

Case No. 86793-3

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**SUPREME COURT OF THE STATE OF WASHINGTON**

JOSE GUADALUPE PEREZ-FARIAS, et al.

vs.

GLOBAL HORIZONS, INC., et al.

On Certified Questions from the United States  
Court of Appeals for the Ninth Circuit  
No. 10-35397

On Appeal from the United States District Court  
for the Eastern District of Washington  
No. 2:05-cv-03061-RHW

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SUPREME COURT  
STATE OF WASHINGTON  
2012 APR 18 P 3:43  
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CLERK

**BRIEF OF NORTHWEST WORKERS' JUSTICE PROJECT  
AND OREGON LAW CENTER AS *AMICI CURIAE*  
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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ORIGINAL

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## I. STATEMENT OF INTEREST OF *AMICI CURIAE*

*Amicus* Northwest Workers' Justice Project ("NWJP") is a non-profit law firm in Portland, Oregon, dedicated to improving the wages and working conditions of low wage immigrant and contingent workers in the Pacific Northwest. NWJP often represents clients who have migrated to and from work in Washington State. NWJP's founder and executive director acted as an advisor to Washington lawyers in lobbying for and developing Washington's farm labor contractor statute, and for almost twenty years was the director of the Farmworker Project of Oregon Legal Services, a period overlapping the legislative developments described herein. *Amicus* Oregon Law Center is a non-profit Oregon corporation established in 1996 to provide legal services to low-income individuals and families in Oregon. As an important part of its mission it engages in litigation and legislative and regulatory advocacy on behalf of farm and forestry workers. *Amici* and our clients are interested in making sure that Washington's farm labor contractor statute remains an effective protection for farm workers and others who work in both states.

## II. ARGUMENT

In 1979, after years of inadequate enforcement of its law governing farm labor contractors, Oregon established a private right of action

allowing workers to recover fixed statutory damages under the statute. Amendments to the statute in 1983 reemphasized the importance of minimum statutory damages to Oregon's enforcement scheme. Because of the similarities and overlap between the workers and farm labor contracting issues in the two states, and because Washington modeled its Farm Labor Contractor Act on the Oregon act, Washington's statute should be interpreted compatibly with the Oregon farm labor contracting law. When plaintiffs are awarded statutory damages, fixed statutory damages are required under both states' laws.

**A. The Fixed Statutory Damages Provision in Oregon's Farm Labor Contracting Law Was Enacted to Protect Workers in Response to Inadequacies in Both the Federal Farm Labor Contracting Law and the Pre-1979 Oregon Law.**

In 1985, the Washington legislature established a private right of action authorizing workers to recover damages for violations by farm and forestry labor contractors of the Farm Labor Contractor Act ("FLCA"). FLCA's legislative history is replete with references to Oregon's adoption of a private right of action, enacted six years earlier. Because the 1985 FLCA amendments were modeled on Oregon's statute and linked to Oregon's experience with farm labor contractors and its own legislative response, *amici* offer this explanation of the Oregon labor contractor

statute and its damages provision as additional context for understanding the purposes and intent of FLCA.

A law regulating farm labor contractors had been in effect in Oregon since the 1950s. As originally enacted, the Oregon law proved ineffectual because enforcement was limited to criminal prosecution by district attorneys or bureaucratic action by the Oregon Bureau of Labor (now the Bureau of Labor and Industries). In 1979, proponents of the private right of action that would become law later that year pointed out the shortcomings of the former regime. The director of the farmworker program of Oregon Legal Services (the predecessor of *amicus* Oregon Law Center) testified in favor of the bill that established the private right of action:

HB 2419 proposes to give the existing law some teeth. The current law is weak on enforcement and what sanctions it does contain are not being utilized in large part. I have spoken with the offices of several District Attorneys and the Attorney General and could not come up with any criminal prosecutions for violations of the Act. From my our [sic] experience and conversations with others around the state, I have uncovered literally hundreds of violations of the Act. These violations have resulted in the economic exploitation of thousands of farmworkers in Oregon. The Act was designed to protect them from this, but as it currently stands it isn't accomplishing its purpose. ***This proposed legislation propose[s] as an alternative enforcement tool statutory damages which would be available to the aggrieved worker.*** It is a self-help bill. The worker will not be dependent on government to right the

wrong. He or she would have a right of action to pursue the remedy.

Appendix at 26 (Hearing on House Bill 2419, House Labor Committee (March 14, 1979), Exhibit B, Testimony of Dick Ginsburg) (emphasis added).<sup>1</sup>

A federal statute at the time also purported to regulate labor contractors. Like the then-current Oregon law, the federal Farm Labor Contractor Registration Act (“FLCRA”) had shortcomings that rendered it ineffective in policing the misconduct by contractors that was rampant in Oregon. These shortcomings included the exemption of most local recruitment, the failure to cover forestry contractors, and lackluster enforcement by the United States Department of Labor.

To address these and other inadequacies in FLCRA and the pre-1979 Oregon farm labor contracting law, House Bill 2419 was enacted in 1979. Or. Laws 1979, ch. 883, § 3 (codified at ORS § 658.453). The new act ushered in a “private attorney general” scheme to check the behavior of farm labor contractors. For the first time, workers themselves had the right to sue to redress violations of the statute and deter the abuses and unlawful conduct of farm labor contractors.<sup>2</sup> The purpose of the law was

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<sup>1</sup> Oregon legislative materials are set forth in the Appendix.

<sup>2</sup> The underlying substantive requirements for contractors were obtaining a state license and giving prospective workers accurate

not merely to compensate farm workers but to provide a remedy to address the inadequate public prosecutorial resources and the generally ineffective federal law. *See* Appendix at 17 & 26 (Hearing on House Bills 2419 & 2420, House Labor Committee (Mar. 14 1979), Exhibit B, Testimony of Dick Ginsburg).

Minimum statutory damages, as an alternative to actual damages, were a crucial element of Oregon's new farm labor contracting law. If a victim of a statutory violation could recover no more in damages than he or she could prove in monetizable losses, proponents feared that workers would have insufficient motivation to bring the suits that the legislature was relying on to deter misconduct. Appendix at 33 (Hearing on House Bill 2420, Senate Committee on Labor, Consumer & Business Affairs (June 8, 1979), Exhibit C, Remarks of Rep. Kafoury). These minimum statutory damages were effectuated under Oregon's new law by using the remedial language "or \$500, whichever amount is greater." Or. Laws 1979, ch. 883, § 3.

House Bill 2420 was the companion bill to House Bill 2419. It covered misrepresentations concerning all work, not just farm work. It, too, sought to add minimum statutory damages, using the language, "or \$500, whichever is greater." Appendix at 35 (House Bill 2420 (Enrolled)),

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disclosures about the work.

1979 Session). At a legislative hearing where the two bills were discussed together, a proponent of both bills emphasized the reason for minimum statutory damages of \$500<sup>3</sup>:

The bill would give him the option of asking for the \$500 provided in the statute as an alternative to seeking recovery for actual losses. The worker could elect the larger of the two amounts . . . .

*Statutory damages would allow a minimum \$500 recovery in all cases. . . .*

The existing statute does not have much deterrent effect in cases where actual damages are small; many times a suit will not even be filed. With workers in the lower income brackets, such as farmworkers, this kind of exploitation is common. *A minimum damages provision would encourage aggrieved individuals to pursue their cases and thereby increase the deterrent effect of the law.*

Appendix at 24-25 (Hearing on House Bill 2420, House Committee on Labor (March 14, 1979), Exhibit B, written testimony of Anita Paulsen and Dick Ginsburg at 1-2) (emphasis added).

