



*From the Desk of
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Support Senate Joint Memorial 7

Urge Congress to require US Department of Labor to adopt standard rules and procedures for "Hot Good" orders

In 2012 the U.S. Department of Labor threatened "hot goods" objections on Oregon farms, denying the farms due process, contacting and warning customers that the farmers' products might no longer be bought, shipped, or sold, and offering as the only alternative a blanket confession which did not enumerate any specific allegations. The confession form included a waiver of all rights to appeal, even if findings of fact or law later exonerated the farmer. In addition to the blank confession form, USDOL assessed one farm over \$156,000 in fines and back wages it never substantiated, and demanded immediate payment. USDOL used a new statistical method for assuming wage violations it did not witness or provide any documentation of. USDOL's actions in Oregon have left growers with best practices in place in the impossible position of either under-paying top-producing employees or paying them for their full production and risking violating USDOL's arbitrary hourly production maximum. SJM 7 encourages the president's administration to implement policies and procedures in the application of hot goods powers so that what we saw last summer never happens again.

How did USDOL determine there were underpaid "ghost workers" at these farms? They set a never-before applied production standard for blueberries and assumed that any berries picked above these levels must have been picked by ghost workers. In one case a farm was told that any amount beyond 50 pounds per hour per person indicates a ghost worker. At another farm USDOL said the threshold is 60 pounds per hour. One USDOL employee called anything over 50 pounds per hour, "Michael Phelps numbers." No basis for USDOL's creation or application of this hourly number has ever been offered.

A survey of farmers found that many of top employees can and do pick well over 60 pounds per hour on a sustained basis. A wage study conducted by a recently-retired USDOL farm inspector found sustained picking rates of over 80 pounds per hour common. The study was conducted with the same employees on one of the farms USDOL penalized. The wage study was conducted on a third picking on the same variety being harvested during the USDOL visit. The best employees were documented to reach levels of 100 pounds per hour in this study.

The consent judgment requires the farmers to "waive service of process, answer, and any defense to the complaint filed herein; waive further findings of fact and conclusions of law; and agree to the entirety of this judgment without contest." The document states that the farmers, "waive their right to a hearing before the USDOL office of administrative law judges on these assessed civil money penalties." The alternative presented to the farmer was that his perishable blueberries would be blocked from shipment or sale and allowed to rot. In other words, his entire year's income on that crop would be lost if he chose to defend himself.

Please support SJM 7 and give Oregon's farmers the fair treatment they deserve