

BC Employment Standards for the Next Decade Coalition

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HONOURABLE PAT BELL

Minister of Jobs, Tourism, Skills Training & Labour

Room 138, Parliament Buildings

Victoria BC

V8V 1X4

Premier Christy Clark

PO Box 9041 Stn Prov. Govt.

Victoria BC

V8W 9E1

Dear Mr. Bell and Premier Clark:

Re: BC Employment Standards Act & Regulation - Minimum Wages for Farm Workers

Thank you for your December 18, 2012 reply to our letter of November 5, 2012 providing a petition to the Provincial Government and the Minister of Labour in support of abolishing Employment Standards Regulation Section 18 and extending the hourly minimum wage to farm workers who hand harvest berries, fruits and vegetables. That petition had been signed by a total of 323 British Columbians (209 signatures on paper petitions and 114 signatures on our website on-line petition). Since that letter an additional 86 British Columbians (see attached) have signed the same petition (53 signatures on paper petitions and 33 signatures on our website on-line petition) for a total of 409 petitioners on this issue. The petition wording is as follows:

We, the undersigned, urge the BC Government to abolish the Employment Standards Regulation (Section 18) that excludes certain farm workers from the hourly minimum wage regulation (Section 15).

We note that in your letter of reply to our November 5, 2012 submission you make reference to the late 2011 hand harvester piece rate study report of consultants retained by your government, and that because one of the key findings of that study was that “by and large, workers who are paid under the piece rate system earn well above the hourly minimum” your government decided that the regulated minimum piece rates would remain unchanged as set on May 1, 2011.

With respect, having carefully reviewed the consultants’ piece rate study report, it is our submission that your government’s interpretation of that study’s results is fundamentally flawed, as provided in the following summary of our assessment of that report:

The minimum piece rate system study was conducted by private sector agricultural consultants who have a history of consulting research for agricultural producers, but with no labour economics or employment relations qualifications or experience. Their research was conducted in late 2011 after most of the hand harvesting of fruits and berries had ended.

In an attempt to find out how extensively piece rates were paid to hand harvesters during the 2011 season, and if piece rates were paid what the average hourly pay equivalents were, the researchers conducted a voluntary survey of a very small number of farm owners in each product sector. The consultants' final report was submitted to the government in December 2011.

After studying the consultant's report the Ministry of Labour announced on March 9, 2012 that "piece rates for hand-harvested crops listed in the employment standards regulation will remain unchanged as the review found that current piece rates are appropriate for both workers and employers." The BC Agricultural Council stated that it "coordinated discussions with the Ministry to address the importance of piece rates for some commodities." The Ministry stated that the decision to maintain current piece rates "strikes a balance to preserve jobs and businesses that B.C. families depend on."

Incredibly, based on this study, the government decided that not only is the minimum piece rate system more beneficial to farm workers than a minimum hourly wage without the consultants having surveyed or consulted a single farm worker, and without listening to farm worker advocacy groups that called for scrapping the system, it decided that the piece rates last adjusted on May 1, 2011 should be frozen indefinitely. This means that while the minimum wage for all other BC workers will have increased on May 1, 2012 by 28.13% since 2001, for fruit, berry and vegetable hand harvesters their minimum piece rate wages will have increase by only 9.4% - two thirds less than the general minimum wage! This constitutes nothing less than a subsidy to fruit and vegetable farm operators at the expense of low waged farm workers.

What is more incredible is that the decision to freeze hand harvester piece rates was not based on such a recommendation from the consultant's study report. The study report makes no recommendation as to whether or not the employment standards piece rate regulation should be retained or whether the rates should be changed, and did not survey or make any assessment of the positive and/or negative impacts of the system on individual farm worker earnings and conditions of employment.

The review consultants did not interview or obtain earnings and hours of work data from a single farm worker, therefore the government's statement that "the current piece rates are appropriate for both workers and employers" is stunningly misleading, and points to the total failure of the government to consider the interests of farm workers and the impact that a freezing of their minimum piece rates will have on them, or the supply of Canadian workers to the industry.

Another reason that the government should not rely on the consultant's piece rate review as the basis for its minimum wage policy for farm workers is that the study was fundamentally flawed, particularly with respect to the Lower Mainland berry and vegetable sectors. In these sectors the majority of harvesting labour is supplied to farm operators through the notoriously corrupt and exploitative farm labour contracting system. It is telling that not one farm labour contractor

cooperated with the researchers to provide data on the pay and hours of work of the berry and vegetable harvesters that they supply to farm owners. This fact alone renders the analysis of the berry and vegetable harvesting sector invalid.

