

H-2A: Two other Oregon farms also face federal complaints

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him for whistleblowing and making a wage claim.

The plaintiff sought more than \$28,000 in economic damages from Siri and Son Farms, based on missing 18 weeks of wages due to being terminated.

His attorneys said the plaintiff was also entitled to noneconomic damages under Oregon law, in an amount to be proven at trial, while federal case law suggested he may be awarded “compensation for mental anguish and humiliation.”

Siri and Son Farms characterized the events lead-

ing up to the lawsuit much differently.

The farm said that weather conditions had delayed the harvest season, which hadn’t yet begun when the plaintiff originally asked for a job. Because he returned “eager to start work,” the farm instead hired him as a weeder — a position that pays about \$2.30 less than harvest work, according to the farm.

The plaintiff soon switched to irrigation work based on his previous experience, which paid the same hourly rate, but he “turned out to be a difficult employee and coworker,” the farm said in a court document.

Aside from his “hostile and abusive” treatment of other employees, the plaintiff also “responded angrily and made hostile gestures” to a supervisor who asked why he wasn’t working, the document said.

After receiving a written warning notice about his behavior, the plaintiff “stormed off” and quit his job while vowing to complain to state regulators, the farm said.

Though the plaintiff agreed an hourly wage of \$12.70, the farm ended up paying him \$15 per hour “in an effort to de-escalate the situation,” which ultimately

proved futile, the document said.

The jury sided with Siri and Son Farms in this case, but another lawsuit that claims it unlawfully favored H-2A workers remains pending.

Court documents indicate the farm reached a settlement with the plaintiff earlier this year. A federal judge hasn’t yet closed the case, however, and will hold a status hearing next month.

Two other Oregon farms also face federal complaints alleging H-2A violations.

Coleman Farms in Marion County is defending against a lawsuit originally

filed by nine farmworkers who claim they were denied job offers or received lower wages than foreign guestworkers.

One of the farmworkers dropped all his claims after a July settlement conference, while another plaintiff dismissed some of her claims. Attorneys for two other farmworkers have withdrawn from the case after their clients died.

Last month, Cal Farms, which grows vegetables in several locations in Oregon, requested a jury trial in a lawsuit brought by a farmworker earlier this year.

In its answer to the com-

plaint, the company denied violating working arrangements with the plaintiff or denying him employment opportunities after hiring H-2A workers.

Advocates for Northwest farm employers say the number of lawsuits over H-2A workers has risen in recent years, along with the program’s popularity, which has grown due to labor shortages.

Attorneys for farmworkers say they’re legitimately fighting back against unlawful discrimination and deny targeting the program because foreign guestworkers are harder to unionize.

Weather: Unusual spring weather was statewide

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he said. “The weather was the primary factor. We just didn’t have enough good-weather windows to get any work done.”

The weather eventually dried out, but it was followed by a heat wave in late July that shrank raspberries in Whatcom County and stressed unirrigated crops, the USDA reported.

The heat is likely to linger, too. The federal Climate Prediction Center says the odds favor above-normal temperatures for the region through October.

Klesick said he’s hoping for an extended summer so fall vegetables can be harvested as late as November.

“Everyone would benefit from have a longer harvest season,” he said.

Statewide phenomenon

The unusual spring weather was statewide. In central Washington, Douglas County orchardist April Clayton said cherry orchards that normally yield 7 to 9 tons an acre will yield 3 to 4 tons an acre.

“We’re hoping that even though we don’t have the volume we normally do, the prices will increase to match the demand in the market, so we’ll have to see about that,” she said.

The upside of the wet spring was in the small number of irrigators whose water rights have been curtailed by the state Department of Ecology. The agency has curtailed only nine irrigators statewide. All draw from the Nooksack River in Whatcom County in the northwest corner of the state.

As a comparison, during the severe drought of 2015, Ecology curtailed 883 irrigators’ water rights.

