

NO. A11-1788

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State of Minnesota  
In Court of Appeals

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In the Matter of the Order to  
Comply: Labor Law Violation  
of Daley Farm of Lewiston, L.L.P.

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**RELATOR'S BRIEF AND ADDENDUM**

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## STATEMENT OF THE ISSUES

### **I. Whether Agricultural Workers Who Are Paid More Than the Minimum Threshold Provided in Minn. Stat. § 177.23, subd. 7(2) Are Exempted From Overtime Requirements under the Minnesota Fair Labor Standards Act When Their Wages Are Not Predetermined?**

(1) This issue was raised throughout the underlying proceeding, including the Summary Disposition Motion Hearing held at the Office of Administrative Hearings, the final contested case hearing held at OAH, as well as in response to the Findings of Fact, Conclusions of Law and Orders issued by the Department of Labor.

(2) At the initial Summary Disposition Motion Hearing, the Administrative Law Judge found in Relator's favor concluding that its agricultural employees were exempt from overtime requirements. The Department of Labor subsequently determined that the employees were not exempt and remanded the case back to the OAH. The final hearing was held to determine the amount at issue.

(3) The issue was preserved for appeal. (Ad., pp. 2-3; Transcript, pp. 9-10).

(4) Minn. Stat § 177.23, subd. 7(2)  
Wenigar v. Johnson, 712 N.W.2d 190 (Minn. Ct. App. 2006)

### **II. Whether Minnesota Agricultural Workers Are Exempt from Receiving Overtime Pay under the Federal Fair Labor Standards Act, 29 U.S.C. § 213(b)(12), (13)?**

(1) This issue was raised throughout the underlying proceeding, including the Summary Disposition Motion Hearing held at the OAH, the final contested case hearing at OAH, as well as in response to the Findings of Fact, Conclusions of Law and Orders issued by the Department of Labor.

(2) At the initial Summary Disposition Motion Hearing, the Administrative Law Judge did not address this issue as she found in Relator's favor as to the Minnesota FLSA exemption. The Department of Labor addressed the issue in its Amended Order dated January 25, 2009, finding that the Federal FLSA does not preempt Minnesota's exemptions. (Ad., p. 29; Ad., p. 19).

(3) The issued was preserved for appeal. (Ad., pp. 2-3; Transcript, pp. 9-10).

(4) 29 U.S.C. § 213(b)(12),(13).

## STATEMENT OF THE CASE

On October 16, 2006, Respondent, the Minnesota Department of Labor and Industry (hereinafter referred to as the “Department”) served Relator, Daley Farm of Lewiston, L.L.P. (hereinafter referred to as “Daley Farm”) with an Order to Comply: Labor Law Violation, alleging that it had failed to pay certain of its employees time and a half for all hours worked over 48 in a work week during the audit period of April 1, 2003 to April 1, 2005. (Ad., p. 9). On October 24, 2006, Daley Farm objected to the Order to Comply: Labor Law Violation, arguing that it was not required to pay its employees overtime wages as they were exempt as agricultural workers under both State and Federal law. (Ap., p. 10). A contested case hearing was scheduled at the Office of Administrative Hearings (hereinafter referred to as “OAH”). (Ap., p. 18).

On June 12, 2008, Daley Farm brought a Motion for Summary Disposition arguing that its employees are not subject to the overtime pay provision under the Minnesota Fair Labor Standards Act, the Federal Fair Labor Standards Act, and barred by a prior conciliation court decision. (Ad., p. 9; Ap., p. 1). Oral argument on the motion was heard before Administrative Law Judge Barbara L. Neilson on July 24, 2008, and the OAH record closed on that date. (Ad., p. 9).

