



Pineros y Campesinos Unidos del Noroeste
Northwest Treeplanters and Farmworkers United

300 Young St. / Woodburn, Oregon 97071 / (503) 982-0243 / (503) 982-1031 (FAX)
e-mail: farmworkerunion@pcun.org

MEASURE: HB 2977
EXHIBIT: 18
H BUSINESS & LABOR
DATE: 3-13-2013 PAGES: 17
SUBMITTED BY: Ramon Ramirez

PCUN Testimony supporting HB 2977, This bill will reduce wage theft and provide means to collect wages owed, to the House Business and Labor Committee.

March 13, 2013

Submitted by Ramon Ramirez, President.

PCUN, Oregon's Farmworker Union strongly supports passage of **HB 2977**. This bill will reduce wage theft and provide means to collect wages owed.

Farmworkers are more than ever being recruited by labor contractors to work in the construction, painting and building cleaning industries.

We have seen an increase of violations of labor laws, minimum wage and wage fraud. Wage theft is the underpayment or non-payment of the wages workers have earned for their labor. It occurs when workers do not receive minimum wage or the agreed rate or overtime, when they are paid under the table or in cash, when they are not paid tips, and too often not paid at all.

When we try to identify the employer, it became very difficult to pinpoint who was the contractor or sub-contractor. That's why it important to require people who recruit and employ workers be licensed and bonded.

An increasing problem area is the mislabeling of employees as independent contractors. Independent contractors have no guarantees of minimum wage and overtime. They do not receive workers' compensation or unemployment compensation. They are not covered by anti discrimination laws.

Wage theft occurs in most industries and affects all people. But it affects the low-wage workers whose wages are stolen the most. These workers are left without money to pay for food, shelter, and provide for their children.

Wage theft also harms all workers, honest employers, our communities, and the local economy as well as revenues for the State of Oregon.

We strongly encourage the passage of **HB 2977**.

**Report of Wage Survey of Willamette Valley
Farmworkers Engaged in Piece-rate Harvest
of Selected Agricultural Products During
2009**

**Pineros y Campesinos Unidos Del Noroeste
PCUN**

Northwest Treeplanters and Farmworkers United

300 Young St
Woodburn, Oregon. 97071
(503) 982-0243
Contact: Ramon Ramirez

Did you work this year in harvests paid by piece rate?

All respondents 191 checked that they did.

Did you have residence for more than six months?

161 respondents said yes

29 respondents said no

1 respondents did not answer

Did you work on farms or nurseries in the United States for a total of more than thirteen weeks in 2008?

148 respondents said yes

41 respondents said no

2 respondents did not answer

At the time you were hired or paid did the grower ask you if you had lived in Oregon for more than six months or if you had worked for more than 13 weeks in agriculture?

127 respondents said no

21 respondents said yes

43 respondents did not answer

Did the grower record your work hours when you worked for piece rate?

170 respondents said no

17 respondents said yes

4 respondents did not answer

Do you think that you are guaranteed the minimum wage even when you worked in the strawberry and cane berry fields?

140 respondents said yes

42 respondents said no

9 respondents did not answer

Appendix C: Statistical table on approximate amounts of wage rates

AVERAGE HOURLY & DAILY WAGES LOST FOR SURVEYED FARMWORKERS
COVERED BY THE MINIMUM WAGE IN 2009 HARVESTS

| | A | B | C | D |
|---------------|------------------------------------|--------------------|---|---|
| | Average hours per reported workday | Average hourly pay | Average loss per hour at minimum wage (B - \$8.40) | Amount lost per average day (A * C) (1) |
| COMBINED CROP | 7.86 | \$5.30 | (\$3.10) | (\$24.37) |
| STRAWBERRIES | 7.92 | \$5.33 | (\$3.07) | (\$24.28) |
| CANE BERRIES | 7.80 | \$5.26 | (\$3.14) | (\$24.47) |

(3) Every employer of one or more employees covered by ORS 653.010 to 653.201 shall supply each of the employer's employees with itemized statements of amounts and purposes of deductions in the manner provided in ORS 652.610. [1967 c.596 §9; 1985 c.99 §5]

ORS 653.256 provides for penalties:

"Civil penalty for general employment statute or rule violations. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed \$1,000 against any person who willfully violates ORS 653.025, 653.030, 653.045, 653.050, 653.060 or 653.261 or any rule adopted thereunder.