Too much water

But farmers had to deal with too much water in some places. In Lewis County in southwest Washington, farmer Dave Fenn said rye grass flourished in his barley fields. In some places, the grass was so thick that his fields only produced silage, rather than a barley crop.

“It was so wet and cold for so long, the grass grew better than the barley did,” he said.

In Pacific County on the coast, the weather delayed



Don Jenkins/Capital Press

Estabon Andres picks raspberries in southwest Washington. Farmers face a tight labor market.



Don Jenkins/Capital Press

Lewis County, Wash., farmer Dave Fenn mows a field of rye grass. Because of the wet and spring, grass outpaced barley.

bees from pollinating cranberry bogs, Long Beach Peninsula grower Malcolm McPhail said. The continuous rain also caused excess vine growth, shielding the berries from the sun.

McPhail said he expects harvest to start in September at least a week later than usual, meaning the farm will still be working in bogs in November.

If berries aren’t big enough by then to meet industry standards, they will be screened out with the leaves, he said. “We’re going to lose small berries that are perfectly good berries.”

Farther north along the coast, Grays Harbor County farmer Jay Gordon said he finished planting corn June 21. “We’ve never planted that late, ever,” said Gordon, who grows sweet and feed corn.

On the progress of

the crop, he said in mid-July that the “corn looks good for the first week of June.”

It may not be possible to push back the harvest dates to accommodate the planting dates. Gordon said he inherited a piece of wisdom about farming in Western Washington: Harvest by Columbus Day, which is traditionally Oct. 12, because the Columbus Day Storm was on Columbus Day.

“We lost the time. We can’t get it back,” he said.

The wet spring made Lewis County farmer Mike Peroni forgo planting sweet corn. The crop is secondary to berries, but does create buzz for the small farm, he said. “People like corn. It’s the herald of high summer.”

In some parts of Western Washington, the weather has flip-flopped.

Skagit County dairy farmer Jason Vander Kooy

said that by the time he got the last of his corn in, the rain stopped. The exposed ground dried up and needed irrigating.

“We’ve done a 360 in the weather,” he said. “All that spring water has disappeared.”

In early July, Western Washington crops “looked great with the recent summer weather,” the USDA reported. “Once the weather broke, we made a lot of hay,” said Albert, in Snohomish County.

Spiraling input prices

Albert said he could have applied more fertilizer, but had not wanted to spend the money and gamble on the weather. “All the inputs on the farm are off the chart,” he said.

Fertilizer prices worldwide surged by 80% in 2021 and by another 30% by the spring of 2022, according to the World Bank. Meanwhile, diesel prices also roughly doubled.

On-highway diesel in the Northwest peaked at \$6.15 a gallon in late June. It was \$3.56 a gallon a year ago and \$2.77 at the start of 2021, according to the federal Energy Information Administration.

Washington farmers are exempt from paying the state’s 49.4-cent-a-gallon fuel tax on diesel used in food production. Still, the higher price is a huge expense.

The USDA recently reported that Washington



Don Jenkins/Capital Press

Lewis County berry grower Mike Peroni says labor was hard to find.



Grays Harbor County, Wash., farmer Jay Gordon

farmers cut back on total expenses in 2021 compared to 2020, but didn’t spend any less on fuel.

“I put off filling some fuel tanks as long as I could. Finally, I had to bite the bullet,” said McPhail, the cranberry grower.

He said he paid about \$3,800 for 280 gallons of gasoline and 440 gallons of diesel. “We’ll fill the tanks again before harvest,” he said.

Gordon cited as his biggest challenge “finding enough money to pay the diesel bill.”

“But it isn’t just diesel. We’re feeling the effects of inflation. Everything is going up,” he said.

Plastic to wrap bales is going up. If birds peck holes in the plastic, the holes need to be taped over. “The price of tape has gone up,” Gordon said.

Albert ranked fertilizer and diesel costs high on his list of challenges.

After that, he said, there are supply-chain disruptions. “We’ve had a heck of a time getting parts and services,” he said.

Labor costs are also increasing. Washington’s minimum wage automatically adjusts each year for inflation and is now \$14.49 an hour. The minimum wage for H-2A workers also rises yearly.