On August 27, 2008, ALJ Neilson issued a decision recommending that the Commissioner of Labor and Industry grant Daley Farm’s Motion for Summary Disposition and dismiss the Department’s Order to Comply. (Id.) Based on the holding in Wenigar v. Johnson, 712 N.W. 2d 190 (Minn. Ct. App. 2006), ALJ Neilson

concluded that the Daley Farm employees at issue were exempt from the overtime requirements as agricultural workers under Minn. Stat. § 177.23, subd. 7(2). (Id., Ad., p. 29). As she found in favor of Relator on the Minnesota FLSA, she did not address the other issues raised. (Ad., p. 29).

After the parties had time to file exceptions to the ALJ Order, the Assistant Commissioner, Patricia Todd, issued her Decision on the matter on December 22, 2008. (Ad., p. 10; Ad., p. 17). In her Decision, she ordered that the ALJ's Recommendations *not* be adopted, denied Daley Farm's Motion for Summary Disposition, and affirmed the Department's Order to Comply. (Id.) On January 25, 2009, Assistant Commissioner Todd issued an Amended Order in which she corrected a typographical error. (Id.)

Thereafter, Daley Farm petitioned the Court of Appeals for a Writ of Certiorari to review the Department's Order. (Ad., p. 10; Ap., pp. 109-10). On February 10, 2009, the Minnesota Court of Appeals granted the Department's Motion to dismiss, discharged the Writ of Certiorari, and found that the appeal was premature. (Ad., p. 10; Ap., p. 131).

On September 23, 2010, the Department issued an Amended Notice and Order for prehearing conference and returned the record to the OAH for further proceedings. (Ad., p. 10; Ap., p. 134). The matter came on for hearing again before ALJ Neilson on March 29, 2011, and the record closed on that date. (Ad., p. 6).

On April 28, 2011, ALJ Neilson issued her Findings of Fact, Conclusions and Recommendations determining the amount of back overtime wages and liquid damages owed to identified employees of Daley Farm. (Id.). The Department did not seek a civil penalty. (Ad., p. 13). Additionally, the ALJ included a Memorandum whereby she acknowledged that the Department had previously decided the legal issues and that the only issues before her were the computation of wages and damages. (Ad., p. 16).

After the parties had time to file exceptions, the Assistant Commissioner, Gary Hall, issued his final decision on the matter on September 7, 2011. (Ad., p. 1). In his decision, the Department adopted and incorporated the ALJ's Findings of Fact and Conclusions and ordered Daley Farm to pay approximately fifty thousand dollars (\$50,000.00) in back pay and an additional equal amount as liquidated damages. (Ad., pp. 2-3). This appeal followed.

#### **STATEMENT OF THE FACTS**

Daley Farm is a 3,500-acre family-owned dairy and feed operation located in Lewiston, Minnesota. (Ad., p. 6). Daley Farm regularly employs individuals to assist with the farm's operation. (Id.). It currently employs 43 people, but the number of employees fluctuates on a seasonal basis. (Id.). During the period at issue, Daley Farm employed 41 employees. (Ad., p. 7). Daley Farm employees perform a variety of tasks, including milking cows, caring for animals, and cleaning stalls. (Ad., pp. 6-7). For the purpose of this case, the Department stipulated that the employees of Daley Farm for

whom back pay is sought were employed in “agriculture.” (Ad., p. 8; Transcript, p. 133).

In 2005, the minimum hourly wage rate for a large employer like Daley Farm was \$5.15 per hour. (Transcript, pp. 20, 39; Ad., p. 26). It is undisputed that during the period of time at issue, Daley Farm paid its employees more than the state minimum hourly wage. (Ad., p. 7; Transcript, pp. 82, 91). In addition to compensation, full-time employees receive paid vacation and are eligible to receive milk and beef from the farm. (Ad., p. 7; Transcript, pp. 82, 92). Daley Farm also provides full health care coverage for full-time employees who have been employed at Daley Farm for at least three months. (Id.).