The contrary view, that damages should be limited to pecuniary losses, was also aired in the legislature. Under the contrary view, to recover \$500 or any other amount, a worker would need to prove in every case, in addition to a violation of the statute, what were in effect

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<sup>3</sup> Although this testimony was offered in support of HB 2420, it was given at a joint hearing on both bills; given the similarity of language, the legislature must have understood that the purpose of the two nearly identical remedial proposals was the same.

consequential damages. Tapes of the Senate hearing are inaudible, but from the minutes:

\* \* \* SENATOR WINGARD felt that in most law it says "up to \$500" and he didn't remember seeing a floor rather than a ceiling. MS. PAULSEN said there are instances where it is a flat amount, although she couldn't state one at this time. She thought the \$500 would be better because it would be difficult for an individual to prove actual damages \* \* \*

\* \* \* SENATOR HANLON understood that \$500 was the least amount a worker could collect and REPRESENTATIVE KAFOURY agreed, if the claim was sustained and deceptive representation was proven.

\* \* \* *SENATOR HANLON asked if they would oppose an amendment to limit the amount to not more than the actual damages suffered.*

*\*\*\* REPRESENTATIVE KAFOURY pointed out that is the problem they are trying to correct.* When it is actual damages and a matter of a bus ticket the person doesn't go to court and there are a few noted people in her area who continually misrepresent the conditions but they can't get the workers to file charges because they can't take the time from work. Last year there were about nine complaints filed with the Bureau of Labor.

Appendix at 31-33 (Hearing on House Bill 2420, Senate Committee on Labor, Consumer, and Business Affairs (June 8, 1979), Exhibit C, Minutes at 3-5) (emphasis added).

The Oregon Legislative Assembly rejected this contrary view and opted for minimum statutory damages, which remain in the labor-contractor statute to this day. That regulatory approach is entirely

consistent with the nature of the systemic ills that the legislature intended to address. It recognizes that the harms caused by violations of the labor contractor statute can become significant in the aggregate even if they are small and difficult to prove individually. The legislature manifestly expected minimum damages to serve as a deterrent to contractors, especially when combined with the private attorney general scheme it created in House Bill 2419.

**B. The 1983 Amendments to Oregon's Farm Labor Contracting Law Further Established the Importance of Fixed, Minimum Statutory Damages Under the Oregon Law.**

By 1982, it became patently clear that the federal remedies provided by FLCRA failed to protect farm workers. On September 28, 1982, the United States House of Representatives, after receiving extensive testimony about the continued abuses committed by farm labor contractors, issued a report that stated:

The committee has concluded, as a result of direct evidence, that the farm labor contractor registration act [FLCRA], [] has failed to reverse the historical pattern of abuse and exploitation of migrant and seasonal farm workers and that a completely new approach must be advanced.

House Report No. 97-885, H.R. REP. 97-885, 3, 1982 U.S.C.C.A.N. 4547, 4549, 1982 WL 25163, 3.

Against that backdrop, and given the identified inadequacies of FLCRA, in 1983, the Oregon Legislative Assembly amended Oregon's

farm labor contractor act in three significant ways to provide additional state law protections for farm workers. It broadened coverage of forestry labor contractors under the statute, and required that they obtain a special endorsement. Or. Laws 1983 ch. 654, §§ 2 & 3 (codified at ORS § 658.405 & .417). It created a right to minimum damages of \$500 in actions for injunctive relief brought against forestry contractors, which action could be brought by “any person,” including other forestry contractors. *Id.* § 9 (codified at ORS § 658.475). It also increased the \$500 minimum statutory damages available to workers in actions against all farm labor contractors to \$1,000. *Id.* § 7 (codified at ORS § 658.453(4)). Each of these provisions originated in Senate Bill 525. By 1983 the remedy of minimum statutory damages was well established and not questioned.

Indeed, the importance of the minimum statutory damages provision in the Oregon statute was reaffirmed in the debate over the provision authorizing licensed reforestation labor contractors to sue to enjoin unlicensed persons from acting as contractors. The licensed contractors insisted that being able to recover minimum statutory damages should be an integral part of the enforcement scheme. If they were going to play an important role in enforcement (because no increase in resources for bureaucratic enforcement was being proposed) they needed sufficient

incentive. The contractors' representative testified that minimum statutory damages were needed to "break even" on their efforts. Appendix at 38 & 44 (Hearing on Senate Bill 525, Senate Committee on Labor (May 11, 1983), Exhibit D -Testimony of Gerry Mackie, Northwest Forest Workers Association).<sup>4</sup>

**C. The Fixed Statutory Damages Provisions in Oregon's and Washington's Farm Labor Contracting Laws Should Be Interpreted Harmoniously for the Protection of Farm Workers in Both States, Particularly Given that Washington's Law Was Expressly Modeled on Oregon's Law.**

Oregon and Washington are similar in their geography, growing seasons, crops, climate, and culture. The types of work regulated by FLCA and its Oregon counterpart are very much alike. Often, that work is even performed by the same people, who migrate between the two states to earn their livelihood.

This is simply a fact of economic life. There is not enough permanent, non-seasonal, well-paid work to enable most farm and forestry workers to make a living without migrating. Farm and forest labor

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<sup>4</sup> Licensed forestry contractors took this position, and the legislature accepted it, even though proving actual losses would presumably be far easier for them than for plaintiff workers. *See* ORS § 658.475 (provides minimum damages in injunctive suits brought by "any . . . person").

contracting is an inherently interstate business. This was so in the years when the critical amendments to FLCA and the Oregon act were being passed, and it remains so today.

The briefing submitted by the parties to this Court notes that Oregon Legal Services testified before the Washington Legislature at a 1984 public hearing in Vancouver. (Pltfs.-Appellants' Brf. at 19-20). OLS took on that advocacy in hearings that resulted in the 1985 FLCA amendments because it recognized that the problems facing their farm worker clients did not end at the Oregon-Washington border. The same clients frequently traveled to and from Washington, not as a choice, but out of necessity to provide for their families, and they needed equivalent protections in both states. The certified question now before this Court involves the same issue and presents the same concerns. The workers need equivalent protections in both states, as provided in these parallel statutes. Any dilution of the protections that FLCA affords to Washington workers, including clients of *amici*, would affect their well-being in Oregon as well.

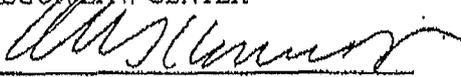
### III. CONCLUSION

Washington's and Oregon's farm labor contracting laws, including the fixed statutory damages provisions in the two statutes, should be read harmoniously, consistent with the legislative history of the 1985 FLCA amendments and the absence of any expressed intent on the part of the

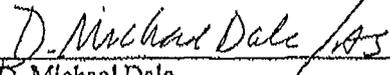
Washington Legislature to take Washington in a different direction. Oregon has made a legislative judgment that in farm labor contracting, where damages can be small by traditional measures, effective enforcement of its law depends on minimum statutory damages, using the language "or statutory damages of \$1,000, whichever amount is greater." The Washington Legislature, after studying the Oregon farm labor contracting law, adopted remedial provisions using the very similar language "or statutory damages of five hundred dollars per plaintiff per violation, whichever is greater." Interpreting this FLCA provision in a manner consistent with the Oregon act on which it was modeled will keep crucial protections in place to help prevent abuses in the future.

