



**U.S. DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

DATE PREPARED 8/29/78

RE: ONTARIO ORCHARDS, CASE NO. 78-TLC-141

THIS DECISION BASED ON REQUEST OF GARY B. FITCH, PRESIDENT , ONTARIO ORCHARDS, INC., FOR EXPEDITED ADMINISTRATIVE-JUDICIAL REVIEW UNDER 20 C.F.R. 655.212 OF AUGUST 22, 1978, REGIONAL ADMINISTRATOR'S (RA) DENIAL FOR TEMPORARY LABOR CERTIFICATION FOR 32 (THIRTY-TWO) WORKERS TO PICK APPLES SEPTEMBER 10, 1972 TO NOVEMBER 15, 1978. THE DENIAL WAS ISSUED PURSUANT TO 20 C.F.R. 655.206(a)(1). THE RA COMMENTED THAT "10 LOCAL WORKERS WERE RECRUITED AND JOSEPH WRIGHT WITH A CREW OF 20 IS AVAILABLE."

GARY B. FITCH, PRESIDENT OF ONTARIO ORCHARDS, ADVISED IN HIS APPEAL TELEGRAM THAT IN HIS JUDGMENT WRIGHT DOES NOT HAVE A CREW AVAILABLE AND THAT WRIGHT HAS NOT ATTEMPTED TO CONTACT HIM. HOWEVER, FITCH'S ASSERTIONS IN FILING APPEAL MAY NOT BE RECEIVED AS EVIDENCE (SECTION 655.212(A)).

THE UNCERTIFIED RECORD IN THIS MATTER REFLECTS AT PAGE 33 OF THE FILE A HANDWRITTEN NOTATION, "C.L. TO CALL TODAY 8/14." THE NOTATION FOLLOWS A TYPE- WRITTEN STATEMENT "JOE WRIGHT TO ONTARIO ORCHARDS." PAGE 33 IS IDENTIFIED AS A REPORT "RECEIVED R.O. 8/16/78." THE FOREGOING IS THE ONLY REFERENCE TO "JOE WRIGHT" AND IS APPARENTLY THE ONLY GROUNDS FOR THE REGIONAL ADMINISTRATOR'S CONCLUSION THAT JOSEPH WRIGHT WITH A CREW OF 20 IS AVAILABLE.

IN MY OPINION THE INDICATION THAT JOE WRIGHT IS SUPPOSED TO CALL ON "8/14" DOES NOT CONSTITUTE A BASIS TO MAKE A DETERMINATION THAT WRIGHT WITH A CREW OF 20 (TWENTY) IS VERY LIKELY TO SIGN A WORK CONTRACT 20 C.F.R. 206(a). HAVING FOUND THAT THE RECORD LACKS SUFFICIENT EVIDENCE FOR SUCH A DETERMINATION THE RA DENIAL OF THE APPLICATION FOR TEMPORARY LABOR CERTIFICATION IS REVERSED AND LABOR CERTIFICATION IS GRANTED FOR 22 (TWENTY-TWO) TEMPORARY ALIEN APPLE PICKERS. (20 C.F.R. 655.12(b). IT HAS BEEN NOTED THAT THE ORIGINAL

APPLICATION WAS FOR 32 (THIRTY-TWO) WORKERS AND TEN WORKERS HAVE BEEN RECRUITED FROM LOCAL WORKERS.

THOMAS G. EGAN
HEARING OFFICER
U.S. DEPARTMENT OF LABOR