Daley Farm has never paid its employees overtime wages. (Ad., p. 7; Transcript, pp. 83, 92). Daley Farm believes its employees are exempt from the Minnesota Fair Labor Standards Act (FLSA) under Minn. Stat. § 177.23, subd. 7(2) because they are employed in agriculture on a farming operation and are paid a salary greater than the individual would be paid if they worked 48 hours at the state minimum wage plus 17 hours at 1-1/2 times the state minimum wage per week. (Ad., pp. 7-8; Transcript, pp.103-05, Exhibit 102). Daley Farm bases its position in part on a 2005 decision in its favor in a conciliation court case in Minnesota’s Third Judicial District and a 2007 decision by the Minnesota Court of Appeals involving a different employer. (Ad., p. 8; Ap., p. 1).

At the close of the OAH hearing held on March 29, 2011, the parties agreed that with the exception of two employees, the computations in Exhibits 10 and 11, submitted by the Department, accurately reflect the rate of pay and hours worked by the identified Daley Farm employees. (Ad., p. 11). As a result, ALJ Neilson issued her findings as to the amounts owed to individual employees and the Department adopted those findings. (Ad., pp. 11-13; Ad., p. 1).

## ARGUMENT

### **I. Introduction**

This matter comes before the Court for alleged violations of the Minnesota Fair Labor Standards Act (FLSA), Minn. Stat. §§ 177.21-177.35 (2006).

The Respondent, the Department of Labor, alleges that from 2003 to 2005, the Relator, Daley Farm, violated the Minnesota FLSA by failing to pay its employees overtime wages as required under Minn. Stat. § 177.25. However, the agricultural workers identified in this matter do not meet the definition of “employee” under the Minnesota FLSA and are thereby exempt from the overtime requirements. Further, under the Federal FLSA, 29 U.S.C. §§ 201-219 (2006), Daley Farm employees are not entitled to overtime wages due to the specific exemption for agricultural workers provided in the law. *Id.* at § 213(b)(12),(13).

### **II. Standard of Review**

Judicial review of an administrative decision is governed by Minn. Stat. § 14.69 which provides:

In a judicial review under sections 14.63 to 14.68, the court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

“Decisions of administrative agencies enjoy a presumption of correctness and will be reversed only when they reflect an error of law or when the findings are arbitrary and capricious or are unsupported by substantial evidence.” In re Hibbing Taconite Co., 431 N.W. 2d 885, 889 (Minn. Ct. App. 1988); *citing* Crookston Cattle Co. v. Minnesota Department of Natural Resources, 300 N.W. 2d 769, 777 (Minn. 1980). However, when reviewing questions of law or when statutory interpretation is at issue, a reviewing court is not bound by the agency’s determination. Beaty v. Minnesota Board of Teaching, 354 N.W.2d 466, 470 (Minn. Ct. App. 1984); In re Hibbing, 431 N.W.2d at 889; *citing* Arvig Telephone Co. v. Northwestern Bell Telephone Co., 270 N.W.2d 111, 114 (Minn. 1978). “Statutory interpretation is the province of the judiciary.” In re Petition of Fritz Trucking, Inc., 407 N.W.2d 447, 450 (Minn. Ct. App. 1987).

“Although administrative agency decisions are typically accorded deference by the judiciary, deference does not automatically extend to an agency’s interpretation of a

statute or case law.” *Id.*; *citing* Beaty, 354 N.W.2d at 470. “It is the function of the court in reviewing administrative agency decisions to settle questions of law.” *Id.*

On matters of statutory interpretation, this court is not bound by the determination of an administrative agency. The manner in which the agency has construed a statute may be entitled to some weight, however, where (1) the statutory language is technical in nature, and (2) the agency’s interpretation is one of long-standing application.

Arvig, 270 N.W.2d at 114. Yet, “[a]dministrative agency decisions which are quasi-judicial in nature are more closely scrutinized than the quasi-legislative decisions which receive an extremely limited review on appeal.” *Id.* at 116.

