employers” and therefore not subject to the Farm Labor Contractor Act, RCW 19.30. CP 8-11.

B. Statement of the Issue

Does picking, cutting, clearing, and harvesting of evergreen foliage constitute “forestation . . . of lands” under RCW 19.30.010(4), which “includes but is not limited to” activities such as “planting, transplanting, . . . thinning of trees and seedlings, the clearing, piling, and disposal of brush and slash, the harvest of Christmas trees, and other related activities”?

III. STATEMENT OF THE CASE

A. The Companies Obtain Evergreen Foliage from Harvesters or Contractors with Harvesters

The Companies are self-described specialized forest products industry business operators. CP 571, 1374. The Companies are regulated by the Specialized Forest Products Act, RCW 76.48. See CP 1385, 1373-1374.

In the non-timber forest products industry, evergreen foliage includes brush, evergreen boughs, huckleberry, salal, fern, Oregon grape, rhododendron, mosses, bear grass, scotch broom, cedar salvage, Cascara bark, Christmas trees, and other cut or picked evergreen parts. CP 571, 920, 922, 1374; RCW 76.48.020(8), (17).³ These specialized forest products are commonly referred to as “evergreen foliage” or “brush.” CP 571, 1374; RCW 76.48.020 (8), (17).

The specialized forest product industry is growing. CP 608, 920, 922. In Washington state, its value was conservatively estimated at \$236

³ RCW 76.48.020(8) defines “cut or picked evergreen foliage, commonly known as brush,” as “evergreen boughs, huckleberry, salal, fern, Oregon grape, rhododendron, mosses, bear grass, scotch broom (*Cytisus scoparius*), and other cut or picked evergreen products. ‘Cut or picked evergreen foliage’ does not mean cones or seeds.” RCW 76.48.020(17) defines “specialized forest products” as “Christmas trees, native ornamental trees and shrubs, cut or picked evergreen foliage, cedar products, cedar salvage, processed cedar products, wild edible mushrooms, and Cascara bark.”

million in 2002. CP 571, 620, 922, 942. More recent estimates are as high as \$500 million. CP 608.

The Companies procure evergreen foliage either directly from individual harvesters or from contractors with harvesters. CP 920, 922-924. The Companies do this frequently through permits on the forest lands they lease. CP 922-923, 1374.

Evergreen foliage is harvested from forest lands usually owned by large timber landowners, including the U.S. Forest Service, Washington Department of Natural Resources, and large timber companies. CP 1374, 922. The Companies often obtain the right to harvest evergreen foliage from these landowners through leases, CP 922, 1374, which give the Companies ownership of and control over the harvest of evergreen foliage on those forest lands. CP 922-923, 1374.

Most of the Companies obtain the labor to harvest evergreen foliage by selling permits from land leases to individual workers, who harvest the foliage, or to contractors or crew leaders who hire the harvesters. CP 922-923, 1374. The permits allow harvesters or crew leaders to harvest brush and evergreen boughs on land that is either leased or owned by one of the Companies' sheds. CP 922. A permit specifies where the harvesters are allowed to harvest brush. CP 922. The sheds control the harvest of brush through the permits, which specify the type,

location, and amount of brush harvested. *See* RCW 76.48.050. Supply is also controlled by the price and type of brush the sheds buy. The type of brush harvested and bought depends on the season. *See* CP 608, 923.

When one of the Companies' sheds issues a permit for harvesting brush on land they lease or own, the sheds may collect the fees for the permits up front. CP 922. Alternatively, the sheds may collect payment for the permits in the form of a "stumpage fee," a percentage of the value of the brush sold back to the sheds. CP 922. Typically, harvesters or contractors or crew leaders sell the brush back to the sheds that issued the harvesting permits. CP 922, 925. The stumpage fee is then collected by the sheds for the cost of the harvesting permit. CP 922.

Some of the Companies obtain brush by buying it from other sheds or individual harvesters or contractors with harvesters who use permits obtained directly from the U.S. Forest Service or the Washington Department of Natural Resources to harvest brush. CP 922.

B. Evergreen Foliage Harvesting Workers Are Vulnerable to Abusive Work Conditions

Workers who harvest evergreen foliage, like other farm and forest workers who are protected by the Farm Labor Contractor Act, are vulnerable to abusive working conditions and exploitative farm labor contractors. Brush harvesters often work in crews for contractors called

crew leaders who have recruited them to harvest brush. CP 920, 923-924. Many of the crew leaders who recruit harvesters may be operating as unlicensed farm labor contractors. CP 611, 920, 926, 948-949, 951. A contractor or crew leader recruits people to go to a specific location on forest land to harvest evergreen foliage. CP 920, 923-924. This location can be determined by a permit that has been obtained from a shed. CP 924-925, 1374.

The crew leader often transports several workers by van or truck into remote locations in the forests and mountains of Western Washington. CP 923-924. Evergreen foliage is generally found growing naturally in the forest, where it is harvested by a variety of means depending on its type. *See* RCW 76.48.020(9). Some workers travel as far as 100 miles early in the morning to reach these locations in the woods. CP 616, 620.