RESPECTFULLY SUBMITTED this 10th day of April, 2012.

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## CERTIFICATE OF SERVICE

I certify that on the 10th day of April, 2012, I caused a true and correct copy of the Brief of Northwest Workers' Justice Project and Oregon Law Center as *Amici Curiae* in Support of Plaintiffs-Appellants to be served on the following persons by First Class U.S. Mail:

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Rec. 4-10-12

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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**Subject:** Case No. 86793-3: motion & proposed amicus brief

To the Clerk of the Supreme Court:

I attach for filing in *Perez-Farias v. Global Horizons*, Case No. 86793-3, a **Motion for Leave to File Amicus Brief** and the proposed **Brief**. Because the Appendix of the Brief exceeds 25 pages, I am mailing that to you separately this date.

The Motion and Brief (with Appendix) have been served on all interested parties, as appears from the within certificates of service.

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Perez-Farias v. Global Horizons, Inc.

Case No. 86793-3

Overlength Appendix

(to be filed and matched up with electronically filed proposed amicus brief of  
Northwest Workers' Justice Project and Oregon Law Center)

# APPENDIX

HOUSE COMMITTEE ON LABOR

March 14, 1979

1:30 P.M.

Hearing Room E

Members present: Representative Jim Chrest, Chairman  
 Representative Bill Rogers, Vice Chairman  
 Representative Eldon Johnson  
 Representative Gretchen Kafoury  
 Representative Al Riebel  
 Representative Max Rijken  
 Representative George Starr

Staff Present: Mike Kopetski, Administrator  
 Ellen Scheidel, Assistant

Witnesses: Anita Paulsen, Oregon Legal Service, Legislative  
 Coordinator  
 Dick Ginsburg, Director, Farmworker Office  
 Nancy Fries, Milton-Freewater, Oregon  
 Mary Friesen, Pendleton, Oregon  
 Juanita Coleman, Hermiston, Oregon  
 Jeff Manly, North Bend, Oregon  
 Rev. Frank J. Knusel, Archdiocese of Portland  
 Seferina Deleon, Oregon Legal Services, Ontario,  
 Portland  
 Jesus R. Lopez, Oregon Legal Services, Forest Grove,  
 Oregon  
 Daniel Garza, Forest Grove Oregon  
 David Silva, Portland, Oregon

0025 Chairman Chrest called the House Labor Committee to Order.

HB 2419 & 2420 - Farm Labor Bills

0035 Rep. Kafoury told the committee how important she feels these bills are. She related there are probably over 100,000 workers in the state who fall under the category of seasonal or migrant workers.

0050 Anita Paulsen spoke for the Oregon Legal Services in support of the the bill. Her written testimony is marked Exhibit "A" as pertains to HB 2419.

0141 Rep. Johnson asked Ms. Paulsen who she represented and explain something about the organization to understand better her reason for interest. Dick Ginsburg responded to Rep. Johnson. He stated there were many cases of violations of current state Act covering farm labor contractors. Ms. Paulsen commented that recurring problems are reported to the legislation committee of legal services. Client's councils are made up of individuals who have been legal services clients or because they are low income are eligible to be legal services clients. The corporation operates off federal grants.

- 0235 Mr. Ginsburg explained what a farm labor contractor was and his responsibility to the worker and farmer. He stated the existing law in the state is widely violated. He has seen hundreds of violations of the law with the last year. The law is not enforced. This bill would put some teeth into the law and not actually change the existing law. The federal farm labor act does not cover Oregon's need. He wants farm labor contractors registered under the Oregon law rather than federal law.
- 0319 Rep. Starr that any reference to "crew leader" is deleted from the law. He asked if that were replaced with another term. Mr. Ginsburg stated current law refers to "crew leaders" by exempting them from coverage. They are the type of people who are exploiting workers now and who should be covered. He feels that strengthening this law would require farm labor contractors to treat an alien equal to a domestic worker. If the chance of exploitation of an alien is removed then the domestic worker becomes just as attractive an employee as the alien.
- 0363 Rep. Rogers asked how many contractors had caused problems. Mr. Ginsburg stated that in his five years in this work he has seen less than 5% of the contractors who have not been in violation.
- Rep. Rogers asked Ms. Paulsen if there would be any objection to amending the bill to state that the prevailing side would not have to pay the court fees. She replied that the workers come to Legal Services because they have no money and it would be hard on them to find the money to pay for the costs of a lost case. She said perhaps that the amendment would state attorney's fees and the discretion of the court to determine if the plaintiff were to pay. She stated the Legal Service Organization is trying to encourage the private bar to intercede on behalf of the workers, not generate business for the Organization lawyers.
- 0716 Rep. Starr served notice to the committee that when the bill was dealt with again he would have a number of amendments.
- 0722 HB 2420 - Misrepresentation to farm worker by contractor
- Mr. Dick Ginsburg presented written testimony which is marked Exhibit "B" and supports the bill.
- 0730 Ms. Nancy Fries appeared to testify in behalf of the bill. She has been working with migrant workers for four years in Milton-Freewater. There have been several instances in her area where the contractor has left the families without means of transportation, and without means of support. People in farm work are not receptive to welfare and are reluctant to take state help. In some cases the workers are required to pay rent to the labor board even though the farmer is already paying the rent. In other words, the contractor is being paid of rent by both the farmer and the worker. She reported other instances where the worker was getting "ripped off" by the contractor. She stated there are some contractors who use "muscle" when opposed.

- 0874 Ms. Fries described a labor contractor at the request of Rep. Johnson. He contracts with a farmer to bring laborers to harvest crops, and brings sometimes 60 people either by bus or by their own transportation. She feels the best contractor has them come up from Texas or elsewhere by their own means and thereby does not have as big a hold on them as if they came by bus. The contractor receives pay over and above (she has heard they receive \$100 per person) for his part in bringing the laborers. They will sometimes then charge the worker for different services which the farmer may have already provided, but the worker is unaware of this. The farmer can either pay the workers directly or he can pay the contractor who then takes care of the worker. She testified that when the farmer pays the contractor then the worker many times does not receive the money or very little of it.
- 0923 Juanita Coleman, a former farm laborer, testified in support of the bill. She stated that a major complaint of farm labor workers is that a contractor, after hiring and agreeing to pay them, will sometimes fail on his promises and leave the area. This problem was evident when she was employed in farm labor and is still evident today. She felt the contractor should be required to put in writing the conditions of work and the wages to be received before any contracting is done. All workers should have the right to file legal action against any contractor for failing to be licensed, for not posting notices, and for any discrimination. An employer should be fined if he uses an unlicensed contractor, and the unlicensed contractor should also be fined.
- 1000 Mary Friesen stated she has not worked the farm labor for several years. However, the complaints she hears remain the same. She supports the bill for the same reason as previously stated.
- 1078 Mr. Jeff Manly, North Bend, Director of the Southwest Oregon Community Action, Inc., testified in support of the bill. He stated he wanted to discuss the Weyerhaeuser Corp. and big timber companies. The Weyerhaeuser Corp. contracts with the labor contractor to get the trees planted. The contractor recruits the workers illegally in Mexico. Generally toward the end of their contract they are taken into the communities and a tip is given to the Federal Government and they are arrested. It seems to happen just before payday. Of the 112 interviews he has conducted, 99 people were owed money for the work they had done. The interviews were done in the jails. The workers were always paid by the contractor and never by the company. He told the committee of an instance where workers were put up six to a motel room and each worker was charged the entire amount of the motel cost. He stated he could document that statement and at the request of the Chairman agreed to furnish the committee with the documents. There are only three contractors that he knows of.

