



Oregon Labor and Industries Commissioner Brad Avakian Testimony

Testimony before the House Committee on Agriculture

Subcommittee on Horticulture, Research, Biotechnology, and Foreign Agriculture

July 29, 2014

Mr. Chair, Representatives,

Thank you for inviting me to discuss Oregon's perspective on the use of the "hot goods" provision of the Fair Labor Standards Act during the investigation of perishable agricultural products.

My name is Brad Avakian and I serve as Oregon's Commissioner of Labor and Industries, a non-partisan statewide elected position. Our agency supports local businesses with technical assistance, helps train much of Oregon's workforce, and enforces our state's civil rights laws so that people are treated fairly on the job, in housing and in public accommodations.

We also enforce the state's Wage and Hour laws, ensuring that workers receive the wages to which they're entitled. We license all the state's farm labor contractors and manage the state's farm labor unit. Last year, our enforcement efforts returned more than \$2 million to Oregon workers who had not received the wages they had earned.

We view strong wage enforcement as a matter of basic fairness not only to the individual employees, but also the vast majority of employers who deserve a level playing field on which to compete. Our agency conducts more than 2,000 Wage and Hour investigations each year. In addition, we responded to about 20,000 calls last year from employers helping them to avoid potential wage violations in the first place.

In Oregon, our timber, agricultural and nursery industries play an important economic role in communities around the state. In fact, together, these sectors employ **over 54,000** workers – which is one of the reasons for our interest in enforcement that's both strong and fair.

Our agency is committed to having strong wage enforcement while still ensuring due process for Oregon growers. For this reason, we continue to have deep concerns about using the "hot

goods” provision of the Fair Labor Standards Act with perishable agricultural goods on Oregon farms.

The imminent perishable nature of the produce often renders contesting a “hot goods” motion moot, for when the produce spoils, it has no value. With the loss of the goods, the farmer has diminished or no ability to pay employees if wages are truly due. In short, the actions of a farmer facing the choice of having blueberries spoil in a warehouse during a protracted legal process are far from voluntary when he or she signs a hot goods consent judgment.

The imbalance of power in this type of hot goods action obscures any meaningful due process during the enforcement action and risks violating constitutional search and seizure and commerce clause protections. Requiring farmers to waive their rights of appeal—even if future findings of fact or law would exonerate the farmers— runs contrary to basic rules of fairness.

When applied appropriately, use of the “hot goods” provision can be a powerful and effective tool in wage enforcement. But “hot goods” should be limited to the enforcement of non-perishable items such as those traditionally associated with the garment industry.

We value our partnership with the US Department of Labor and work to stay in close communication with them so that we can most effectively coordinate investigative resources. The Oregon Bureau of Labor and Industries believes in strong wage enforcement for our state’s most vulnerable workers. We work to strengthen our workforce and believe that we can take meaningful action against employers failing to pay wages without violating fundamental principles of due process.

Thank you again for your consideration of this issue and the critical work of ensuring fair enforcement of important wage and hour protections.

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