### **III. Daley Farm’s Employees Who Earn An Hourly Wage Are Exempt From Overtime Requirement Since They Are Paid Wages Greater Than the Threshold Amount Provided in Minn. Stat. § 177.23, subd 7(2).**

Here, the Department determined that Daley Farm employees were not excluded from the Minnesota FLSA’s overtime provisions as a matter of law and ordered Daley Farm to pay almost \$50,000.00 in unpaid overtime wages and an additional equal amount as liquidated damages. (Ad., p. 3). However, the Department exceeded its authority and erred as a matter of law in its interpretation of the applicable statute. The Department’s interpretation of Minn. Stat. § 177.23, subd. 7(2) is contrary to case law, the statute’s plain meaning and its purpose and intent.

#### **A. The Department Exceeded its Statutory Authority and Erred in its Application of Minn. Stat. § 177.23, subd. 7(2) to Daley Farm Employees.**

The Minnesota FLSA mandates overtime pay for employees who work in excess of 48 hours a work week. Minn. Stat. § 177.25, subd. 1. However, Minn. Stat. §

177.23, subd. 7(2) states that for the purposes of the Minnesota FLSA, the definition of “Employee” does not include...

any individual employed in agriculture on a farming unit or operation who is paid a salary greater than the individual would be paid if the individual worked 48 hours at the state minimum wage plus 17 hours at 1-1/2 times the state minimum wage per week;....

As a result, any individual meeting that definition is not deemed an “employee” and the requirements of the statute, including mandatory overtime, are not applicable to them.

At all times during the period of time at issue, the state hourly minimum wage was \$5.15 for employees of “large employers.” Minn. Stat. § 177.24. Using the large employer minimum wage, the statutory formula prescribed by section 177.23, subd. 7(2), requires an agricultural employee to be paid a minimum of \$378.61 per week (48 hours x \$5.15 plus 17 hours x \$7.73 (1-1/2 times \$5.15)). Should an agricultural employee earn more than \$378.61 per week, they are not considered an “employee” under the Minnesota FLSA and are not entitled to overtime wages. *See Wenigar*, 712 N.W.2d 190 (stating that an agricultural worker who earned more than the statutory threshold is not an employee for the purposes of Minnesota FLSA and their employer is not liable for overtime requirements for that basis).

Here, it is undisputed that Daley Farm paid its agricultural workers more than the state minimum hourly wage. (Ad., p. 7). In fact, in some instances the amount paid to Daley Farm employees was more than twice the state’s minimum wage. (Exhibit 10). Additionally, several of the employees were provided paid vacation, full health care

coverage, and were eligible to receive milk and beef from the farm. (Ad., p. 7).

However, even without taking into consideration the benefits Daley Farm employees receive above and beyond their wages, Daley Farm employees certainly meet the threshold amount provided in the statute.

Using the calculation provided by Minn. Stat. § 177.23, subd. 7(2), every employee identified in this proceeding was compensated at a much greater rate than had they been paid if they worked 48 hours at the state minimum wage plus 17 hours at 1-1/2 times the state minimum wage per week. (Ad., pp. 7-8, Transcript, pp. 103-105). As can be seen by the Department's own exhibit, for any week an employee worked more than 48 hours, not one made wages less than the statutory threshold amount of \$378.61. (Exhibit 10, Transcript, p. 103). Further, looking at the total wages paid to Daley Farm employees during the period of time in question, nearly all of the employees earned significantly more than they would have earned under the statutory threshold for that same period of time. (Transcript, pp. 104-05; Exhibit 102 – Daley Farm Wage Summary and Comparison – submitted for illustrative purposes only).<sup>1</sup>

For example, the Department ordered Daley Farm to pay its employee, Viktor Saenko, \$4,646.71 for unpaid overtime wages. During the prescribed period, Mr. Saenko earned \$11.00-\$12.00 per hour, so that for any week he worked more than 48

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<sup>1</sup> While total amount paid for a few employees was less than total threshold amount, for every overtime week that individual worked, they were paid a greater amount than the statutory threshold of \$378.61 and the lower amount paid was due to the fact they were part time, seasonal or temporary workers. (Exhibit 10).