The harvesters work long hours. CP 923. They clear away brush, such as salal and other evergreen foliage, or pick it by cutting it with a claw-like tool called a ring. CP 624; RCW 76.48.020(9).⁴ To obtain evergreen boughs, harvesters cut or thin tree limbs, which may involve the

⁴ RCW 76.48.020(9) provides:

“Harvest” means to separate, by cutting, prying, picking, peeling, breaking, pulling, splitting, or otherwise removing, a specialized forest product (a) from its physical connection or contact with the land or vegetation upon which it is or was growing or (b) from the position in which it is lying upon the land.

use of hand-held cutting devices such as pruning shears or saws.⁵ The harvesters bundle brush together with rope or rubber bands. CP 923. The harvesters often load up a van or truck with the brush. CP 624, 923-924. At the end of a day of harvesting, the crew leader gathers all of the harvested brush from the harvesters and provides the brush to one of the sheds owned by the Companies. CP 624, 924

Evergreen foliage harvesters are typically paid by the contractor or crew leader after the brush is sold to a shed. They are paid by the bundle for the value of brush sold. CP 624, 920. Stumpage and other fees for services provided by the contractor/crew leader are deducted. These can include transportation costs, supplies, or housing. CP 624, 922-923.

Harvesters are mostly low-wage earning immigrants of various backgrounds with limited education and English-language proficiency. CP 923. Many do not own their own vans or trucks. CP 923. Crew leaders provide transportation to and from the site for a fee – usually between \$5 and \$10 per day. CP 923. In many cases, the crew leaders charge additional fees for rubber bands, twine, or rope to tie the brush bundles. Sometimes, a crew leader collects a stumpage fee from the harvesters. CP 923. There are some crew leaders who may charge

⁵ See *Colunga v. Young*, 722 F. Supp. 1479, 1483-1484 (1989)(workers cut boughs from trees with shears or machetes).

harvesters so much in fees for transportation, housing, and supplies that the harvesters end up in debt. CP 610, 622, 624. In many cases, harvesters are not paid fair wages, or are paid no wages at all. CP 610.

Many harvesters are unaware of their rights to safe working conditions or wage protections or are afraid to assert their rights. CP 926. They often live in sub-standard housing. *See* CP 610, 890-901. Harvesting brush requires long days of hiking over difficult terrain, usually in wet and cold weather, and often carrying heavy bundles of brush. CP 923. Many consider it a job of last resort. CP 923.

C. The Department's Outreach Efforts to Protect Evergreen Foliage Harvesting Workers

In 2003, the Department received complaints from landowners, businesses, workers, and advocates that raised concerns about the above-detailed abuses of workers. CP 927. Concerns were also raised regarding the impact of unfair business practices of unlicensed farm labor contractors operating in the specialized forest products industry. CP 927. In the same year, in response to those concerns, the Department started an outreach initiative to educate workers and businesses in the industry and to investigate these complaints. CP 946, 948-949.

The importance of this outreach effort became highlighted by serious accidents that resulted in the deaths of numerous brush harvesters.

CP 927. In March 2004, a van carrying ten brush harvesters crashed in Lewis County, killing five people and injuring five others. CP 610, 613-624, 996, 998. Another fatal van accident occurred on December 19, 2005, killing two brush harvesters and seriously injuring a third. CP 610, 627-629. These accidents shed light on this largely unseen, underground workforce (CP 920-921, 923) and demonstrated the vulnerability of the workers and the difficult working conditions often present in the specialized forest products industry. CP 923, 998. One of the ways the Farm Labor Contractor Act protects against such problems, is that a farm labor contractor is required to file proof of liability insurance to operate the contractor's vehicle when transporting workers. RCW 19.30.030(4). These tragic accidents demonstrate the need for compliance with the Farm Labor Contractor Act and other labor laws to protect workers who pick, cut, clear, and harvest evergreen foliage in Washington's forests. *See* CP 927, 996, 998-999.

D. The Companies' Declaratory Judgment Action

In March 2006, the Companies filed a complaint in Mason County Superior Court against the Department, requesting a declaratory judgment that the Farm Labor Contractor Act did not apply to them. CP 1389, 1385. They asserted that they were not "agricultural employers" under RCW 19.30.010(4), claiming that picking brush and cutting evergreen boughs

did not constitute an “agricultural” or “forestation” activity within the meaning of the statute. CP 1380, 1385-1387.

The Companies brought this declaratory judgment action because of concerns about potential liability under the Act. Under RCW 19.30.200, any person who knowingly uses the services of an unlicensed farm labor contractor is personally, jointly, and severally liable with the person acting as a farm labor contractor.⁶

Later, the Companies moved for summary judgment, CP 1373, which the superior court granted. CP 286. As stated in its oral ruling, the superior court did not consider harvesting evergreen foliage to be a “forestation” activity defined in RCW 19.30.010(4):

[O]ther related activities refers back to the specific words at the beginning of that [the statute], forestation or reforestation. It doesn't say, *and other related forestry practices*. It doesn't say, *and forestry practices in general*. It says, *and other related forestation and reforestation activities*, is what we're really dealing with there.

RP 25 (emphasis added). The superior court did not find that brush picking was forestation and stated that the activity had “to be included if it's going to be covered.” RP 27. The superior court stated that nothing in

⁶ Although the Companies also raised the issue of whether they are users of unlicensed farm labor contractors under RCW 19.30.200, that is not at issue here because the superior court did not reach that issue.

RCW 19.30.010(4) “defines the activities so broadly” to include the “gathering of horticultural product.” RP 26.

The superior court entered a judgment declaring that the Companies “are not subject to RCW 19.30 because they are not agricultural employers.” CP 286.

The Department now appeals from this ruling. CP 6-7.

IV. STANDARD OF REVIEW

The appellate court reviews an order granting summary judgment de novo. *Herron v. Tribune Pub. Co.*, 108 Wn.2d 162, 169, 736 P.2d 249 (1987). Summary judgment is appropriate only where “there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” CR 56(c). The burden of proof is on the party moving for summary judgment to prove by uncontroverted facts that there is no genuine issue of material fact. *See Young v. Key Pharmaceuticals, Inc.* 112 Wn.2d 216, 237, 770 P.2d 182 (1989).

