

July 31, 2018

Mr. Alexander Acosta
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Dear Secretary Acosta:

The undersigned organizations request that the Department of Labor ensure fair wages for farmworkers hired by employers participating in the H-2A temporary foreign agricultural worker program during this year's apple harvest in Washington State. In accordance with its responsibilities to ensure that United States farmworkers' wages are not adversely affected by the hiring of temporary foreign agricultural workers, and ensure that foreign workers are not exploited, the Department should require apple growers to offer and pay prevailing piece rates for harvesting apples.

We are aware that efforts have been made by a farm labor contractor called WAFLA, which provides Washington State apple growers with H-2A workers, to persuade the state's Employment Security Department, which carries out prevailing wage surveys, to conclude that there is insufficient data to draw a conclusion regarding the prevailing wage rate for certain apple varieties. As you know, if no prevailing wage rate is found to exist, then the Department would require such employers to offer and guarantee the workers the highest of the state minimum wage (\$11.50 per hour), the federal minimum wage (\$7.25 per hour), or the Adverse Effect Wage Rate, which is based on regional (Washington and Oregon) average hourly earnings of field and livestock worker combined, and which this year is \$14.12 per hour.

Apple growers in the H-2A program would be permitted to slash the existing wage rates of its apple pickers (both the U.S. workers and the temporary foreign workers) if no prevailing wage rate for apple pickers is found. This result would be unconscionable and unlawful.

It is well-known that the prevailing method of paying apple harvesters in Washington State is through a piece-rate wage based on a large bin of apples. The relevant piece rates range depending on the variety of apple but several of them range

from \$20 to \$27 per bin. Many farmworkers have been earning \$18 to \$20 per hour, and some more, under these piece rates. Many apple pickers would suffer a wage loss of \$4 to \$6 per hour if employers took advantage of the change they seek by offering a lower piece-rate (or hourly rate) and merely promising workers would earn the AEW. In fact, the H-2A farm labor contractor WAFLA recently claimed that WAFLA's efforts will save the Washington apple growers "millions" of dollars by preventing piece-rate wage findings.

Advocates have provided Washington State and U.S. Department of Labor officials with ample evidence and expert opinion to show that it is incontrovertible that the prevailing wages in apples in Washington are piece-rate wages and that the State gathered enough data in 2017 to make valid statistical findings. Moreover, the prevailing piece-rates yield substantially higher wages per hour than the H-2A program's alternative minimum wage rates. Therefore, the prevailing piece-rates must be required. On July 27, the Washington State Employment Security Department sent a letter to the U.S. Department of Labor urging DOL to publish findings and require payment of prevailing piece-rate wages for the upcoming apple harvest. Its conclusions and request should be followed.

The law and underlying purpose of the H-2A temporary foreign agricultural worker program -- as well as basic fairness and common sense -- necessitate the conclusions we ask the Department to draw.

We would appreciate the opportunity to discuss these urgent matters through a meeting and conference phone call. Please contact Bruce Goldstein, President, Farmworker Justice, bgoldstein@farmworkerjustice.org, 202-293-5420 ext. 304, and Joe Morrison, Columbia Legal Services, Joe.Morrison@ColumbiaLegal.org (509) 662-9681 Ext. 125.

Thank you for your consideration of this urgent matter.

Sincerely,

Columbia Legal Services
Farmworker Justice
Northwest Justice Project
Washington State Labor Council, AFL-CIO