- 1253 Rev. Frank Knusel, in charge of the Spanish speaking for the Diocese of Western Oregon, spoke in support of the bill. Most of the things he was going to bring out have already been said. He has never seen a notice of bonds posted in any camp or a written statement of agreement of payment.
- 1368 Rep. Rogers asked Rev. Knusel if laws could realistically be enacted to stop this abuse. He replied he does not feel this bill will solve all the problems, but this will put some teeth into the law.
- 1385 Rep. Chrest asked Bob Steen to have the Labor Commissioner's office supply the committee with a list of all the licensed labor contractors in the state. The list is marked Exhibit "C".
- 1418 Seferina Deleon also testified in support of the bill. Her testimony is marked Exhibit "D".
- 1489 Rep. Rogers requested that the staff follow up with Seferina Deleon to get applicable data, names and details, and check with the Department of Revenue to see if there were taxes withheld and not turned in. How do farm labor contractors account for the money on his own income tax?
- 1502 Ms. Deleon read into the record testimony in support of HB 2419 and HB 2420 by Amanda Valero. This testimony is marked Exhibit "E".
- 1532 Jesus Lopez and Daniel Garza, both from Washington Co., testified in support for the bill. Both have been farm workers. Mr. Lopez interpreted for Mr. Garza and stated everything has been said by previous testimony.
- Mr. Ignacio Alatorre of Mt. Angel stated he had been a farm worker al his life and has had problems with different contractors who many times take advantage of the workers.
- 1699 Mr. David Silva presented written testimony in support of the bill and cited a few incidents of abuse of farm workers. His testimony is marked Exhibit "F".

There being no further business, the meeting adjourned.

Respectfully submitted,

Ellen Scheidel

The following were unable to testify, but their testimony is made a part of the minutes:

Bill Fitzgerald - AFL-CIO, Exhibit "G".  
George Stevens - Oregon State Grange, Exhibit "H".  
Rob Hukari - Hood River, Exhibit "I".  
Clayton Patrick - Oregon Trial Lawyers Assn., Exhibit "J".

# EXHIBIT A

# OREGON LEGAL SERVICES Co

Central Office

2328 NORTHWEST EVERETT ST.  
PORTLAND, OREGON 97210

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PHONE 223-7502

House Labor Committee

3/14/79 - Exhibit "A"

HB 2419-2420

Presented by Ore. Legal Serv.

2 pages

March 13, 1979

TO: House Committee on Labor  
FROM: Anita Paulsen, Legislative Coordinator  
Dick Ginsburg, Director, Farmworker Office  
RE: Testimony in Support of HB 2419

Both of us work for Oregon Legal Services; Anita as Legislative Coordinator, and Dick as Director of OLSC's Farmworker Office. OLSC is a legal aid organization serving Oregon's low income rural population. OLSC has 11 branch offices throughout the state. Today we are representing the Oregon State Clients Council. The Council is an organization consisting of OLSC clients and persons eligible to be OLSC clients.

Oregon presently has a law<sup>a</sup> regulating farm labor contractors (see ORS 658.405 and 658.991). It requires farm labor contractors to be licensed by the Labor Commissioner, carry vehicle insurance, post a bond to guarantee payment of workers and growers who advance the contractor money and make disclosures to workers in written form of the terms and conditions of employment.

The proposed legislation would keep intact the provisions of current law, though it would rework them to provide workers with better protections. It would require farm labor contractors violating the Act to pay statutory damages to workers. Growers using unlicensed contractors would also be liable to workers for similar damages. Currently, the only sanctions in the law are criminal that are seldom enforced. The Labor Commissioner presently can suspend or revoke the license of a contractor who doesn't comply with the law.

The proposed legislation would preserve the exemption from the Act for individual growers who recruit workers for their own operations. The current exemption for "crewleaders," persons who travel with the workers and supervise the work for the growers, would be deleted as would the exemption for permanent employes of growers and those recruiting workers for day-haul operations.

The bond amount is increased from a blanket \$5,000 to \$7,500 for crews of 25 workers or less and \$15,000 for all others. Provisions are added to allow part-year licensing (and bonding) for persons who operate as contractors only on a seasonal basis. Additionally, the Labor Commissioner will have the authority to reduce the bond requirements for contractors who have had no claims filed against them for three years.

The bill would require contractors to appoint the Labor Commissioner as their agent for purposes of accepting service of process of claims filed under the farm labor contractor statute.

The temporary licensing provisions would be eliminated.

All written disclosures made to the worker would have to be in the language of the worker.

The bill contains an emergency clause to allow it to take effect upon passage.

# EXHIBIT B

B  
OREGON LEGAL SERVICES Co

Central Office

2328 NORTHWEST EVERETT ST.  
PORTLAND, OREGON 97210

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PHONE 223-7502

House Labor Committee

3/14/79 - Exhibit "B"

HB 2419-2420

Presented by Ore. Legal Services

6 pages

March 13, 1979

TO: House Committee on Labor

FROM: Anita Paulsen, Legislative Coordinator  
Dick Ginsburg, Director Farmworker Office

RE: Testimony in support of HB 2420

WHAT THE BILL DOES

This bill gives a worker a right of action for \$500 as an alternative to the right, provided under current law, to collect actual damages suffered as a consequence of false or deceptive representations, false advertising or false pretenses used to induce the worker to change his or her place of employment. The bill also provides for the recovery of other appropriate damages in such cases.

For example: An employed worker is recruited to take a new job. The worker is promised terms and conditions that make the new job look attractive and induce the worker to leave his or her former employer. If the representations turn out to be false and the job is not as described, the worker may suffer a loss of income or benefits. The worker may also have incurred travel and moving expenses.

Current law would permit him to recover these losses. However, if the job the worker left was temporary, or if the worker is in a low-income bracket, actual provable damages may be small so the worker will not be able to recover much for the wrong done him.

The bill would give him the option of asking for the \$500 provided in the statute as an alternative to seeking recovery for actual losses. The worker could elect the larger of the two amounts. The worker would also have the right to recover all other appropriate damages under this bill.

ARGUMENT FOR HB 2420

A worker may not be able to show large financial losses as a result of an employer's recruitment representations. For example, if the worker could not afford to hire a moving company, he might not be able to recover the value of his or her own labor in moving, nor could he recover for the inconvenience and disruption caused by the move. Statutory damages would allow a minimum \$500 recovery in all cases. This is still not a large amount of money, but it would give the worker something to help in getting settled again.

The existing statute does not have much deterrent effect in cases where actual damages are small; many times a suit will not even be filed. With workers in the lower income brackets, such as farmworkers, this kind of exploitation is common. A minimum damages provision would encourage aggrieved individuals to pursue their cases and thereby increase the deterrent effect of the law.

Good afternoon. My name is Dick Ginsburg. I am the director of the Farmworker Office of Oregon Legal Services. We are funded by the National Legal Services Corporation to provide legal services to farmworkers in Oregon. I have been involved in this work for five years. And have an intimate knowledge of the problems of farmworkers.