This case turns on the meaning of the words “agricultural employer” and “forestation” under RCW 19.30.010(4). The meaning of a statute is a question of law reviewed de novo. *Port of Seattle v. Pollution Control Hrgs. Bd.*, 151 Wn.2d 568, 593, 90 P.3d 659 (2004).

V. SUMMARY OF THE ARGUMENT

The superior court declared that the Companies are not subject to the Farm Labor Contractor Act, RCW 19.30, on the *singular* ground that they were not “agricultural employers” within the meaning of the Act. CP 8-11. The superior court’s decision that the Companies were not “agricultural employers,” as a matter of law, was based on the conclusion that harvesting evergreen foliage, in which the Companies were involved, does not constitute an “agricultural” or “forestation” activity under RCW 19.30.010(4). RP 26-27; *Ferree v. Doric Co.*, 62 Wn.2d 561, 567, 383 P.2d 900 (1963) (“[I]f the court’s oral decision is consistent with the findings and judgment, it may be used to interpret them.”).

The sole question on this appeal is, thus, whether harvesting evergreen foliage (i.e., evergreen boughs, bark, salal, ferns) by various means (cutting, picking, and gathering) under the uncontested facts constitutes “forestation . . . of lands” under RCW 19.30.010(4).

The “fundamental objective” of statutory interpretation is to ascertain and carry out the Legislature’s intent. *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). To determine the plain meaning of the statute, the court considers the statute’s language and closely related statutes. *Campbell*, 146 Wn.2d at 11. If clear, the court must afford the statute its plain meaning. *Campbell*, 146

Wn.2d at 9-10. The plain language of RCW 19.30.010(4), which uses *inclusive* terms (“includes but is not limited to” and “and other related activities”), encompasses harvesting evergreen foliage within “forestation” activities covered by the statute.

The Farm Labor Contractor Act’s provisions, RCW 19.30.010-.902, read as a whole, indicate that the Legislature intended to include workers who harvest evergreen foliage under the terms of the Act. The inclusion of these workers effectuates the purpose of the Farm Labor Contractor Act, i.e. to protect agricultural and forestation workers by ensuring that farm labor contractors are held accountable for their legal commitments regarding the terms and conditions of these workers’ employment, compensation, and benefits. *Cf. Drinkwitz v. Alliant Tech Systems, Inc.*, 140 Wn.2d 291, 300, 996 P.2d 582 (2000) (recognizing “Washington’s long and proud history of being a pioneer in the protection of employee rights.”) Coverage under the Act gives workers remedies for a farm labor contractor’s denial of wages or benefits, or failure to disclose or comply with other terms and conditions of employment.

Any ambiguity in the statute should be resolved in favor of the broad reading of the word “forestation” to include harvesting evergreen foliage because that interpretation promotes the purpose of the Farm Labor Contractor Act, i.e. to protect farm and forest workers. The legislative

history of the statute and the use of statutory construction principles – reading a remedial statute liberally and giving deference to the interpretation of the agency charged with the administration of the statute – support an interpretation that harvesting evergreen foliage falls within the definition of “forestation” under RCW 19.30.010(4).

Further, federal law also supports this interpretation. Federal courts have broadly construed a substantially similar federal statute to effectuate its remedial purpose. *See Escobar v. Baker*, 814 F. Supp. 1491, 1500-1501 (W.D. Wash. 1993) (interpreting the federal Migrant and Seasonal Agricultural Workers Protection Act, 29 U.S.C. §§ 1801-1872); *Bresgal v. Brock*, 843 F.2d 1163, 1165-1172 (9th Cir. 1988) (same); *Bracamontes v. Weyerhaeuser Co.*, 840 F.2d 271, 274-277 (5th Cir. 1988) (same); *Colunga v. Young*, 722 F. Supp. 1479, 1486 (W.D. Mich. 1989) (same).

The superior court erred in reading “forestation” too narrowly. This was inconsistent with the inclusive language of the statute and failed to recognize the legislative intent evinced by the statutory language and legislative history – to protect workers in the forest, including evergreen foliage harvesting workers, from exploitation and abuse.

VI. ARGUMENT

A. The Farm Labor Contractor Act

1. Overview of Purpose

The Farm Labor Contractor Act, RCW 19.30, regulates contractors who use agricultural employees who perform, among other things, forestation activities. RCW 19.30.010. The purpose of the Act is to protect workers on farms and in the forest from exploitation.⁷ CP 632-638, 641-648. The Act gives agricultural and forestation workers remedies for a farm labor contractor's denial of wages or benefits, or failure to disclose or comply with other terms and conditions of employment by ensuring that farm labor contractors are held accountable for their legal commitments regarding the terms and conditions of these workers' employment, compensation, and benefits. RCW 19.30.040, .045, .110, 170. As a remedial statute, the Farm Labor Contractor Act must be liberally construed to effect this important purpose. *See, infra*, Part VI.G.

The purpose of the 1985 amendments that added forestation activities as shown in the legislative history, reveals the Legislature's intent to protect forest laborers from the same kind of abuses that were present in the agricultural industry, including unpaid wages, unfair

⁷ *See Escobar v. Baker*, 814 F. Supp. at 1499-1501 (discussion of the remedial nature of Migrant and Seasonal Agricultural Workers Protection Act, 29 U.S.C. §§ 1801-1872, the federal equivalent of Farm Labor Contractor Act).

deductions by labor contractors for commissions, equipment, transportation, and housing, as well as sub-standard living conditions. *See, infra*, Part VI, F. This legislative history further indicates that the Legislature did not intend to exclude evergreen foliage harvesting workers from the protections it added for forestation workers because evergreen foliage harvesting workers are the kind of workers the Legislature intended to protect. They are recruited under the same system and face the same difficulties as other farm and forest workers.

