Farm managers need license to hire workers, Washington agency says

Supreme Court to interpret Farm Labor Contractor Act

By DON JENKINS
Capital Press

OLYMPIA — The Washington Department of Labor and Industries has asked the state Supreme Court to require farm management companies to obtain a separate license to hire workers.

L&I argues in a court filing that its "longstanding" policy has been for on-site managers to have a license issued to farm labor contractors.

The leaders of the Washington Growers League and wafla, formerly known as the Washington Farm Labor Association, disputed the claim.

"Their brief and their position is a surprise and amazing to me," Growers League Executive Director Mike Gempler said. "I'm really disappointed they're taking this kind of position. I think it's a gross overreach."

L&I filed the brief in connection with Saucedo v. John Hancock Insurance Co., a case the Supreme Court will hear Jan. 14.

The case stems from a 2012 federal class-action lawsuit in which workers at three Yakima County orchards alleged they were mistreated by a gun-toting foreman.

The lawsuit's focus became whether the orchards' on-site manager, Northwest Management and Realty Services, violated the state's Farm Labor Contractor Act by not having an L&I license.

The act requires businesses that recruit and transport farmworkers to obtain the L&I license and post a bond.

The goal of the act is to prevent workers from being misled or stiffed out of pay by fly-by-night operators.

Northwest had been managing Yakima Valley orchards since 1986. According to court records, it didn't recruit or transport workers, and hired employees who came seeking work. The landowners paid the workers, and Northwest received $150 a year per-acre to manage all farm operations, no matter how many people it employed.

Northwest argued it was a farmer, not a labor contractor, and would be easy to find and hold responsible for exploiting workers.

U.S. District Judge Thomas O. Rice ruled that Northwest should have had the license because its fee covered hiring workers.

He also ruled that the landowners, John Hancock and Texas Municipal Plans Consortium, were liable for not making sure Northwest had the license. A fourth defendant, California-based Farmland Management Services, which hired Northwest on behalf of the landowners, also was held responsible.

Rice awarded a total of $1 million to 722 workers, who are represented by Columbia Legal Services.

The defendants appealed Rice's decision to the 9th U.S. Circuit Court of Appeals. The circuit found no court precedent addressing the issue, so it has asked the state Supreme Court to interpret the state's act.

L&I argues that as the sole enforcer of the labor act, the court should defer to its interpretation.

Farm management companies should be required to obtain a labor contractor's license because such businesses might not own any real property for workers to claim in lieu of back wages, according to L&I. "If the management company goes out of business, the employees are out of luck," L&I's brief states.

Agency spokesman Matthew Erlich said Dec. 23 that beginning in 2008 the department became more aggressive in educating growers about who needs a contractors license.

"We've done extensive outreach to stakeholders, farmers," he said.

Dan Fazio, the director of wafla, said that before Rice's ruling everyone assumed that companies such as Northwest were not labor contractors.

"They are in every way shape and form the employer," he said. "This does nothing to help the farmworker, and that's the big picture here."

Gempler said Rice's ruling did not reflect the industry's understanding of the law.

"That, honestly, was a surprise, that anybody could see it that way," he said.

L&I lists 167 farm and forestry labor contractors on its website. Farmworker labor contractors pay an annual licensing fee of $35 and must post a bond ranging between $5,000 and $20,000, depending on the number of workers they hire out.

Dan Wheat/Capital Press

A crew harvests apples in Brewster, Wash., on Aug. 31. The Washington Employment Security Department says a farm employers association's suggested answers skewed the results of a wage survey. The association's director says the survey was biased toward inflating prevailing wages.

Washington farm employers group in flap over wage survey

By DON JENKINS
Capital Press

The head of a farm employers association Tuesday responded to complaints by a Washington state agency that he interfered with a pay survey, saying he offered honest advice to growers on how to answer questions rigged to artificially inflate prevailing wages.

"The survey has a bias to it," said Dan Fazio, director of wafla, formerly known as the Washington Farm Labor Association. "There's nothing that we did that was wrong."

The Employment Security Department surveyed growers in September about wages, bonuses and housing.

The U.S. Department of Labor will use the information to set minimum wages and employment standards for H-2A foreign workers.

In written instructions and Internet videos, wafla encouraged farmers to return the survey and answer truthfully, but also cautioned that their responses could unwittingly raise wages, make bonuses mandatory and force farmers to provide free housing to workers' families.

