**Agricultural Operations, Labor Disputes Involving Temporary, Seasonal Agricultural Employment**

**REFERENCES**

The Workforce Investment Act (WIA) of 1998, Public Law 103-152 (WorkSource); the Wagner-Peyser Act as amended by WIA (Labor Exchange); the Code of Federal Regulations (CFR), Title 20, Chapter V, Part 652 (Labor Exchange); and the Washington Administrative Code (WAC), Chapter 192.12.030 (5).

**PURPOSE**

Most labor disputes are easily identified because there is an obvious controversy between employees and an employer; i.e., the employees are refusing to work or the employer is refusing to allow the employees to work, and an association or union is representing the employees in an attempt to resolve the controversy.

Some labor disputes, however, are not so clearly identifiable as demonstrated by labor disputes involving temporary, seasonal agricultural employment in the harvesting of perishable crops. In these instances, it is much more difficult to determine if there are actual labor disputes and whether or not job referrals can be made to the affected establishments.

**PERSONS AFFECTED**

ESD WorkSourceStaff and Management

**DEFINITIONS**

**Labor Dispute** - The following definition is used as a guideline for determining the existence of a labor dispute involving temporary, seasonal agricultural employment and for deciding whether or not **employment services** are allowed:

*". . . any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer or employee . . ." (NLRB, ETA Handbook 373).*

The key word in this definition is "controversy." The presence of pickets at a work site implies a controversy, but there are circumstances where pickets are present and there has been no actual communication or attempted negotiation between a labor organization or group of workers and an employer or business. For example, the first contact between the business and the labor organization may be the placement of informational pickets. **Action of this nature does not constitute a labor dispute.**

In fact, a controversy constituting a labor dispute involving temporary, seasonal agricultural workers in the harvesting of perishable crops exists, relative to providing **employment services**, only when all of the following conditions are present:

1. There is an issue concerning terms and conditions of employment;
2. A union or group of workers in a concerted action has communicated a demand or demands concerning terms and conditions of employment to the employer or the employer's authorized representative; and

***Note:*** *This differs from UI procedures.*

1. The employer acknowledges receiving such a demand or demands from a union or group of workers, or there is evidence which confirms that the demand or demands have been conveyed to the employer.

***Note:*** *This may differ from UI procedures.*

**POLICY**

It is the policy of the Employment Security Department (ESD) that all staff remain impartial in dealing with agricultural employers, employees, and the employers' and employees' representatives. Under no circumstances do staff express an opinion as to the merits of a [labor dispute](http://www.wa.gov/esd/policies/documents/4064.htm#Labor Dispute) involving temporary, seasonal agricultural employment; nor are any recommendations or decisions made or influenced by the merits of such a labor dispute, as ESD cannot be concerned with such merits. ESD's only concern regarding such labor disputes is in how they affect our ability to provide employment services to agricultural employers. For example:

1. Job orders **are not knowingly accepted** when a strike, lockout, or other labor dispute involving temporary, seasonal agricultural employment is in progress, when the job is vacant because a former occupant is on strike or has been locked out, or when the filling of the opening is an issue in such a labor dispute.
2. Referrals **are not made** when such referrals aid directly or indirectly in filling a job that is vacant because the former occupant is on strike, being locked out in the course of a labor dispute involving temporary, seasonal agricultural employment, or if the filling of the order is an issue in such a labor dispute.

In addition, any information gathered as a result of agricultural labor dispute fact-finding activities is considered confidential, for ESD use, and is only released in accordance with Policies and Procedures document number 0006, Request for Public Records/Disclosure and Privacy of Information and Records.

**SUPERSEDES**

None

**CONTACT**

Oscar Trevino
Employment Security Department
Employment and Career Development Division
P.O. Box 9046, Mail Stop 6000 | Olympia , WA 98507-9046
E-Mail: otrevino@esd.wa.gov
Telephone: (360) 438-4653
Fax: (360) 438-4014