Further, the Department's interpretation that the Farm Labor Contractor Act applies to the specialized forest products industry should be given deference because the Department is the agency charged with administration and enforcement of the Farm Labor Contractor Act. *See infra*, Part VI, H.

2. Overview of Provisions

To protect agricultural and forestation workers, the Farm Labor Contractor Act requires licensing of farm labor contractors and compliance with specified wage and hour standards, and violations can result in liability and civil penalties. RCW 19.30.020, .030, .110, .150, 170, .200.

Farm labor contractors must post a bond to guarantee amounts due under contract with agricultural and forestation workers, and must also identify the conditions of employment to each worker in writing. RCW

19.30.040, .110. This written statement must identify not only the rate and terms of compensation, but also the benefits, transportation, housing, bonuses, and more. RCW 19.30.110. A farm labor contractor is also required to file proof of liability insurance for operation of the contractor's vehicle when transporting workers. RCW 19.30.030(4).

If the farm labor contractor does not adhere to the written statement's terms, the Act affords these workers additional protections. The Department can seek remedies for violations made by licensed farm labor contractors, including bringing an action against the contractor and his or her surety (RCW 19.30.045, 19.30.160(4), WAC 296-310-190), assessing civil penalties (RCW 19.30.160, WAC 296-310-230), seeking criminal penalties (RCW 19.30.150), revoking or suspending a contractor's license (RCW 19.30.060, WAC 296-310-120), suing to enjoin a contractor from further violations (RCW 19.30.180), and collecting judgments against the bond or security (RCW 19.30.170(9), WAC 296-310-210). The Department can also penalize unlicensed farm labor contractors by assessing civil penalties (RCW 19.30.160), seeking criminal penalties (RCW 19.30.150), and suing to enjoin a contractor from further violations (RCW 19.30.180). Knowing users of unlicensed contractors can be held equally liable for unpaid obligations and violations under the Act. RCW 19.30.200.

The Farm Labor Contractor Act defines the entities and activities that are covered under the Act. *See* RCW 19.30.010. A farm labor contractor is “any person, or his or her agent or subcontractor, who, for a fee, performs any farm labor contracting activity.” RCW 19.30.010(2). Farm labor contracting activity is “recruiting, soliciting, employing, supplying, transporting, or hiring agricultural employees.” RCW 19.30.010(3). Farm labor contractors are a critical component of the agricultural and forestation industries. Agricultural employers often rely on the services provided by farm labor contractors, or middle persons, to procure workers. CP 655, 658, 664. The agricultural and forestation workforce generally consists of migrant and/or seasonal workers. *See* CP 658, 664, 870.

The Farm Labor Contractor Act defines an “agricultural employee” as “any person who renders personal services to, or under the direction, of an agricultural employer in connection with the employer’s agricultural activity.” RCW 19.30.010(5). The Act defines “agricultural employer” to include any person engaged in “forestation of lands,” which the Act further defines to include a non-exhaustive list of activities:

“agricultural employer” means any person . . . *engaged in the forestation or reforestation of lands, which includes but is not limited to* the planting, transplanting, tubing, precommercial thinning, and *thinning* of trees and seedlings, the *clearing, piling, and disposal of brush* and

slash, the *harvest of Christmas trees, and other related activities.*

RCW 19.30.010(4) (emphasis added).

B. The Statutory Definition of “Forestation” Establishes Its Meaning

Instead of interpreting the word “forestation” in terms of the *non-exhaustive* list of activities that *defines* the word, the superior court failed to give the word “forestation” its statutory meaning. RP 27 (“[Brush picking is] different than forestation and reforestation . . .”). The superior court said:

But, and other related activities refers back to *the specific words* at the beginning of that, *forestation or reforestation.* It doesn’t say, and forestry practices in general. It says, and *other related forestation and reforestation activities,* is what we’re really dealing with there.

RP 25 (emphasis added). In so doing, the superior court improperly read the word “forestation” in isolation and failed to give effect to all the statutory language. RP 27.

The “fundamental objective” of statutory interpretation is “to ascertain and carry out the Legislature’s intent, and if the statute’s meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.” *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d at 9-10. The court discerns the plain meaning “from *all that the Legislature has said in the statute and*

related statutes which disclose legislative intent about the provision in question.” *Campbell*, 146 Wn.2d at 11 (emphasis added); *see also ITT Rayonier, Inc. v. Dalman*, 122 Wn.2d 801, 807, 863 P.2d 64 (1993) (“Statutory provisions must be read *in their entirety* and construed together, not piecemeal.”).

RCW 19.30.010(4) defines “forestation” as including a non-exhaustive list of activities and “other related activities.” This broad statutory definition controls over a standard dictionary definition⁸ of the word “forestation.” *Campbell v. Dep’t of Social and Health Services*, 150 Wn.2d 881, 899, 83 P.3d 999 (2004) (statutory definition rather than dictionary definition controls).