(2) In addition to any other penalty provided by law, the commissioner may assess a civil penalty not to exceed \$1,000 against any person who intentionally violates ORS 653.077 or any rule adopted thereunder.

(3) Civil penalties authorized by this section shall be imposed in the manner provided in ORS 183.745. ...

BEFORE THE BUREAU OF LABOR AND INDUSTRIES
OF THE STATE OF OREGON

In the Wage Claim Matter of:
OREGON BUREAU OF LABOR AND
INDUSTRIES as assignee of
Jose Madrigal-Arias et al,
Wage Claimants,

ORDER OF DETERMINATION

FILE #: 11-2749

v.

Jose Rubio de la Cruz,
Employer

I. Jurisdiction

This Order of Determination ("Order") is prepared pursuant to ORS 652.310 to 652.405. The Bureau of Labor and Industries ("Bureau") has jurisdiction over this matter pursuant to ORS 652.330.

II. Employer Liability for Unpaid Wages

This Order is based upon the assigned wage claims filed by those wage claimants whose information is set out in Exhibit A, attached hereto and incorporated herein by this reference. During the periods set out in Exhibit A, the wage claimants performed work, labor and services for Jose Rubio de la Cruz ("employer"). The employer was required by the provisions of ORS 653.025 to compensate some of the wage claimants at the rate not less than \$8.50 per hour for each hour worked. The employer was also required by the provisions of OAR 839-020-0030 to compensate some of the wage claimants at one and one-half times the regular rate of pay for each hour worked over forty in a given work week. The wage claimants worked a total of 1,439 hours and are entitled to \$14,033.75 in wages, \$3,345.00 of which has been paid, leaving a balance due and owing of \$10,688.75 in unpaid wages. The Wage and Hour Division of the Bureau ("Agency") has determined that the employer owes the wage claimants \$10,688.75, together with the interest thereon as set out in Exhibit A.

III. Penalty Wages and Civil Penalties

Penalty Wages: The Agency has determined that more than thirty days have elapsed since the wages became due and owing and since a written notice was sent to the employer pursuant to

ORS 652.140 and ORS 652.150. The employer has willfully failed to pay the wages referred to in Paragraph II and set forth in Exhibit A, entitling the wage claimants to \$15,240.00 in penalty wages under ORS 652.150 based on the claimants' hourly wage rates as set out in Exhibit B, with the interest thereon at the legal rate per annum as set out in Exhibit B, until paid. OAR 839-001-0470.

Civil Penalties: The Agency has also determined that the employer paid some of the wage claimants less than the wages to which the wage claimants were entitled under ORS 653.010 to 653.261 and is therefore liable to the wage claimants for civil penalties pursuant to the provisions of ORS 653.055(1)(b) in the amount of \$13,080.00, with the interest thereon at the legal rate per annum as set out in Exhibit B, until paid. OAR 839-001-0470(4); OAR 839-001-0496

IV. Right to a Contested Case Proceeding or Court Trial

The employer is entitled to a contested case hearing or a trial in a court of law in connection with this Order and may be represented by counsel at either proceeding.

V. Wages and Penalties Must Be Paid or a Hearing or Court Trial Requested

Pursuant to ORS 652.332, within 20 days of receipt of this Order, the employer must pay the full amount of the wage claims described in Paragraph II and the penalty wages and civil penalties described in Paragraph III or present a written request for a contested case hearing or trial in a court of law to the Commissioner. A request for a contested case hearing must also include an "Answer" as described in Paragraph VIII. If the employer does not pay the amounts described in this Order as owed by the employer or request a contested case hearing or a trial in a court of law within 20 days of receipt of this Order, this Order shall become final against the employer.

