
From: Pointer, Ann Margaret
Sent: Thursday, July 03, 2008 10:58 AM
To: 'Costantino, Vincent (Constantino.Vincent@dol.gov)'; 'Willis, Robert J. (RWillis@rjwillis-law.com)'; 'Lee Wicker (lwicker@ncgrowers.org)'; Stevenson, Shanon; 'Harry Sheinfeld (Sheinfeld.Harry@dol.gov)'
Cc: Wray, Susan; Jones, Amy
Subject: NCGA--diversified vegetables order

Confidential Attorney Communication

Vince and Bob: Please let me know that you have a total of 5 transmissions, Vince. I am copying Harry because of the bounce-backs I continued to get last weekend from what I believe was your correct email address.

Here is the complete diversified crop-vegetable order.

There is a separate job order for tobacco and vegetables and other diversified crops that I will have to send you in 4 separate additional transmissions because it is so large.

You can see that potential U.S. workers who don't want to work in tobacco can choose this job order instead of the tobacco and diversified crop vegetable order.

I believe you are aware from our discussions that the Union that represents both U.S. workers AND H-2A workers, Farm Labor Organizing Committee, AFL-CIO, supports the acceptance of the job orders as NCGA has filed them and had them approved for so many years. Bob Willis, the Union's counsel, can provide you a copy of the current collective bargaining agreement. This is another very significant fact of which ETA decision-makers may be unaware.

Whether we look in the *Dictionary of Occupational Titles* job category "farmworker, diversified crops II" or the current "O*Net Online" job description code 45-2092.02 for "farmworkers and laborers, crop," there is no justification for forcing farmers to create a limited scope of operations that does not match what they or other farmers of "diversified crops" actually do.

I am also thinking that ETA may not be aware of what a market maker for farmworker services NCGA is. Without the ability of growers to rely on workers being available, growers won't be able to say to themselves, as opportunities arise during the course of the planting, growing season, to decide in a "just in time" sort of way, I think I'll plant some X. I suddenly or unexpectedly can get decent X plants (for transplant); or the bell pepper plants I was thinking I'd plant 15 acres of don't look so good, cost too much, etc. are not such a great idea, but I can get good squash or something else plants close by, at a good price, etc. and do those instead.

Or Grandma, Mama, or the farmer himself or his key year-round supervisor-manager is in the hospital, so he'll forego planting asparagus but plant something else instead in a couple of weeks; or my neighbor isn't going to plant sweet corn on land he thought he would use for that, but he'll lease me that X acreage so I can plant corn there, or my cousin will lease me Y acreage that has good irrigation equipment and water on it so I can plant a spot crop that requires water to which I didn't otherwise have access.

There are so many variables of what these relatively small farmers can do and in fact do when

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they have flexibility to do it. Many can decide all these choices at literally the last minute. Unlike the big many hundred acre tomato and sugar cane growers you may know, these North Carolina growers more typically sell on the spot market or through brokers on order-by-order bases or at the farmers' markets or on the side of the road.

These thoughts are not a complete listing of how different the North Carolina formwork is than maybe what your certifying officer and colleagues have experience with but a sampling.

The result of what the ETA has said about these jobs is that work opportunities will be diminished for U.S. Workers, including year-round local workers, for the farm family members who depend on their farm incomes, and for their local economies. It will force farmers who were able to be agile and make good decisions as the season went along out of business. Even for the larger growers, the decision will diminish work opportunities for workers and income. That's a loss of tax base on top of personal losses of farmers and their families, their local year round workers and the temporary workers who want jobs in agriculture.

I sincerely hope that ETA will take another look at the long-existing, legitimate business practices here and decide to accept these orders.

By copy of this note, please let me introduce you to Shanon Stevenson, one of our immigration lawyers who will be working with me in this matter. Her direct number is: 404.240.5842.

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