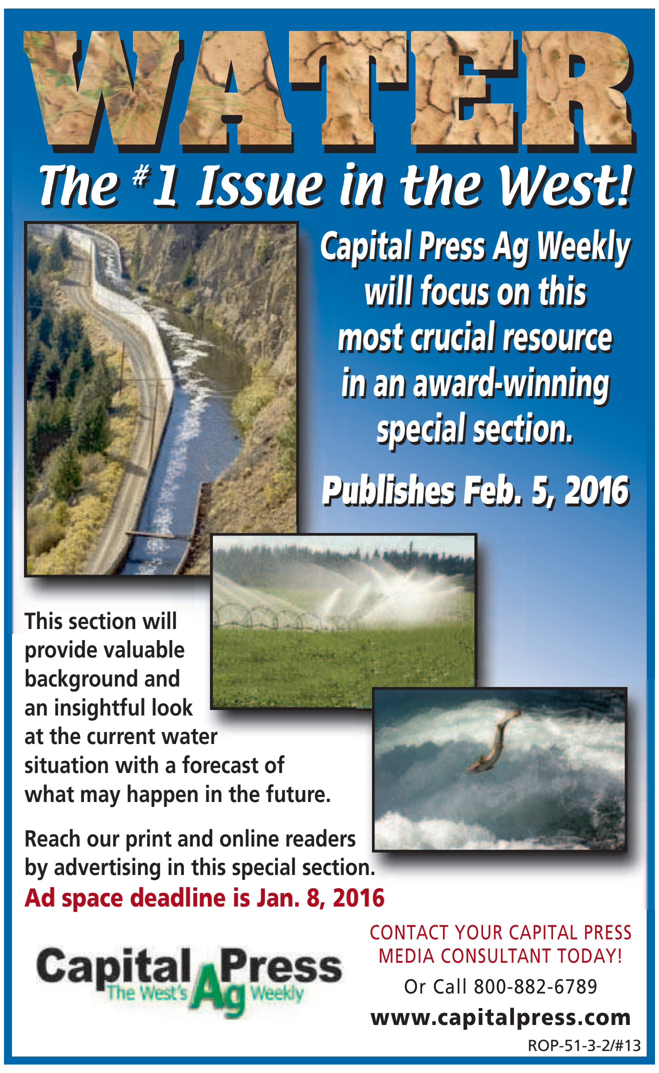
Fazio said in an interview that wafla was trying to keep the survey from leading to false conclusions about industry standards.

ESD, however, took exception to wafla suggesting specific answers to some questions.

In a report last week, ESD said wafla's influence apparently distorted how much domestic seasonal workers were paid for picking Fuji, Golden Delicious and Granny Smith apples.

The survey said workers received the state's minimum wage, $9.47 an hour, for picking those varieties. ESD said a statistical analysis suggests workers actually received piece-rates of $28 a bin for Fujis and $23 a bin for the other two varieties.

An ESD spokeswoman said the department, which compared survey answers to a 2013 survey, could not explain why wafla's influence was limited to pay for three varieties, but not to five other major varieties listed on the survey.



Cattle markets get good news for holidays

By CAROL RYAN DUMAS
Capital Press

Tighter than expected fed cattle supplies and moderating carcass weights have industry analysts seeing a more bullish market for fed cattle heading into the new year.

USDA's latest cattle on feed report showed November marketings of fed cattle at the high end of expectations and November placements into feedlots 5 percent lower than anticipated.

Marketings, at 1.53 million head, were up 4 percent year over year, according to the report released Dec. 18.

Placements, at 1.60 million head, were down 11 percent and the lowest November placements since the tracking series began in 1996.

That combination of good marketing rate and significantly lower placements than expected is bullish for fed cattle markets, said Derrell Peel, livestock marketing specialist with Oklahoma State University.

Cattle on feed, placements, marketing and other disappearances, November

(Feedlots with 1,000-head capacity or more)

Item	(1,000 head) 2014	2015	Percent change
On feed Dec. 1	10,816	10,794	0
Placed on feed, Nov.	1,794	1,601	-11
Fed cattle marketed, Nov.	1,475	1,532	4
Other disappearance, Nov.*	74	74	0

*Includes death loss, movement from feedlots to pasture, and shipments to other feedlots for further feeding.

Source: USDA NASS Capital Press graphic

Dec. 1 on-feed numbers were slightly lower year over year at 10.8 million head, NASS reported.

A fractionally lower on-feed number is also bullish, reminding folks there's not a big increase in feeder cattle supplies. Cattle on feed have been at or above year-ago levels for most of the year, not because there were any more cattle but because feedlots were slowing them down, he said.

High feeder cattle prices gave feedlots incentive to hold cattle longer to put on extra weight, which slowed turnover. But it also resulted in a backlog of heavy fed cattle, which caused a price drop and volatility this fall, he said.

The bulge is still working its way through retail but the glut has somewhat been fixed on feedlots, he said.

Analysts are saying lower feeder cattle prices have led producers to keep feeder cattle longer, delaying their entry into feedlots, but Peel doesn't think those supplies are particularly burdensome.

Industry analyst John Nalivka, owner of Sterling Marketing, Vale, Ore., said feeder cattle are still out there, but with feedlots losing nearly $700 a head right now based on the cash market, they have plenty of motivation to pressure feeder cattle prices downward.

That's why placements were down 11 percent, he said.

He estimates feedlots (on a cash basis) will be in the red $629 per head in December and $492 a head in January and said they've been losing money all year, with an average loss of $245 a head for the entire year.

"I don't think there's any opportunity to turn that red ink in the feedlot to black ink until we get into May," he said.