The bill in front of the committee would amend the Oregon Farm Labor Contractor Act. Farm Labor Contractors are the middlepersons in the farm labor business. They are the link between the grower who needs labor and speaks no Spanish and the worker who needs work and speaks no English. They are the biggest exploiters of farmworkers and often cheat the growers as well. This legislature has already recognized their evil by enacting to a Farm Labor Contractor Act.

H.B. 2419 proposes to give the existing law some teeth. The current law is weak on enforcement and what sanctions it does contain are not being utilized in large part. I have spoken with the offices of several District Attorneys and the Attorney General and could not come up with any criminal prosecutions for violations of the Act. From my own experience and conversations with others around the state, I have uncovered literally hundreds of violations of the Act. These violations have resulted in the economic exploitation of thousands of farmworkers in Oregon. The Act was designed to protect them from this, but as it currently stands it isn't accomplishing its purpose. This proposed legislation propose as an alternative enforcement tool statutory damages which would be available to the aggrieved worker. It is a self-help bill. The worker will not be dependent on government to right the wrong. He or she would have a right of action to pursue the remedy. The added expense to the State treasury will be negligible.

I would now like to go through the sections of the bill.

Section One changes some of the definitions. The term Farm Labor Contractor is only slightly changed. It makes it clear that anything the contractor receives of value for services rendered can be a fee and thus bring coverage of the law. Exempted from coverage are persons who personally recruit their own labor.

The exemption for "crewleaders" is deleted. This exemptions in the current statute guts it. It is these people who are termed crewleaders who are the labor contractors who exploit the workers.

The exemption of those recruiting for dayhaul work is eliminated. The chance for abuse exists here as with any other recruitment.

The definition of covered employment should include the thinning and pruning of trees and the preparation of the land for reforestation.

Section Two has only minor changes in language which do not change the substance of current law.

Section Three eliminates the reference to temporary licenses which are deleted elsewhere in the bill. The Bureau of Labor has stopped issuing temporary licenses. Also temporary licenses lack the safe-guards of permanent licenses-such as the bottom.

Section Four provides changes in the information the applicant for a license must provide to the labor commissioner. Both temporary and permanent addresses would be required plus information on vehicles used in the applicant's operations. The applicant would also have to report to the Commissioner of any previous revocations, denials, etc., of Farm Labor Contractor licenses, not just those in the three prior years. The amount of the bond which the applicant must post to guarantee payment of the wages of the employees of the contractor and the repayment of moneys advanced the contractor by the grower is raised to \$7500 for smaller crews and \$15,000 for larger crews. The current amount is \$5000. This inadequate. The Labor Commissioner is given the discretion to lower this amount if the applicant has operated for three years without having a claim filed against him or her.

The contractor is presently required to post a notice of the bond and the address of Labor Commissioner at the worksite. The bill would require this disclosure to be in the language of the person recruited.

Section Five provides that any person may make a complaint against a farm labor contractor and that the Labor Commissioner shall investigate within a reasonable period of time. Inherent in this idea of reasonable period of time would be the seasonal nature of work being performed by the contractor and persons he or she has recruited.

An applicant for a license would have to name the Labor Commissioner or as his or her agent for service of process for purposes of accepting service of process in civil suits brought against the contractor pursuant to this Act. This is very important since contractors are seldom in one place very long and are notorious for evading service.

Section Six makes minor changes in language and does not effect the substance of the current law.

Section Seven would require the contractor to disclose to the workers recruited the name and address of the owner of the operations where the workers will be laboring. This would be in addition to the present written disclosure requirements. Also, the disclosures would have to be in the language of the workers being recruited.

Section Eight adds as an additional basis for the Labor Commissioner to revoke, suspend or refuse to renew the license of a contractor the manner in which the individual has operated as a contractor.

The prohibition against retaliation against aggrieved employees is expanded to include cases where the employee has discussed inquired about or consulted an attorney or agency. The word "or" should be inserted in line 16 on page 15 before the word consulted.

Section Ten provides for the statutory damages. A Labor Contractor who so operated without a license would be liable to the employee involved in the amount of \$500.

A contractor who violate the requirement to post a notice detailing the bond of the contractor would be liable to the worker involved in the amount of \$250.

A contractor who fails to make the disclosures required by concerning the terms and conditions of employment would be liable to the worker for \$500 for each term or condition not disclosed.

Any person using the services of an unlicensed farm labor contractor would be liable to the worker involved in the amount of \$750. This provision is a key part of the bill. It provides compliance with the act by the contractor by making it harder for the unlicensed contractor to find work. The burden on the grower is minimal. All he or she need do is ask to see the contractor's license. Such a contractor could easily become licensed at any office of the Oregon Employment Service.

Any person retaliating against an aggrieved worker who is asserting his or her rights would be liable to the worker for \$1000.

The aggrieved worker is given the right of action to collect the statutory amounts provided. He could also collect attorney's fees. This provision is important since the amount involved are small and there must be some encouragement to the attorney to take the case and for the worker to bring the action with the knowledge that the recovery will not all go the attorney.

The statute of limitations provide should be deleted. The Oregon statutes on limitations of actions would cover the rights provided in this bill.

In summary, this legislation would greatly enhance the compliance with the current law, which is now widely violated. It would go far to limit the exploitation of a class of workers who are at the bottom of the economic ladder. And it would do this without providing for more government of added costs to the state.

Thank you very much.

3  
Good Afternoon. My name is Dick Ginsburg. I am the director of the Farmworker Office of Oregon Legal Services. We are funded by the National Legal Services Corporation to provide legal services to farmworkers in Oregon. I have been involved in this work for five years. And have an intimate knowledge of the problems of the farmworkers.

H.B. 2420 would expand the statutory damages provision of the Oregon Fair Employment Practices Act to provide for minimum statutory damages in the amount of \$500 as an alternative remedy to actual damages suffered. Many workers, especially farmworkers, are recruited to employment through the use of misrepresentations. Such misrepresentations are wide spread with farmworkers.

The workers go to a lot of trouble to travel to the area of the new job but because they are poor, they don't make actual expenditures such as hiring a moving company. Their recovery under the current Act would be minimal as would the Act's deterrent effect in such circumstances. The alternative of a \$500 statutory amount would cure this defect.

# EXHIBIT C

Tape 31 - 1

084 Father Frank Knusel, Director in Charge of the Spanish-speaking area of Western part of Oregon, living in Cornelius, explained his duties and his work in the labor camps in western Oregon. Many of the people that would be covered are those that do not know what their rights are. They will be told living conditions and salaries are much better than they are when they get to Oregon.

104 REPRESENTATIVE GRETCHEN KAFOURY and REPRESENTATIVE BILL RODGERS appeared together in support of HOUSE BILL 2420.

109 SENATOR GROENER asked if these conditions prevailed in their areas and SENATOR RODGERS noted they did not exist in his area. REPRESENTATIVE KAFOURY noted that House Bill 2419 was the companion bill to HB 2420, however it has been referred to the Senate Agriculture Committee. HB 2419 relates to the tree planter's situation.