hours, he was paid \$500-\$850 per week depending on the number of hours worked. (Exhibit 10, pp. 54-57). Clearly, this was more than the statutory threshold of \$368.71 per week. In addition, looking at total compensation paid to Mr. Saenko during the period in question, he earned \$57,846.28 for 86 weeks of work. (Exhibit 101, p. 35). Under the statutory scheme, Daley Farm would only be required to pay him \$32,560.46 for that same period of time (\$368.71 x 86 weeks). Since Daley Farm paid Mr. Saenko more than the statutory threshold amount, Mr. Saenko should be exempt from the state FLSA and should not be owed anything for overtime wages. It should be noted that Mr. Saenko is just one of Daley Farm's employees to earn significantly more than what the statute requires. (Exhibits 10, 101, 102). Therefore, since Daley Farm employees earn more than the statutory threshold, they do not qualify as "employees" for the purposes of the state FLSA. As a result, Daley Farm should not be liable for overtime requirements as purported by the Department. Given that the Department erred in its application of the exemption and exceeded its authority, its Order finding Daley Farm liable is improper and should be reversed.

**B. The Department Exceeded its Statutory Authority and Erred as a Matter of Law In Determining that Daley Farm Employees Are Obligated to Overtime Since The Department's Interpretation of the Statute is Contrary to Wenigar v. Johnson.**

Here, the Department determined that Daley Farm employees were not excluded from the Minnesota FLSA's overtime provisions as a matter of law. (Ad., p. 10; Ad., p. 17). To support its finding, the Department argues that the statute should be read to incorporate its own rule defining "salary":

A salary is not an hourly rate. An employee is paid a salary if the employee, through agreement with an employer, is guaranteed a predetermined wage for each workweek. An employee may still be salaried even if complete days absent are deducted from salary for reasons other than no work available. Should those deductions reduce the salary for the workweek below the minimum salary required by Minnesota Statutes, section 177.23, subdivision 7, clause (2), or parts 5200.0190 to 5200.0210, the employer will lose the exemption in that workweek.

Minn. R. 5100.0211, subp. 1. (2006).<sup>2</sup> The Department's position is that the language of Minn. Stat. § 177.23, subd. 7(2) only applies to employees who are paid a "salary" and not to employees whose wages are calculated on an hourly basis. (Ad., pp. 27-28; Ad., p. 17). Therefore, the Department asserts that Daley Farm workers, who are all paid hourly, cannot be subject to the exception and must be paid overtime wages. (Ad., p. 28; Ad., p. 17). However, if the rule's definition is strictly applied and the Department's position is upheld, it would be contrary to this Court's interpretation of the statute.

In Wenigar v. Johnson, the Court of Appeals addressed an FLSA claim by Mr. Wenigar, an agricultural worker, against his employer, a pig farmer. 712 N.W.2d 190. Mr. Wenigar "was paid an *hourly* wage of \$5.50 per hour." Id. at 197 (emphasis added). In its analysis, the Court applied the language of the exception and determined that had Mr. Wenigar worked in accordance with the statutory threshold, he only would have earned an annual salary of \$19,687.72. Id. at 204-05. In that case, Mr. Wenigar

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<sup>2</sup> ALJ Neilson requested the rulemaking record relevant to the rule at issue. The Department did not have a copy of an Administrative Law Judge's report on the rule and surmised it was noncontested and adopted without hearing. (Ap., p. 69).

earned \$36,520.95 in 1999 and \$35,590.69 in 2000. Id. at 205. As a result, the Court held that “because [Mr. Wenigar] was paid a *salary* greater than he would have earned if he were paid for 48 hours at the state minimum wage plus 17 hours at one and a half times the state minimum wage per week, he is not an employee for purposes of the state FLSA.” Id. (emphasis added). While there was no discussion about the use of the word “salary,” the Court clearly recognized that Wenigar was paid at an hourly rate and ultimately refers to his wages as “salary.” Id.