VI. Where to File Request for Hearing and Answer

The employer's written request for a contested case hearing or court trial must be submitted to the Agency at the address shown on the last page of this order.

VII. Representation of Employer

Contested case hearings will be conducted in accordance with ORS 652.310 to ORS 652.405, ORS chapter 183, and the Bureau's administrative rules regarding such hearings: The employer and the wage claimants may each be represented by counsel. All partnerships, corporations, unincorporated associations, including limited liability companies, and government agencies MUST be represented either by an attorney or by an "authorized representative" AT ALL STAGES OF THE HEARING, including the filing of a written request for hearing and Answer. OAR 839-050-0110. Before appearing in the case, an authorized representative must provide

written authorization to appear on behalf of the party. This authorization must be provided no later than the time that a request for hearing and Answer is filed. Other employers, including individuals, may choose whether or not to be represented by an attorney. Any attorney appearing on your behalf must be a member in good standing with the Oregon State Bar, or a member in good standing of the bar of another state or United States court who is permitted to appear in this proceeding by order of the administrative law judge. OAR 839-050-0020(10).

VIII. Requirements for Answer

The employer's request for a contested case hearing must include a written "Answer" to the factual determinations contained in Paragraphs II and III. The Answer must include an admission or denial of each factual determination set out in those paragraphs. The Answer must also affirmatively allege a short and plain statement of each affirmative defense which the employer will assert at the contested case hearing, including financial inability to pay the wages or compensation at the time they accrued.

IX. Consequence of Failure to Deny Factual Determinations or to Plead Affirmative Defenses in Answer

Except for good cause, the factual determinations set out in Paragraphs II and III that are not denied in the Answer shall be deemed admitted. Failure to raise an affirmative defense in the Answer is a waiver of that defense. Any new facts or defenses alleged in the Answer will be deemed denied by the Agency and wage claimants.

X. Notice of Hearing

If the employer who files a written request for hearing and an Answer, the employer will be served with a Notice of Hearing that states the time and place of the hearing and the name of the administrative law judge designated by the Commissioner to preside at the hearing.

XI. Consequence of Failure to Request Hearing and File Answer or Request Court Trial; Agency File as Record of the Case

- If the employer does not submit either (1) a written request for a contested case hearing that includes an Answer or (2) a written demand for a trial in a court of law within 20 days from the receipt of this Order, such failure shall constitute a waiver of the employer's right to a contested case hearing or a jury trial and this Order shall become final.
- If the employer fails to file an Answer and request for hearing within the time specified, or if the employer makes a timely request for hearing but later withdraws that request, the record of the

proceeding to date, including information in the Agency file or files on the subject of the contested case, will automatically become part of the contested case record upon default against the employer for the purpose of proving a prima facie case. The Agency's file will be designated as the record of the case; this Order shall become final as to the employer; and no hearing will be held for the employer.

XII. Failure to Appear at Hearing

If the employer files a request for hearing and an Answer, but later notifies the Agency or the Hearings Unit that the employer will not appear at the time and place specified for hearing, or without such notification, fails to appear at hearing, the Agency's file will automatically become part of the contested case record for the purpose of proving a prima facie case against the employer.

DATED this _____ day of July, 2012.

Brad Avakian, Commissioner
Bureau of Labor and Industries

Christine N Hammond

CHRISTINE N HAMMOND, Administrator
Wage and Hour Division
Bureau of Labor and Industries

ALL PAYMENTS, REQUESTS FOR ADMINISTRATIVE HEARING, DEMANDS FOR TRIAL
IN A COURT OF LAW OR INQUIRIES SHOULD BE MADE TO:

Mark Lundsten, Order Processor
Bureau of Labor and Industries
Wage and Hour Division
800 NE Oregon Street, Suite 1045
Portland, Oregon 97232-2180
Phone: 971-673-0848

WH-61 (Rev. 10/11)