C. The Legislature Defined “Forestation” Very Broadly to Include a Non-Exhaustive List of Wide-Ranging Activities and “Other Related Activities”

The superior court erred in reading RCW 19.30.010(4) in a very restrictive manner when it indicated that for harvesting evergreen foliage

⁸ The dictionary definition of the term “forestation” is “the establishment of a forest,” *Webster’s Third New International Dictionary* 890 (2002), or “the planting or care of forests,” *Webster’s New World Dictionary* 546 (2d college ed. 1984). The verb “reforest” means “to renew forest cover on (denuded land) by natural seeding or artificial planting.” *Webster’s Third New International Dictionary* 1909 (2002). The dictionary definition for “forestation” read in *isolation* from the rest of the statute could thus convey that forestation includes only cultivation-related activities, but “statutes should be construed so that *all of the language used is given effect*, and no part is rendered meaningless or superfluous.” *In re Marriage of McLean*, 132 Wn.2d 301, 307, 937 P.2d 602 (1997) (emphasis added). It must be noted that the dictionary defines “forest” to include “an extensive plant community of shrubs and trees in all stages of growth and decay.” *Webster’s Third New International Dictionary* 890 (2002).

to fall within the scope of “forestation,” it needed to be specifically named in the statute. RP 26-27. The superior court’s restrictive interpretation of the word “forestation” fails to give effect to the inclusive language that modifies it.

The Farm Labor Contractor Act defines “forestation” as *including* “but is *not limited to*” a non-exhaustive list of wide-ranging activities and “other related activities.” RCW 19.30.010(4). The statutory phrase “includes but is not limited to” has an expansive effect. *See Wheeler v. Dep’t of Licensing*, 86 Wn. App. 83, 88, 936 P.2d 17 (1997) (“Generally, the term ‘include’ is construed as a term of enlargement, not as a term of limitation.”). The word “include” conveys “the conclusion that *there are other items includable, though not specifically enumerated.*” 2A Norman J. Singer, *Statutes & Statutory Construction* § 47.07, at 231-232 (6th ed. 1973) (emphasis added). Clearly, by using the synonymous words of inclusion “includes” *and* “but is *not limited to*,” the Legislature did not intend that only the listed items constitute “forestation.” Rather, the Legislature intended that similar non-specified activities be included.

The statute further broadens the scope of “forestation” by adding “other related activities” to the non-exclusive list of specific activities. RCW 19.30.010(4).

The word “other” means something distinct from those already mentioned:

1a: being the one (as of two or more) left: not being the one (as of two or more) mentioned or of primary concern: REMAINING; 1b: *being the ones distinct from the one or those first mentioned or understood.*

Webster’s Third New International Dictionary 1598 (emphasis added).

The word “relate” means “to show or establish a *logical or causal connection between.*” *Webster’s Third New International Dictionary* 1916 (2002) (emphasis added). The phrase “and other related activities” thus operates to *add* to the non-exclusive list of activities those activities that have some logical or causal connection to those listed.

As shown below, the broad definition of “forestation” in RCW 19.30.010(4) encompasses the activity of harvesting evergreen foliage.

D. The Broad Definition of “Forestation” in RCW 19.30.010(4) Covers Harvesting Evergreen Foliage

Harvesting evergreen foliage is not listed in the non-exhaustive list of “forestation” activities in RCW 19.30.010(4). But the activity, under the uncontested facts, has sufficient relationship to those listed (i.e., harvesting Christmas trees; thinning trees; and clearing, piling, and disposal of brush), and thus constitutes “forestation” under the statute.

First, harvesting evergreen foliage constitutes “forestation” because it is similar and “related” to the activity of harvesting Christmas

trees and thinning trees in RCW 19.30.010(4). Harvesting Christmas trees and thinning trees can be for commercial or ornamental purposes. The statute covers both “thinning” and “precommercial thinning” of trees as “forestation.” The “thinning” of trees can be distinguished from “precommercial thinning” by the presence or absence of commercial value in the thinned trees, with the latter having yet to have commercial value as forest products. The specific inclusion of the words “precommercial thinning,” along with “thinning,” indicates that the “thinned” trees have commercial value as forest products. Similarly, harvesting evergreen foliage (i.e. cutting evergreen boughs) has commercial and ornamental purposes (use in wreaths and floral arrangements). CP 1374. The identical purposes involved in these two activities make them both: (1) similar to the specified activities (Act’s coverage “includes but is not limited to”), and (2) “related” to each other under RCW 19.30.010(4).

Second, harvesting evergreen foliage is similar and related to the activities of clearing, piling, and disposal of brush in RCW 19.30.010(4). To “clear” means “to free, rid or empty (as an area or object) of accumulated, intruding, or encumbering things . . .” *Webster’s Third New International Dictionary* 420 (2002). Brush, by definition, is “dense growth of forest and undergrowth.” *Webster’s Third New International Dictionary* 286 (2002). “Brush” is a term used by the specialized forest

products industry to mean evergreen foliage. *See* RCW 76.48.020(8). “Disposal” means “the transference of something into new hands or to a new place.” *Webster’s Third New International Dictionary* 654 (2002).

Harvesting brush or evergreen foliage involves “clearing” because it involves removing the plant or part of the plant from the forest land or brush or trees growing on the land by hand or with hand tools. *See* RCW 76.48.020(9). Once the brush is harvested, the brush is gathered into piles and then disposed of by transfer to the sheds owned by the Companies. CP 923. Whether the “clearing, piling and disposal of brush” is performed by heavy equipment over a large area or with manual labor and hand tools in harvesting evergreen foliage, they are similar and “related” activities and constitute “forestation” under RCW 19.30.010(4).

The Companies argued below they were not “agricultural employers,” claiming that “harvesting of brush does not involve cultivation, the essence of agriculture.” CP 1377. They claimed, “Brush grows naturally in Washington’s forests.” CP 1377. But nothing in RCW 19.30.040(1) requires cultivation for an activity to constitute “forestation.” Nor does it confine the covered activities to the use of non-naturally occurring plants such as those found in a farm or a nursery.