113 SENATOR WINGARD wondered how they arrived at \$500. REPRESENTATIVE RODGERS noted it was an arbitrary figure and he had no strong feeling about it one way or the other. SENATOR WINGARD was concerned that there are times when someone does this intentionally and the amount of flagrant violation, and he wanted to know what the real problem is, because usually a penalty will be in degrees, not a flat \$500. REPRESENTATIVE KAFOURY pointed out that the penalty is \$500 or whichever. REPRESENTATIVE RODGERS felt there was a lid. SENATOR WINGARD wanted to be sure they were satisfied that \$500 is not overburdensome. MS. PAULSEN felt the wording of the statute is deceptive. There has to be some proof of serious misrepresentation. SENATOR WINGARD wanted to know how they would prove this and what the law says must be done to be misrepresentation. MS. PAULSEN gave an example of moving from a long distance, leaving a job and finding the job and the salary are not what they were promised.

124 SENATOR WINGARD wanted to know what steps the person would go through to file a claim. MS. PAULSEN felt it could be handled in small claims court if an individual was sophisticated enough to handle it that way. REPRESENTATIVE RODGERS pointed out a court action is involved. SENATOR WINGARD felt that in most law it says "up to \$500" and he didn't remember seeing a floor rather than a ceiling. MS. PAULSEN said there are instances where it is a flat amount, although she couldn't state one at this time. She thought the \$500 would be better because it would be difficult for an individual to prove actual damages. SENATOR WINGARD wondered about the worker that went from one field to another to make more money and then finds out they can't make more money. REPRESENTATIVE KAFOURY didn't feel there could be any recovery unless the person was induced there by some action of the employer. REPRESENTATIVE RODGERS added that if there were no damages, there could be no award. Before there can be a cause of action, there must be a damage sustained.

Tape 31 - 1

135 SENATOR WINGARD found that the language he was concerned about had been deleted, but was not clear in the printed bill.

138 SENATOR TROW asked what was prohibited in section 1, (1), where it speaks of persons injured in ORS 659.210. REPRESENTATIVE KAFOURY noted that was the Civil Rights Statute that also contains the farm labor contractor. That is why it is relevant to this and includes persons, firms, companies, corporations, associations or agents of the association. SENATOR TROW wondered what was prohibited. SENATOR GROENER read that statute.

144 SENATOR HANLON understood that \$500 was the least amount a worker could collect and REPRESENTATIVE KAFOURY agreed, if the claim was sustained and deceptive representation was proven. SENATOR HANLON wondered about the employer who sends a recruiter across the border to bring a bus load of workers in and REPRESENTATIVE KAFOURY noted the employer was not liable, the recruiter would be liable. SENATOR HANLON changed to the employer bringing them up and all the people decide they were unduly influenced, induced or persuaded and the job isn't represented properly as to what it is to be and if they prove expenses of \$100 or \$150, they can collect \$500 each. REPRESENTATIVE KAFOURY replied that it would have to be proven that they were induced to come here. SENATOR HANLON didn't think there was any provision for them to collect less than \$500.

150 REPRESENTATIVE RODGERS pointed out that this comes about from those few cases where this does happen and people suffer these losses. This isn't an overworked factor as far as they can determine. It would have to be a flagrant violation and a small amount is usually involved. Present law says the person can recover reasonable attorney's fees, but many times the attorney's fees are higher than the award. Subsection (2), is an amendment put in in the House. Under existing statute, if a farmer is accused and goes to court to defend themselves and win, the farmer might have been better off to pay the \$250 claim because the attorney's fee may be \$1,000 and the farmer could get nothing. Under this new language, if it is adopted, the farmer would be entitled to get attorney's fees and costs also. That is the trade-off in the bill for getting the floor in because if the farmer won, the farmer could get attorney's fees as the court would award and court costs. SENATOR WINGARD noted it didn't say they have to be awarded and REPRESENTATIVE KAFOURY agreed, but now, they can't recover at all. REPRESENTATIVE RODGERS pointed out that most existing statutes allow attorney's fees to the plaintiff or prevailing party and this is the language that is allowed, so the court will have the discretion to allow this and it is going to be allowed if it is a legitimate case

163 SENATOR HANLON asked if <sup>32</sup>they would oppose an amendment to limit

Tape 31 - Side 1

the amount to not more than the actual damages suffered. REPRESENTATIVE KAFOURY pointed out that is the problem they are trying to correct. When it is actual damages and a matter of a bus ticket the person doesn't go to court and there are a few noted people in her area who continually misrepresent the conditions but they can't get the workers to file charges because they can't take the time from work. Last year there were about nine complaints filed with the Bureau of Labor. SENATOR HANLON felt if it were changed to \$500 there will be more complaints. REPRESENTATIVE RODGERS thought subsection (2), which was added in the House, will be the controlling factor, as far as stopping anything that would be frivolous, because the attorney for the plaintiff is going to have to be aware that if they go in and lose, it will cost them money. Right now it doesn't cost them anything but time. MS. PAULSEN pointed out that 659.121 is the statute that provides a base limit.

171 SENATOR GROENER noted there were other statutes that related to fraudulent employment practices, but this is one where a person would have to travel to charge deceptive advertising and he didn't feel \$500 was excessive as far as this bill was concerned.

174 SENATOR WINGARD was concerned about the language in line 5 which says "induced, influenced or persuaded". SENATOR TROW pointed out that was not the operative language. That is in the statute it refers to.

177 SENATOR HANLON said he wouldn't support the bill. He could see a person bringing a busload of strawberry pickers up and they will charge misrepresentation and the employer will deny it and the court will award each person \$500 and it could destroy a man's whole institution.

179 SENATOR GROENER didn't think labor was imported for strawberries. He thought this applies to the Mexican-American and perhaps the wetback that is induced to come up for good wages and living conditions. REPRESENTATIVE RODGERS noted it was aimed at the farm labor contractor. REPRESENTATIVE KAFOURY pointed out that the nine cases that were filed were with the Bureau of Labor and she had no idea how many received wrong information that did not file. SENATOR HANLON understood the problem but he didn't think the grower could handle these sums of money.

186 REPRESENTATIVE RODGERS mentioned the amendments in the bill were his, with the concurrence of REPRESENTATIVE KAFOURY, and he thought this was perhaps a philosophical thing. They went into a great amount of detail and are convinced there are some problems. He is concerned about the frivolous kind of suit and right now the farmer has no protection. Right now, if the suit described by SENATOR HANLON were brought

# HOUSE BILL 2420

Enrolled

## House Bill 2420

Sponsored by Representatives KAFOURY, CHREST, RIJKEN, RUTHERFORD,  
STARR, Senator KULONGOSKI (at the request of Oregon State Client Council)

CHAPTER.....

AN ACT

Relating to damages for deceptive representations in employment; amending ORS 659.220.

Be It Enacted by the People of the State of Oregon:

Section 1. ORS 659.220 is amended to read:

659.220. (1) Any [*workman*] worker of this state, or any [*workman*] worker of another state, who is influenced, induced or persuaded to engage with any persons mentioned in ORS 659.210, through or by means of any of the things prohibited in that statute, shall have a right of action for:

(a) Recovery of all damages sustained in consequence of the false or deceptive representations, false advertising and false pretenses used to induce [*him*] the worker to change [*his*] the worker's place of employment against any persons, corporations, companies, or associations, directly or indirectly causing such damages. *In addition to all actual damages such workman may have sustained, he is entitled to recover*, or \$500, whichever is greater; and

(b) Such reasonable attorney fees as the court fixes, to be taxed as costs in any judgment recovered.