EXHIBIT A

| | | |
|---------------------------------|---|-------------------|
| Jesus Madrigal Arias 11-2749 | Period of Employment: August 30, 2011 to September 27, 2011 Rate: \$12.00/hr for 165 hours and \$18.00/hr for 8 overtime hours | |
| | Earned: | \$2,130.00 |
| | Paid: | <u>\$0.00</u> |
| | Balance Due: | \$2,130.00 |
| | With interest thereon at the legal rate per annum from November 1, 2011, until paid. | |
| Edgar Vazquez-Garcia 12-0210 | Period of Employment: September 26, 2011 to October 8, 2011 Rate: \$9.00/hr for 85 hours | |
| | Earned: | \$765.00 |
| | Paid: | <u>\$195.00</u> |
| | Balance Due: | \$570.00 |
| | With interest thereon at the legal rate per annum from November 1, 2011, until paid. | |
| Esteban Gomez-Zarate 12-0211 | Period of Employment: July 21, 2011 to July 27, 2011 Rate: \$8.50/hr for 56 hours | |
| | Earned: | \$476.00 |
| | Paid: | <u>\$0.00</u> |
| | Balance Due: | \$476.00 |
| | With interest thereon at the legal rate per annum from September 1, 2011, until paid. | |
| Rafael Soto Regalado 12-0452 | Period of Employment: October 18, 2011 to January 5, 2012 Rate: \$9.00/hr for 374.50 hours and \$13.50/hr for 38 OT overtime hours | |
| | Earned: | \$3,883.50 |
| | Paid: | <u>\$1,200.00</u> |
| | Balance Due: | \$2,683.50 |
| | With interest thereon at the legal rate per annum from February 1, 2012, until paid. | |

Mario Gomez-Miranda
12-0470

Period of Employment:
December 2, 2011 to January 9, 2012
Rate: \$9.00/hr for 116 hours and
\$13.50/hr for 7 overtime hours

Earned: \$1,138.50
Paid: \$300.00
Balance Due: \$838.50

With interest thereon at the legal rate per
annum from February 1, 2012, until paid.

Nicolas Lucas-Aguilar
12-0471

Period of Employment:
March 11, 2011 to March 30, 2011
Rate: \$9.00/hr for 127.50 hours and
\$13.50/hr for 8 overtime hours

Earned: \$1,255.50
Paid: \$300.00
Balance Due: \$955.50

With interest thereon at the legal rate per
annum from May 1, 2011, until paid.

Gustavo Ordonez-Gomez
12-0472

Period of Employment:
October 18, 2011 to January 5, 2012
Rate: \$9.00/hr for 387.50 hours and
\$13.50/hr for 66.5 overtime hours

Earned: \$4,385.25
Paid: \$1,350.00
Balance Due: \$3,035.25

With interest thereon at the legal rate per
annum from February 1, 2012, until paid.

TOTAL WAGES DUE: \$10,688.75

EXHIBIT B

Jesus Madrigal-Arias Termination Date: September 27, 2011
Hourly Rate: \$12.00
8 Hours of Pay: \$96.00
Penalty wages at the rate of
\$96.00 for 30 days: \$2,880.00
Additional penalty wages due
pursuant to ORS 653.055: \$2,880.00
Plus interest at the legal rate per
annum from December 1, 2011, until paid.

Jesus Madrigal-Arias Termination Date: October 8, 2011
Hourly Rate: \$9.00
8 Hours of Pay: \$72.00
Penalty wages at the rate of
\$72.00 for 30 days: \$2,160.00
Plus interest at the legal rate per
annum from December 1, 2011, until paid.

Esteban Gomez-Zarate Termination Date: July 25, 2011
Hourly Rate: \$8.50
8 Hours of Pay: \$68.00
Penalty wages at the rate of
\$68.00 for 30 days: \$2,040.00
Additional penalty wages due
pursuant to ORS 653.055: \$2,040.00
Plus interest at the legal rate per
annum from October 1, 2011, until paid.

Rafael Soto-Regalado Termination Date: January 5, 2012
Hourly Rate: \$9.00
8 Hours of Pay: \$72.00
Penalty wages at the rate of
\$72.00 for 30 days: \$2,040.00
Additional penalty wages due
pursuant to ORS 653.055: \$2,040.00
Plus interest at the legal rate per
annum from March 1, 2012, until paid.