In fact, RCW 19.30.010(4) includes, as “forestation,” activities involving naturally growing plants – harvesting a Christmas tree and

thinning trees, which can be both naturally occurring or planted. Christmas trees are for ornamental use, and harvesting them does not necessarily involve planting or cultivating. *See* RCW 76.48.020(6) (defining Christmas trees as part of specialized forest products industry). Harvesting Christmas trees and thinning trees, whether the trees are naturally occurring or planted and cultivated, is covered under RCW 19.30.010(4). So is harvesting evergreen foliage, regardless of whether it is naturally occurring or planted and cultivated.

In sum, the broad, inclusive language of RCW 19.30.010(4) covers harvesting evergreen foliage as “forestation.”

E. Any Ambiguity in the Statute Should Be Resolved in Favor of Reading “Forestation” Broadly to Include Harvesting Evergreen Foliage

If “after [the plain meaning] inquiry, the statute remains susceptible to more than one reasonable meaning, the statute is ambiguous and it is appropriate to resort to aids to construction, including legislative history.” *Campbell*, 146 Wn.2d at 12 (citations omitted). The inclusive language “includes but is not limited to” and the words “and other related activities” used to define the word “forestation” in RCW 19.30.010(4) can be read as creating an ambiguity as to whether harvesting evergreen foliage – an activity that is not specifically listed in the statute – is nonetheless a “forestation” activity.

Any ambiguity should be resolved in favor of reading the word “forestation” broadly to include harvesting evergreen foliage. This is because, as shown below, the legislative history of RCW 19.30.010(4), as well as the recognized statutory construction principles ((1) reading a remedial statute liberally; (2) giving deference to the statute-administering agency’s expertise-based interpretation; (3) and considering federal case law interpreting a substantially similar statute) all favor an expansive reading of the word “forestation” in RCW 19.30.010(4) to include harvesting evergreen foliage.

F. The Legislative History of RCW 19.30.010(4) Supports Reading the Word “Forestation” Broadly to Include Harvesting Evergreen Foliage

The legislative history surrounding the 1985 amendment to the Farm Labor Contractor Act evinces the Legislature’s intent to protect workers in the forest, including those working in the forest products industry, because they, like other agricultural workers, are vulnerable to exploitation and abuses. In 1985, the Legislature amended the Act to expand the Act’s protections to include “forestation” in addition to “agricultural activity” in the definition of “agricultural employers.” RCW 19.30.010(4); Laws of 1985, ch. 280 § 1; CP 641 849-850. In the same act, the Legislature provided additional remedies to workers who are denied wages or benefits. *See* RCW 19.30.160, .170, .180, and .200; Laws

of 1985, ch. 280 § 12, 14-16, at CP 640-646; S.B. Rep. on Engrossed Substitute HB 199, 49th Leg. Reg. Sess. (Wash. 1985), at CP 646-648.

Oral and written testimony before legislative committees as well as bill reports from committee staff is used to discern legislative intent. *See State v. Turner*, 98 Wn.2d 731, 737-778, 65 P.2d 658 (1983); *State v. Ortega-Martinez*, 124 Wn.2d 702, 709 n.1, 881 P.2d 231 (1994) (citing citizen testimony to Senate Judiciary Committee); *Biggs v. Vail*, 119 Wn.2d 129, 135, 830 P.2d 350 (1992) (citing statement from Bar Association).

The legislative history shows that the 1985 amendment to the Farm Labor Contractor Act was prompted by concerns about exploitation of workers in the forest. Laws of 1985, ch. 280 § 1; S.B. Rep. on Engrossed Substitute HB 199, 49th Leg. Reg. Sess. (Wash. 1985). The information available before the Legislature during the committee hearings in 1985 included oral and written testimony that described the exploitation and abuses of agricultural and forestry workers. CP 650-652, 654-660, 664-674, 869-876. The examples of abuses described included unfair deductions by labor contractors for commissions, gear, equipment, transportation, and housing accompanied by substandard living conditions, threats of deportation, and unpaid wages. CP 650-652, 655-658, 664-666,

668-674. These concerns also apply to workers who harvest evergreen foliage. CP 607-611, 613-625, 627-629, 890-901, 920-924, 926-927, 936.

A memorandum received by the house committee during its consideration of the 1985 bill pressed the need for extending the Farm Labor Contractor Act's coverage to workers in the forest products industry, because such workers, like their agricultural industry counterparts, include seasonal workers employed at low rates of pay and are vulnerable to exploitation and abuse:

In Washington State, the sprawling forest products industry is in many ways similar to the agriculture industry. Both use seasonal workers at low rates of pay during certain times of the year. Both often depend on a middle person, a labor contractor, to supply labor during the peak seasons. . . . Because their work is much the same as agricultural contractors' work, forest contractors should be regulated under the same system.

CP 658 (memorandum presented as part of committee hearings record on ESHB 199 in 1985).

According to the testimony given at the committee hearings, both the forest and farm businesses used contractors to procure labor:

Historically farm and forest employers have declined to recruit and hire their own labor force *for harvest work generally in the forest*; also, for thinning and tree planting.

CP 870 (emphasis added). Individuals who worked with farm and forest workers detailed the dangerous and poor conditions workers in the forest

faced, which were similar to those conditions faced by other agricultural workers. CP 650-654, 664-674, 873.

The types of abuses that prompted the Legislature in 1985 to add “forestation” to the definition of “agricultural employer” are the same that evergreen foliage harvesters face. Workers who harvest evergreen foliage are vulnerable to unfair labor contracting involving inadequate wages and unsafe, unsanitary working conditions, particularly because the specialized forest products industry, like its agricultural counterpart, often uses migrant workers. CP 581, 607-630, 920-921, 923-924, 926-927, 936-940, 996, 998.