(2) In any action brought under this section, the court may allow the prevailing party costs and reasonable attorney fees.

# SENATE BILL 525 MINUTES

May 11, 1983

Tape 126-A

Page 4

261 CHAIRPERSON HENDRIKSEN opened Public Hearing SB 525

Senate Bill 525 - relating to forest labor contractors

265 PATRICIA WLODARCZYK, Extern on Senator HENDRIKSEN's staff, from Uofo, was called to the witness table, HENDRIKSEN noted that the original bill as drafted had a great deal of controversy and concern and WLODARCZYK had worked with the various parties that were concerned and substantial amendments have been prepared, and a hand engrossed version of amendments were before the committee, and stated WLODARCZYK had done the legal work and drafting. EXHIBIT J

277 PATRICIA WLODARCZYK appeared before the committee and presented prepared comments, marked EXHIBIT C. WLODARCZYK explained that a group of people including Oregon Legal Services, Willamette Valley Immigration Project Bureau of Labor, met several times to discuss objections that the bill raised and began presenting prepared comments. SEE EXHIBIT J & K (memo explaining amendments and hand marked copy of SB 525 amendments)

354 Senator HOUCK asked about the addition fee for reforestation license, WLODARCZYK said the \$80 fee replaced the current \$20 fee, HOUCK asked why the increase, WLODARCZYK said the question would be better put to the supporters of the bill, but as she understood the rationale it was an extra act on the part of the reforestation contractors so that there would be available to BOLI a list of people only in reforestation, and only in farm labor which is important to the people working in each area, she wasn't sure about the dollar amount.

375 Senator HENDRIKSEN said in response to HOUCK's question and added that the Bureau or Gerry Mackie may want to add to her comments, that it was in part to create a fund for enforcement.

381 WLODARCZYK said there were discussion about earmarking the license fee money for enforcement but the bill does not do this specifically,

386 WLODARCZYK continued presenting EXHIBIT C,

Tape 127-A

025 Senator HOUCK asked what form of certified payroll would the bill require, WLODARCZYK said as she understood this, it would be certification on wages paid, that the Bureau would make rules regarding this requirement.

052 Senator HANNON asked for clarification, saying that he understood "regular farmers don't have to provide Workers Compensation, but reforestation contractors would" WLODARCZYK said a "regular farmer would be required to provide workers compensation under present law, the reason that the section needs to be added to reforestation is that as workers compensation presently works, you go up the chain until you find someone liable, and often in reforestation that person is the Federal Government, which can't be held liable due to sovereign issues, so if the contractor is gone the worker has nowhere to go with this".

067 Senator HANNON asked if this applied strictly to the contractor to provide workers compensation now in reforestation, he was trying to understand what the bill would do, that this was new language.

May 11, 1983

Tape 127- A

Page 5

072 WLODARCZYK said it would apply to contractors, yes because the whole act applies to contractors, that contractors who work in reforestation regardless of their business form, and business form was a key to why the section was being added there are exempted from workers compensation if they form the "right business entity", partnerships, and one purpose of the bill is to require those people regardless of business entity to have workers compensation, and said Mr. Mackie would talk about some the various ways that contractors "get out, legally, of workers compensation, and because the Federal Government is immune the hardship goes back on the worker".

088 Senator HOUCK asked if there was anything in the ORS that sets out the length of pay period. WLODARCZYK said this would be up to rulemaking and one of the things the Commissioner would be required to do, and understood BOLI already had a certified payroll system that is required for public contracts for the BOLI will use that as a form for requiring others to do so.

097 HOUCK said that her earlier statement on certified payroll, caused no problem for him, other than if other payroll laws regarding frequency of pay were affected.

126 Senator MC COY asked regarding Section 7 if it were possible to enforce this section, to make this kind of a prohibition.

129 WLODARCZYK said the issue had been raised as to how you would enforce such a prohibition and thought it could fairly be said that in the present law there is not an effective way to enforce this, that it was partly a conceptual statement that "they should not be doing this, and in fact it is in their best interest to not do that, because it is possible to default contractors for operating without a license, it points out the risk"

147 GERRY MACKIE, of North West Forest Workers Association appeared before the committee and presented prepared testimony marked EXHIBIT D, in support of SB 525.

214 Senator HOUCK asked about the Workers compensation comment regarding Mackie's testimony. MACKIE said there was a long history of being exempt from Workers Compensation and then being subject, so it's a long politically grueling history that he hoped was far behind us.

225 Senator HENDRIKSEN said that cooperatives were for some time exempt and this is not settled. HOUCK stated that although WC was high in cost, it was a definite advantage to an employer from the liability standpoint.

239 MACKIE said "there is no fanatic like a converted sinner and Roscoe Caron, President of Hoedads strongly supports that position," and MACKIE agreed with HOUCK.

258 Senator HENDRIKSEN asked MACKIE to elaborate upon his comments regarding him being visited by an "enforcer", Senator MC COY noted this also, HENDRIKSEN said MACKIE was not referring to the Bureau.

263 MACKIE said he had been chasing after contractors who he thought and considered "highly unscrupulous" and have been sending formal complaints to various federal and state agencies and under the present statute any person can make a complaint to the Bureau of Labor, he made a complaint against

SENATE COMMITTEE ON LABOR

May 11, 1983

Tape 127-A

Page 6

271 three separate contractors, three separate complaints, and these were submitted to the Bureau and the Bureau took action, and notified the parties that there was a complaint against them, and on February 1, 1983 he was alone in his office and a "fellow came by to tell me that it was a dangerous world, and you never know what is going to happen to you and it's always wise to mind your own business, and not get involved in other's affairs". MACKIE said that he didn't enjoy this, but a threat is a threat, but if someone is going to do something, they don't give you a calling card first.

290 MACKIE stated that this was not the first threat issued over the last few years.

292 Senator MC COY noted in the last paragraph of MACKIE testimony, given the extent of abuse in reforestation, "how widespread is that".

296 MACKIE said it was impossible to accurately quantify because there is no quantitative data upon which to base a judgement, but "it is widespread, it's huge, 25,30,50%, it's gotten worse in the last 2 or 3 years". MACKIE said he had said in 1981 that if the trend continued they would experience dissolutions, and certainly have, but didn't want to say how much "we have shrunk, but be assured it's more than 50%".

315 MACKIE added that the current statute didn't cover farmers or owners of forest land, and there is no intention of putting any burden on the farmer what so ever and if the farmers reps see something that they believe affects them, he was willing to work with them to make sure the farmers are not affected.

328 HENDRIKSEN noted that she had given a copy of amendments to Don Schellenberg Oregon Farm Bureau Federation, and Schellenberg didn't have any problems with the amendments, but had said he would review them more closely and get back to Senator Hendriksen, but HENDRIKSEN noted that Mr. GOULET was in the hearing.

MACKIE submitted background information to support testimony, marked EXHIBIT E

333 ROSCOE CARON, President The Hoedads, Inc, a worker owned reforestation contracting based in Eugene, appeared before the committee in support of SB 525, and presented testimony marked EXHIBIT F, and noted this was their 10th year of business.

365 Senator WYERS asked the CHAIR about comments made by Patricia WLODARCZYK of taking out references to undocumented workers.