In addition, by their own admission, the consultants survey of harvesting operations in the tree fruits, grape, mushroom and daffodil sectors involved small and statistically insignificant data samples and/or no farm worker wage rate or earnings data. In the tree fruit and grape sectors where wage rate, earnings and hours of work data was obtained and analyzed, the data came from only 0.06% of all producers of apples and cherries, only 0.05% of all producers of pears, and only 0.04% of all producers of grapes. No data was obtained from producers of peaches, apricots, plums or prunes, or from the producers of mushrooms and daffodils. Even in those sectors where a very small number of farm operators provided piece rate, farm worker earnings and hours of work data, they represented a very small proportions of the total production of those crops, for example only 4% of the apple crop, only 1.2 % of the grape crop, and only 18% of the cherry crop.

Another failure of the survey is that it only analyzed the farm worker earnings and hours of work data provided by farm owners on an annualized basis, and did not analyze the obvious differences in the piece rate earnings of farm workers and the hourly equivalents during different phases of each harvesting season, such as early season, peak season and end of season harvesting. It is well known that harvesting productivity and piece rate earnings are low in the early and late phases of every harvesting season. Therefore the annual averaging of the data obtained by the consultants seriously distorts and inflates the actual hourly earnings of farm workers during the shoulder seasons.

The most serious deficiency in the consultant's survey of the piece rate system was in relation to the large and profitable (for both farm owners and farm labour contractors) Lower Mainland berry sector (blueberries, raspberries and strawberries). In this sector the majority of labour is provided by farm labour contractors, or increasingly Temporary Foreign Workers. In this sector the Canadian labour force is made up of South Asian immigrants who are paid the minimum hand harvesting piece rates, while the Temporary Foreign Workers are required to be paid the minimum hourly wage. In addition to the fact that no farm labour contractor provided the researchers with harvester piece rate, earnings and hours of work data, the researchers were unable to obtain that data from the farm owners who employed farm workers through farm labour contractors because in 2002 the government eliminated from the Employment Standards Act the requirement for such farmers to retain records of wages paid to employees of farm labour contractors.

To the very limited extent that the researchers were provided with some earnings and hours of work data for piece rate paid blueberry harvesters for 2011, the researchers found that the average hourly pay for 75% of the farm workers was below the hourly minimum wage of \$10.25 to come into effect on May 1, 2012. It is therefore evident that Lower Mainland farm workers employed in the harvesting of berries are the lowest paid and most exploited workers in the province, and in desperate need of more employment standards protections and a minimum hourly wage the same as all other BC workers.



Except for the province of Quebec, no other province's employment standards legislation sets piece rates for hand harvesting that are not related to or less than the hourly minimum wage. In Quebec only the picking of raspberries and strawberries is compensated at minimum piece rates (\$2.84 per kilogram for raspberries & \$0.75 per kilogram for strawberries).

In Ontario there are rules governing how harvesters of fruit, vegetables and tobacco are to be paid a minimum wage if they are paid a piece rate, but the rules do not specify what those piece rates are for each product. Instead the rules provide that:

Harvesters can be paid on a piece-work basis, but the rate must be set at a level so that with reasonable effort they can earn at least the minimum [hourly] wage for all the hours they worked. The piece-work rate is set according to what is standard pay in an area for the particular crop. (Ontario Agricultural Workers Employment Standards Fact Sheet)

In addition, under Ontario's Employment Standards Act hand harvesters are guaranteed "equal pay for equal work", and are entitled to Statutory Holidays with pay if they have work for at least 13 weeks with an employer. And if they are required to work on a public holiday they receive a premium rate of pay (at least 1½ times regular rate) or compensating time off with pay.

The most principled and equitable policy for the government to adopt on this issue is for the elimination of regulated minimum piece rates of pay for the hand harvesting of any and all agricultural products, and that while employers may choose to pay incentive piece rates for certain products at certain times of the year the rule be (as in Ontario and under the Temporary Foreign Worker programs) that such rates must be set at a level so that with reasonable effort they can earn at least the minimum hourly wage for all hours worked. This was the recommendation that came out of the 2008 CCPA Economic Security Project study report titled *Cultivating Farmworker Rights: Ending the Exploitation of Immigrant and Migrant Farmworkers in BC (June 2008)*.

Respectfully yours,

David Fairey
Co-Chair, BC Employment Standards for the Next Decade Coalition

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