Reading “forestation” in RCW 19.30.010(4) as including harvesting evergreen foliage will effectuate the Legislature’s intent to protect workers in the forest, who just like the workers on the farm, are vulnerable to unfair practices in labor contracting. The court should read an ambiguous statute in such a manner as to carry out the manifest object of its statutory purpose. *City of Seattle v. Fontanilla*, 128 Wn.2d 492, 498, 909 P.2d 1294 (1996); *see also Nucleonics Alliance, Local Union No. 1-369, Oil, Chemical & Atomic Workers International Union, AFL-CIO v. Wash. Public Power Supply Sys.*, 101 Wn.2d 24, 29, 677 P.2d 108 (1984) (“The basic rule is that a statute should be construed in light of the legislative purpose behind its enactment.”).

In sum, the legislative history of RCW 19.30.010(4) favors the interpretation of “forestation” to include harvesting evergreen foliage.

G. The Farm Labor Contractor Act is Remedial and Should be Read Broadly to Effectuate its Purpose.

The Farm Labor Contractor Act is a remedial statute, which “is entitled to a liberal construction to effect its purpose.” *Nucleonics Alliance*, 101 Wn.2d at 29); *see also Drinkwitz*, 140 Wn.2d at 301 (remedial wage statute is to be interpreted, consistent with its “terms and spirit” and in a manner to provide protections to workers).

The Farm Labor Contractor Act is remedial, because it provides for “a remedy, or better[s] or forward[s] remedies already existing for the enforcement of rights and the redress of injuries.” *Olesen v. State*, 78 Wn. App. 910, 915, 899 P.2d 837 (1995). The Farm Labor Contractor Act was first enacted in 1955 to protect agricultural workers and to give these workers a remedy for violations of laws related to their wages and working conditions. Laws of 1955, ch. 392, § 1-17. As stated above, protection for workers doing “forestation” work was included in 1985. Laws of 1985, ch. 280 § 1. The Act is designed to protect vulnerable workers from unfair farm labor contracting practices. Laws of 1955, ch. 392, § 1-17.

Accordingly, RCW 19.30.010(4) must be interpreted liberally to give effect to the remedial purpose of the Act. The interpretation suggested by the Companies below that “forestation” is limited to the cultivation or planting of the forest, CP 254-255, 1375, 1377, will defeat the purpose of the Act by excluding a group of workers on the basis of a distinction that does not make any sense with respect to the legislative purpose to protect vulnerable workers in the forest. *See Silverstreak v. Dep’t of Labor & Indus*, __Wn.2d __, 154 P.3d 891, 899 (2007) (improper to interpret a wage statute to exclude coverage of workers performing similar work by overlooking the remedial nature of the statute).

The word “forestation” in RCW 19.30.010(4) should be read liberally to effectuate the remedial legislative purpose. It should be read to include harvesting evergreen foliage as “other related activity” in the statute – a construction that will effectuate the legislative intent to protect workers in the forest vulnerable to exploitation and abuse.

H. The Court Should Give Deference to the Department’s Expertise-Based Interpretation.

The Department’s interpretation of RCW 19.30.010(4) is entitled to judicial deference because the Department is the agency charged with the administration and enforcement of the Farm Labor Contractor Act. *See Port of Seattle v. Pollution Control Hrgs. Bd.*, 151 Wn.2d at 593

(when interpreting ambiguous statutes, the court gives deference to the agency's interpretation of a statute that falls within the agency's special expertise); *see also Silverstreak*, 154 P.3d at 900 (same).

The Department is the agency designated by the Legislature to regulate farm labor contracting, and other wage, hour, and conditions of employment laws. *See* RCW 19.30; RCW 49.12; RCW 49.46; RCW 49.48. Deference to the Department's interpretation is thus appropriate. This is particularly so, because the Department's interpretation is consistent with the remedial purpose of the statute, legislative intent manifested in the legislative history, and the statute's inclusive language defining "forestation."

I. Federal Law Interpreting a Substantially Similar Statute Favors Interpretation of the Word "Forestation" Broadly to Include Harvesting Evergreen Foliage.

There is no Washington case law interpreting the Farm Labor Contractor Act. But federal case law interpreting a similar statute provides guidance. *See, e.g., Grimwood v. Univ. of Puget Sound, Inc.*, 110 Wn.2d 355, 361-362, 753 P.2d 517 (1988) (federal law construing the Age Discrimination in Employment Act considered as a "source of guidance" in interpreting Washington's similar age discrimination statute); *see also Escobar v. Baker*, 814 F. Supp. 1491, 1501 (W.D. Wash. 1993)

(“Washington courts often look to federal case law for guidance in construing a state law that substantially parallels a federal law.”).

The Farm Labor Contractor Act was patterned after the federal Farm Labor Contractor Registration Act, now known as the Migrant and Seasonal Agricultural Workers Protection Act (MSPA), 29 U.S.C. §§ 1801-1872. *Escobar*, 814 F. Supp. at 1501; *see also Bresgal v. Brock*, 843 F.2d at 1165. Like Washington’s Act, MSPA is remedial and has thus been interpreted broadly. *Escobar*, 814 F. Supp. at 1500.

“Agricultural employment” under MSPA includes the “handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of an agricultural or horticultural commodity in its unmanufactured state.” 29 U.S.C. § 1802(3). “Agricultural employers” hire migrant or seasonal agricultural workers who work in agricultural employment. 29 U.S.C. §§ 1802(2), 1802 (8)(A).

“Agricultural employers” under MSPA include those who own farms, ranches, packing sheds, or nurseries. 29 U.S.C. § 1802(2). While the definition of “agricultural employer” under RCW 19.30.010(4) of Washington’s Farm Labor Contractor Act does not contain the identical language regarding the handling of agricultural and horticultural commodities, it “substantially parallels” MSPA, which is “similar in scope and purpose.” *Escobar*, 814 F. Supp. at 1501.

