



In the Matter of

TED CHRISTIANSEN  
and STEVEN COTTOM,  
Employers

DATE ISSUED: MAY 16 1985

CASE NO. 85-TLC-6

Before: FREDERICK D. NEUSNER  
Administrative Law Judge

DECISION AND ORDER

Pursuant to 20 CFR 656.212, this proceeding was initiated by the above-named Employers who requested administrative judicial review from the determination of the Regional Administrator (RA) of the U.S. Department of Labor denying their application for temporary labor certification of agricultural employees based on 20 CFR 655.205 and 655.206. After correcting the failure of the state agency to circulate the job opening in the interstate process, the RA determined that there were U.S. workers available for this position.

On February 15, 1985, the Employers, through their agent the Southwest Montana Agricultural Association, filed applications for temporary labor certification, specifying the dates of need as May 9 and May 25, 1985. On April 19, 1985, the RA granted certification of the applications which specified the May 9th date of need.

The RA subsequently discovered on April 25, 1985, that the Montana Job Service Office did not satisfy the regulations at 20 CFR 655.201(c) requiring the job orders to be placed into the interstate clearing process in order to recruit U.S. workers throughout the region.<sup>1</sup> In order to correct this problem, an expedited recruitment process was conducted by the Job Service Office. Two responses were received. Texas Rural Legal Aid reported that two unnamed applicants applied. The Dallas Regional Office informed the Montana Job Service Office that there were many such workers in their area and the unemployment rate was ten percent. Although no one had signed contracts, the RA determined that there were U.S. workers available for this job opportunity who made a firm commitment to work for the Employers and who were likely to

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<sup>1</sup> The record shows that this violation of the regulation was the mistake of the Montana Job Service Office, and not the failure of the Employers. Remedial actions were taken as to this State agency. (Record, pp. 49-67).

sign work contracts with these Employers. 20 CFR 655.206(a) Pursuant to 20 CFR 655.205, the RA denied the request for temporary labor certification for the May 25th date of need.<sup>2</sup> (Record, pp. 17-19)

The regulation at 20 CFR 655.206(a) directs the RA only to:

consider as available for a job opportunity any U.S. worker who has made a firm commitment to work for the employer,... (S)uch a firm commitment shall be considered to have been made not only by workers who have signed work contracts with the employer, but also by those whom the RA determines are very likely to sign such a work contract.

No specific worker has been identified or referred to the Employers. No individual has made a commitment to the Employers in any manner. Since the information given to the Montana Job Service Office was tentative and indefinite, it is inferred that no U.S. workers are available at this time for the job opportunity as contemplated by the regulations.

The Employers should not be penalized for the inadvertent mistake of the Montana Job Service Office. If this Office finds U.S. workers after this decision has been rendered, such individuals can be referred to the Employers until 50 percent of the work contract has elapsed. In this case that date is indicated to be August 15, 1985. 20 CFR 655.204(e) This time frame will allow available U.S. workers to obtain employment with the Employers when they are identified and referred.

Based on these reasons, the RA's denial of temporary labor certification should be reversed.

### ORDER

The denial of temporary labor certification is reversed and the Regional Administrator is ordered to grant the requested certification.

FREDERICK D. NEUSNER  
Administrative Law Judge

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<sup>2</sup> Certification for the May 9th date of need already had been granted and could not be reversed unless fraud or willful misrepresentation were involved. 20 CFR 655.208 Therefore, the Employers only requested review of the denial of certification for the May 25th date of need..