

MAINE STATE LEGISLATURE

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Overtime pay and employees of a trucking firm (independent contract carrier), who haul feed grain to, and unload same, on the farms of various poultry raisers.

FACTS:

Samuel Gass, Inc. of Augusta, Maine is a corporation engaged in the hauling of grain from the feed mill of the Lipman Bros., Inc. to the poultry farms which raise birds under contract with Lipman for future processing at the Lipman plant. Gass employs eleven drivers and two mechanics. All are paid on an hourly rate of from \$1.50 to \$1.85 an hour with no premium pay for overtime. In the Gass business, approximately one-fourth of the drivers' time is spent in unloading "on the farms." The remainder of their time is spent in loading at the feed mill and on the road. The drivers make three or four trips a day to widely scattered farms. Gass claims that the overtime payment provision of the Maine minimum wage law does not apply to its employees because said employees are exempt as agricultural workers under 26 M.R.S.A. § 663, 3 A.

ISSUE:

Are the employees of a contract carrier who deliver grain from a feed mill to various poultry farms, and who unload the grain on the various farms, classified as agricultural workers and hence exempt from the provisions of the Maine minimum wage law?

ANSWER:

Yes.

There is a rather broad exemption from coverage under our state minimum wage law for those workers who are engaged in agriculture. 26 M.R.S.A. § 663 entitled "Definitions" provides, inter alia, for certain exemptions and reads in part as follows:

"Subsection 3. 'Employee,' any individual employed or permitted to work by an employer but the following individuals shall be exempt from this subchapter except as provided in section 662:

"(A) Any individual employed in agriculture as defined in the Maine Employment Security Law and the Federal Unemployment Insurance Tax Law; . . ."

The definition of agricultural workers under the Maine Employment Security Law and the Federal Unemployment Insurance Tax Law is precisely the same in language. The section of the Maine Employment Security Law which is applicable to the problem to be resolved reads as follows:

26 M.R.S.A. § 1043 "(1) Agricultural labor includes all services performed:

"A. On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with the raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wild life."
(Emphasis supplied)

When employees come within the terms of the above-quoted statutory definition of agricultural labor as set forth in the Employment Security Law, such employees are simultaneously exempt from coverage under the terms of the minimum wage law. The key question is simply, are the employees described in the factual situation stated-above, agricultural workers or not?

The test is whether or not work is performed on a farm which is properly connected to the conduct of agriculture. It is immaterial for whom the work is performed.

"Services of pick-up crews in catching poultry, putting them in crates and loading them on taxpayer's trucks performed on the farms themselves were rendered in the performance of "agricultural labor" and hence their wages were exempt from federal unemployment taxes; it being immaterial that the growers utilized the taxpayers pick-up crews instead of their own labor to catch and load the poultry. (emphasis supplied) Drummonds Poultry Transportation Service V. Wheeler, (D.C. Me.) 178 F. Supp. 12 (1959)

In the case quoted above the issue was whether or not the carrier was subject to the payment of federal unemployment taxes. The test as to whether or not the taxes were owing was dependent upon whether or not said workers were agricultural employees or not. The definition of agricultural workers is the same under the Federal Unemployment Security Tax law as under the Maine Employment Security law, and by the terms of 26 M.R.S.A. § 663, 3-A quoted above, if employees come under either definition, they are exempt from the applicable provisions of the state minimum wage law.

The facts in the Drummond case are analogous to the employment situation governing employees in Sam Cass, Inc. The facts in Drummond were as follows:

"During the taxable years in question the taxpayer was engaged, as an independent contractor, in hauling live poultry from the farms on which they were raised to the processing plant of the Fort Halifax Packing Company in Winslow, Maine. The farms were located mostly within a radius of fifty miles of the plant. The taxpayer did not own, operate or participate in the operation of the farms. The taxpayer's method of operation was as follows:

Daily poultry pick-ups were made by it in accordance with a weekly schedule furnished by the Packing Company. The taxpayer's employees proceeded by car and truck to the farms scheduled for collections. At each farm crates were unloaded from the trucks, and the employees, including the truck drivers, erected prefabricated enclosures in various parts of the poultry house, caught and crated the poultry and loaded them upon the trucks. The truck drivers then drove the trucks to the processing plant where they were unloaded by employees of the plant. The other members of the pick-up crew returned directly to their homes by car."

In regard to the above-quoted facts in the Drummond case, The Maine Court has held:

"Where, in the conduct of his business, an employer engaged employees to drive his trucks to the various farms on which poultry was located, to catch, crate and transport the poultry from the farms to the processing plant, the services performed by these employees constituted "agricultural labor." Drummond v. Maine Employment Security Commission 157 Me. 404, 173 A. 2d 353 (1961)

In Maplewood Poultry Co. v. Maine Employment Security Commission, 151 Me. 467, 121 A. 2d 360 (1956) our Court had previously reiterated the position that the employment incidental to farming need not be performed in the employ of the owner, tenant or operator of the farm but may be performed by one "in the employ of any person."

Although it is difficult to think of employees of a commercial trucking company as being within the ambit of agricultural labor, the definition of such labor is clearly so broad as to include said employees, if they do in fact perform certain work on farms which is a natural incident of farming operations.

We cannot dispute the ample authority which exists to back up the contention of Samuel Gass, Inc. that its employees who transport feed grain to various poultry farms, and unload same at the situs of the farms, are properly designated as agricultural workers and others exempt from the overtime payment provisions of the state minimum wage law.

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