371 HENDRIKSEN said that as originally introduced, the Hispanic community was very irrate about it because it had alot of employer sanctions, and the intent was not to incourage discrimination against Hispanic but were informed by the Hispanic community. HENDRIKSEN said the original language regarding employer sanctions was an effort to stem the use of undocumented workers, who are particularly vulnerable to wage exploitation, which destroys the local tree planting groups, who can compete with wage exploitation, who are paying fairly, but Hispanic community was concern as it was their belief that it would lead to discrimination against Hispanics in general, because the contractors would then not hire anybody that was Hispanic, and did not want to have any discrimination, whether intended or not, in a spirit of compromise changes were made, and complimented WLODARCZYK on the efforts made for the above mentioned changes

399 HENDRIKSEN noted that the Hispanic community opposed the division of farm license and reforestation license, and in a spirit of compromise deletions were made, that there had been a lot of give and take.

417 HENDRIKSEN stated that in her last communication with Willamette Valley Immigration Project, they no longer objected to the bill, had requested Anita Paulson to be at the hearing, to answer questions as she also represented Hispanic workers.

433 Senator HOUCK noted reference to the Service Contract Act in printed bill and asked for more information on the Act. HENDRIKSEN explained, this as similar to Davis-Bacon, MACKIE said that it was for all Forest Service contracts, but it was weaker than Davis-Bacon.

454 HOUCK asked "why the notation to "other laws". MACKIE said this was used in case the job is a Davis Bacon law, or in case "we ever achieve prevailing wage on state forest land in the future".

456 HOUCK asked about "state laws", MACKIE said this referred to minimum wage and overtime state law.

465 MACKIE added that "it seems excessive in some respects but we were talking about many people in the work force have no knowledge about what there remedies are, at least less knowledge that the average employment situation".

477 CARON emphasized for the committee that the reforestation sector at times resembles the "wild west", there are abuses going on "out there that people just simply do not know about, there are stories that could be told that would upset you greatly, at times it has occurred to us that maybe nobody cares, the Hoedads have been in the business quite awhile, and seen a lot happen

Tape 126-B

010 and probably know more about the industry than anyone else, this side of the Rockies, and have bid on over 525 contracts and intend to successfully complete another 525 contracts but we are going to need your help because it's very nasty out there."

014 HENDRIKSEN said that the bill was part of an effort for basic survival of an industry, a local industry.

015 Senator WYERS told of an example of a client of his brother who was involved in reforestation, that the case was unrelated to reforestation, however was related indirectly as it was a racial incident, an American citizen of Mexican ancestry and after release from jail, it was learned that someone was hired to kill him, and was never seen since, the point being that there are "wild west" like things going on.

027 HENRIKSEN noted that many of her constituents are in reforestation she had heard continuing stories of such things that are very shocking, and also heard state agencies have to deal with contractors that are notorious for wage exploitation, and undocumented workers are totally at the mercy of such unscrupulous contractors, but stressed SB 525 was an effort to protect the wage structure in the industry.

# EXHIBIT D

# Northwest Forest Workers Association

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May, 1983

TESTIMONY OF GERRY MACKIE ON SB525

## "End the Modern Slave Trade"

Massive and horrifying labor abuse has come to dominate reforestation in Oregon. Much of this abuse is related to the exploitation of undocumented migrants, who are deliberately imported or sought out by unscrupulous employers in order to procure a workforce that is not practically able to pursue wage claims and other rights.

Employers know that wage law enforcement is for the most part predicated on employee complaint. They know that the punishment for not paying wages, if caught, is merely to pay wages legally due (and occasionally a small penalty). Only the dumbest wage cheaters are debarred.

Labor abuse in reforestation is not occasional or isolated. An Oregon Legal Services attorney is quoted in the Roseburg News-Review (1/6/82) as saying, "The paid worker is the exception rather than the rule. Though there are many honest, well-qualified contractors who do pay their workers, it is the unscrupulous companies that are getting the majority of the work." Another says, "These men are living in an environment of slavery. They are held in remote mountain workplaces under threat of violence, deportation, and/or desertion." Those assessments are accurate, not exaggerated. Nor is reforestation economically insignificant--we are talking about millions of dollars of wage exploitation and thousands of abused workers. Oregon should not tolerate this modern slave trade.

The damages are manifold and severe. Foreign nationals are cruelly abused and exploited. Honest contractors are destroyed by unfair competition. Domestic workers suffer depressed wages, and are displaced.

If anyone does not believe our contention that the exploitation is massive, I am prepared to recite a list of abuses.

(For example, let us take "Mr. X" a prominent reforestation contractor. Many bad things are said about Mr. X's huge and outrageous operation; following are only the documentable allegations.

- Seven different business names
- 300 to 500 workers a year, almost all illegal
- Fired citizen workers because they were citizens
- Refused medical care to worker with broken back, left in camp three weeks
- Sixty year old man seriously injured and untreated
- Abandoned entire crew, including seriously injured worker
- Represented itself as a small business concern, when it was not



an association of worker cooperatives

- Affidavits swearing supply of phony identification to workers
- Dozens of INS raids; 220 apprehensions in 1980
- Mean length of stay in country before apprehension--four weeks
- 14 year old worker in January 1983
- Wins work easily, even in depressed contract market
- Office accidentally burned on verge of USDOL audit
- Pays all wage claims.

Remember, that is only what is documentable. There are dozens of small, unlicensed contractors engaging in various forms of abuse. There are at least a dozen large, licensed contractors who could not withstand minimum scrutiny, and more who are committing less outrageous but nevertheless substantial violations of the law.)

We believe statutory improvements will help reduce abuse. However, it is important to emphasize that a large part of the problem is the fact that the State Wage and Hour Division is seriously underfunded. Six investigators (or eight depending on how you count) administer and enforce Oregon's laws relating to wages, hours, working conditions, child labor, prevailing wage, wage disputes, employment agencies, farm labor contractors and treeplanting contractors, in a state with a population of 2.6 million. We urge interested members of the Labor Committee to seek a higher priority for this budget.

The bill version before you today is the result of extensive negotiation and compromise among interested parties. The provisions have already been explained. Following are our views on some major points.

(The bill before us today proposes no new penalties for knowing employment of illegal aliens, nor does it alter the existing statutory prohibition. It is our understanding that discussion of that prohibition will take place in a separate proceeding. If it is discussed today, we would like to return to the subject. We consider that prohibition essential, and would be forced to oppose any bill proposing its abolition.)

We think that certified payroll will be an excellent wage enforcement tool. The contractor submits payroll records on a periodic basis swearing under penalty of perjury that the payroll is true. This will be burdensome on us, but we are willing to assume the burden. Details should be left to rulemaking. We do not agree with the argument that certified payroll would betray essential competitive data. We have no fear of exposing our payroll records to public scrutiny.

Workers' compensation. A slight majority of our members strongly supports this provision; a large minority strongly opposes it; therefore our Association is neutral. The provision is in the bill as a courtesy to the Associated Reforestation Contractors.

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The expanded private right of action allows a penalty award for a few salient violations. There are numerous unlicensed contractors; the Bureau of Labor will never have the resources to chase these violators. We cannot afford to enjoin these persons unless we have a reasonable chance of breaking even on our efforts.

Given the extent of abuse in reforestation we think it is justifiable to make violation of certain duties and prohibitions a misdemeanor. In another committee, we are seeking to include labor contracting under the racketeering statute. As one who has been visited by an "enforcer" I certainly think this is appropriate.

We are glad to answer any questions.

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