“Labor has been extremely difficult for us,” said Peroni, the Lewis County berry grower. “We’re competing with much higher wages in our area than we have experienced before.”

Vander Kooy, in Skagit County, said it’s hard to single out one expense. “To me, it’s the overall planting costs,” he said.

Milk checks were up for awhile, but then they went down, he said. “I think we’re still making a little bit of money, but it’s close to break even.”

Dillon: ‘It’s the toughest political climate I’ve ever seen for farmers and ranchers’

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collegiality among the elected leaders, even if they were from a different party.”

When the state Legislature was more evenly divided between conservative and liberal lawmakers, compromise was typically necessary to get anything done, he said.

Now that the House and Senate are dominated by left-leaning super-majorities, though, there’s no longer much incentive to reach across the aisle.

For agriculture, that’s translated into a steeply mounting regulatory burden, he said. “It’s the toughest political climate I’ve ever seen for farmers and ranchers.”

The Oregon Farm Bureau will surely encounter numerous important problems in the years to come, but Dillon advises its members to focus on those that most endanger their livelihoods.

“Is this something that will impact my ability to be farming or ranching next year?” Dillon said. “Does it affect my ability to keep producing?”

Dillon isn’t entirely pessimistic about the prospects for agriculture and natural resource industries in the political arena, however.

If people realize the state’s policies aren’t improving their lives or resolving serious problems, they’ll likely make their dissatisfaction known at the ballot box, he said.

“I do believe there’s a potential for the pendulum to move back toward the middle,” Dillon said. “At some point, voters will make a decision to try something different.”

In the meantime, the staff and members of the Farm Bureau are capable of defending against damaging laws and regulations, as they’ve proven in the past, he said.

“Countless times, we’ve stopped bad legislation or bad rules, or at least

made them less harmful,” Dillon said.

The Farm Bureau is also better equipped to fight such battles due to the reliable coalition it’s built with other crop, livestock and irrigator groups, he said.

Agriculture and natural resource advocates have set aside their differences to cooperate on common interests, amplifying their influence over the years, Dillon said.

“They’re more cohesive now than they have been at other times,” he said. “I’m proud to see that happen.”

Beyond the Farm Bureau’s state-level successes, Dillon is encouraged by the group’s victories at the national scale during his tenure.

For example, the organization prevailed against the U.S. Department of Labor’s “hot goods” tactics during the Obama administration.

The federal agency accused farmers of underpaying alleged “ghost workers” who weren’t represented in employment records.

If pickers harvested more fruit per hour than the agency believed reasonable, it assumed they’d been helped by unauthorized “ghost workers” receiving less than the minimum wage.

Crops grown by targeted farmers were declared “hot goods” by the federal agency, blocking the perishable fruits from sale unless the employers paid hefty settlements.

The Oregon Farm Bureau represented farmers in federal court, ultimately recovering those financial payments and exposing the “ghost worker” charges as baseless, Dillon said.

The agency was unable to find the vast majority of 1,000 “ghost workers” supposedly identified by its hourly harvest formula, which farmers claimed was arbitrarily and inaccurately calculated.

“The precedent was super important for anyone who has labor,” he said. “There was a lot of

interest nationally in what was happening. We weren’t just carrying the torch for Oregon producers. It had a lot of importance to the broader ag community.”

The episode taught a valuable lesson to overzealous, “out-of-control” federal employees, Dillon said. “We see what you’re doing and there are mechanisms for us to correct what you’re doing. And you really shouldn’t do it again.”

Though he doesn’t come from an agricultural background, Dillon said he felt a kinship with farmers and ranchers while working as a staffer in the 1990s for U.S. Sen. Bob Packwood, R-Ore.

He was eager to build on those relationships upon accepting a job as the Oregon Farm Bureau’s communications director, which led to his hiring for the top position in 2002.

“I felt a connection with producers,” Dillon said. “They’re very pragmatic and want to get stuff done.”