Unlike Washington’s Act, the federal MSPA does not mention “forestation.” MSPA only generally describes “planting,” “handling,” and “processing” of agricultural and horticultural commodities. The language of MSPA is thus in many ways narrower than Washington’s Farm Labor Contractor Act. Nonetheless, even under this narrower language, the federal courts interpreting MSPA have determined that MSPA applies to the harvesting of evergreen foliage. In *Bresgal v. Brock*, the Ninth Circuit addressed the issue of whether migrant, commercial forest workers were engaged in “agricultural employment” under MSPA. *Bresgal*, 843 F.2d at 1165. In that case, the federal Secretary of Labor had taken the position that MSPA did not apply to commercial forestry workers. *Bresgal*, 843 F.2d at 1165. The Ninth Circuit rejected this interpretation as inconsistent with Congress’s purpose in enacting MSPA – to protect migrant laborers from abuses by labor contractors:

We recognize that forestry workers are not commonly viewed as agricultural workers. Our examination of the underlying purposes of the Act, however, compel our conclusion that forestry workers who raise trees as a crop for harvest are engaged in “agricultural employment” for purposes of the Act. . . . *The conditions that Congress addressed in the Act, and the persons protected, are the same in the forestry industry as in more conventional agricultural industries. We find no principled reason for isolating forestry from all other agricultural areas in which migrant workers and labor contractors are common.*

Bresgal, 843 F.2d at 1166-1167 (emphasis added).

The *Bresgal* decision focused on “all predominantly manual forestry work, including but not limited to tree planting, brush clearing, precommercial tree thinning and forest fire fighting.” *Bresgal*, 843 F.2d at 1171-1172; *see also Bracamontes v. Weyerhaeuser Co.*, 840 F.2d at 274-276 (The remedial MSPA applies to “forestry contractors who employ tree planters, thinners and other forest laborers.”) (internal quotations omitted).

The *Bresgal* court explained with approval that the district court had noted that “it is inconceivable that Congress intended to protect workers planting fruit trees in an orchard, and to disregard workers planting fir trees on a hillside, when both groups suffer from the same clearly identified harm.” *Id.* at 1166. Similarly here, it is inconceivable that the Washington Legislature intended to protect workers planting fir trees on a hillside and to disregard workers harvesting brush, boughs, or Christmas trees on that same hillside, when both groups suffer from the same clearly identified harm.

In another federal decision, the court determined that harvesters of evergreen foliage were engaged in agricultural employment under MSPA, even when they did not “cultivate” evergreen foliage. The court in *Colunga v. Young*, 722 F. Supp. at 1486, held that harvesters engaged in the cutting and gathering of evergreen boughs in the forest, not on a farm, were “migrant agricultural workers” covered by MSPA because they were

engaged in the handling of horticultural commodities. *Colunga*, 722 F. Supp. at 1486 (citing *Bracamontes* and *Bresgal*). The workers there were involved in the harvesting only of evergreen boughs, not cultivation or planting. *Colunga*, 722 F. Supp. at 1483.

The United States Department of Labor relied on the *Bresgal* decision in its formal interpretation that the harvesting of evergreen foliage is covered under MSPA. Wage-Hour Administrator Opinion Letter No. 1732 (WH-541), 1994 WL 975108 (Dec. 1, 1994), at CP 750-751. The Department of Labor interpreted the definition of “agricultural employment” in MSPA to include such activities as “handling of wild, small plants growing in the forest, harvesting of Christmas trees, trimming and harvesting of evergreen boughs, harvesting of yew bark and harvesting of ferns” when such activities are “done with predominantly manual labor within a forest.” CP 750-751.

Both MSPA and Washington’s Farm Labor Contractor Act have broad, inclusive language in their definitions of agricultural employment. Both Acts have similar purposes. This Court should follow the same reasoning used by the federal courts when they broadly interpreted MSPA to include harvesting evergreen foliage.

VII. CONCLUSION

For the above stated reasons, the Department requests that this Court reverse the superior court's judgment, hold that harvesting evergreen foliage is a "forestation" activity within the meaning of RCW 19.30.010(4), and remand this case to the superior court for further proceedings consistent with the holding.

SUBMITTED this 27th day of April, 2007.

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PACIFIC SOUND COAST
EVERGREENS, INC.; PUGET SOUND
EVERGREENS CO.; MT. ST. HELENS
EVERGREEN, INC.; OLYMPIC
EVERGREE, INC.,

Respondents,

v.

DEPARTMENT OF LABOR &
INDUSTRIES,

Appellant.

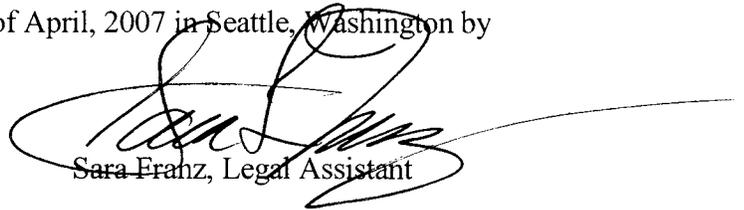
CERTIFICATE OF
SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the
State of Washington, certifies that she caused to be mailed via U.S. mail the
following: BRIEF OF APPELLANT and CERTIFICATE OF SERVICE.

TO:

Phil Talmadge
TALMADGE LAW GROUP PLLC
18010 Southcenter Parkway
Tukwila, WA 98188-4630

Signed this 27th day of April, 2007 in Seattle, Washington by



Sara Franz, Legal Assistant

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