Mario Gomez-Miranda Termination Date: January 9, 2012
Hourly Rate: \$9.00
8 Hours of Pay: \$72.00
Penalty wages at the rate of
\$72.00 for 30 days: \$2,040.00
Additional penalty wages due
pursuant to ORS 653.055: \$2,040.00
Plus interest at the legal rate per
annum from March 1, 2012, until paid.

Nicolas Lucas-Aguilar Termination Date: November 30, 2011
Hourly Rate: \$9.00
8 Hours of Pay: \$72.00
Penalty wages at the rate of
\$72.00 for 30 days: \$2,040.00
Additional penalty wages due
pursuant to ORS 653.055: \$2,040.00
Plus interest at the legal rate per
annum from February 1, 2012, until paid.

Gustavo Ordonez-Gomez Termination Date: January 05, 2012
Hourly Rate: \$9.00
8 Hours of Pay: \$72.00
Penalty wages at the rate of
\$72.00 for 30 days: \$2,040.00
Additional penalty wages due
pursuant to ORS 653.055: \$2,040.00
Plus interest at the legal rate per
annum from December 1, 2011, until paid.

TOTAL PENALTY WAGES PER ORS 652.150: \$15,240.00
TOTAL PENALTY WAGES PER ORS 653.055: \$13,080.00

TOTAL: \$28,320.00



Oregon Bureau of Labor and Industries

Wage and Hour Division

Memo

| DATE: 07-18-12 | | | | | | | | | | | | | |
|--|--|---|--|---------------|--|-------------------------------|--|---|-----------------------------------|--|----------------------------------|---|--|
| TO: Mark O. Lundsten, Judgment Unit | | | | | | | | | | | | | |
| FROM: Stan Wojtyla | | | | | | | | | | | | | |
| CASE NAME: Jose Rubio de la Cruz | | | | | | | | | | | | | |
| MAIN FILE #: 11-2749 | | | | | | | | | | | | | |
| REGARDING: (SELECT ONE) | <input checked="" type="checkbox"/> ORDER OF DETERMINATION <input type="checkbox"/> NOTICE OF INTENT <input type="checkbox"/> SUBPOENA | | | | | | | | | | | | |
| SERVE: Jose Rubio de la Cruz as an individual 1465 Silverton Rd Woodburn, OR 97071 COUNTY: Marion ALTERNATIVE ADDRESS: | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2">ADDRESS TYPE:</th> <th colspan="2">SERVICE TYPE:</th> </tr> <tr> <td><input type="checkbox"/> HOME</td> <td><input checked="" type="checkbox"/> BUSINESS</td> <td><input checked="" type="checkbox"/> SHERIFF</td> <td><input type="checkbox"/> TRANSERV</td> </tr> <tr> <td><input checked="" type="checkbox"/> BOTH</td> <td><input type="checkbox"/> UNKNOWN</td> <td><input type="checkbox"/> CERTIFIED MAIL</td> <td><input type="checkbox"/> OTHER - SEE ADD'L ACTIONS</td> </tr> </table> | ADDRESS TYPE: | | SERVICE TYPE: | | <input type="checkbox"/> HOME | <input checked="" type="checkbox"/> BUSINESS | <input checked="" type="checkbox"/> SHERIFF | <input type="checkbox"/> TRANSERV | <input checked="" type="checkbox"/> BOTH | <input type="checkbox"/> UNKNOWN | <input type="checkbox"/> CERTIFIED MAIL | <input type="checkbox"/> OTHER - SEE ADD'L ACTIONS |
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| COUNTIES TO RECORD JUDGMENT: (In Oregon) Marion | | | | | | | | | | | | | |
| FOREIGN JUDGMENT: NO | COUNTY: _____ | | | | | | | | | | | | |
| ADDITIONAL ACTION: If necessary, please effect a substitute service, Mrs. Rubio or adult children | | | | | | | | | | | | | |