Like Mr. Wenigar, Daley Farm’s agricultural workers are also paid hourly and earn more than the statutory threshold. As a result, following the precedence of Wenigar, Daley Farm’s workers should not be deemed “employees” under the state FLSA and Daley Farm should not be liable to them for overtime wages.<sup>3</sup>

Although the Department argues that Wenigar was wrongly decided, it does not mean that it is not obligated to follow the Court’s interpretation of the applicable statute. As stated previously, statutory interpretation is the province of the judiciary, not an administrative agency. In cases like Wenigar and the present one, where agricultural workers have been paid wages greater than the statutory threshold, it makes little sense and is unreasonable for an administrative agency’s definition of a single term to determine who should be excluded from the exemption, especially when that term is not technical in nature and there is a reasonable interpretation provided by case law. To

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<sup>3</sup> It should be noted that ALJ Neilson initially found in Daley Farm’s favor, recommending summary disposition on the basis of the Court’s interpretation of the statute in Wenigar. (Ad., p. 29).

allow an agency to refuse to follow the judiciary's interpretation of a statute creates an untenable situation that leaves employees and employers, like Daley Farm, stuck in the middle, uncertain as to which interpretation to follow. Employers will then be left open to claims, such as this one, where the employer is forced to contest the agency's interpretation while relying upon the judiciary. Such circumstances were never intended by the legislature and must be remedied.

Given that the Court's interpretation of the statute in Wenigar was reasonable, its holding should be applied to the present case and the Department's Order should be reversed.

**C. The Department Exceeded its Statutory Authority and Erred as a Matter of Law In Determining that Daley Farm Employees Are Obligated to Overtime Since The Department's Interpretation of the Statute is Contrary to Its Plain Meaning.**

Although the Department argues that the Wenigar case was wrongly decided, the Court of Appeals' interpretation follows the plain meaning of the statute which is what should be applied.

“The aim in statutory interpretation is to give effect to the intention of the legislature in drafting the statute.” Milner v. Farmers Ins. Exchange, 748 N.W.2d 608, 613 (Minn. 2008). If the language of a statute is clear and unambiguous, the court must apply its plain meaning. Brua v. Minn. Join Underwriting Ass'n, 778 N.W.2d 294, 301. Minn. Stat. § 645.08 requires that in construing the statutes of Minnesota, “words and phrases are construed according to rules of grammar and according to their common and approved usage....”

Looking at the statute itself, there is nothing that states that the wages earned by agricultural workers need to be predetermined. The term “salary” itself has many meanings that range from a general understanding of compensation earned at any given time, to the specific definition like the one established by the Department. However, in common usage, “salary” is most oftentimes referred to as the compensation a person earns, whether it is what that person earns hourly, weekly, monthly, yearly, etc. For instance, if someone were to ask another “What is your salary?” That person would likely be asking what the person’s compensation is, not expecting the person to be earning a “predetermined wage.”

Given that the Court of Appeals referred to Mr. Wenigar’s compensation as “salary” while knowing he earned an hourly rate, supports the general understanding of the term. *See Wenigar*, 712 N.W.2d at 204-05. Further, the term “salary” cannot be identified as a “technical word” requiring a special meaning. It is a general term that is used in everyday usage, not just by those in the wage and employment field. Had it required a special definition, the legislature certainly would have identified it as such. In fact, if the legislature intended for the statute to apply only to agricultural workers who earned a predetermined wage, what would be the purpose of stating a calculation based on *hourly* wages? *See* Minn. Stat. § 177.23, subd. 7(2); *see also* Minn. Stat. § 645.17 (stating that in ascertaining the intention of the legislature the court may be guided by the presumption that the legislature intends the entire statute to be effective and certain).

Therefore, it is improper to construe the statute using the Department's own rule defining the term "salary" when there the plain meaning is contrary to that rule. Since the Department's interpretation of Minn. Stat. § 177.23, subd. 7(2) is contrary to its plain meaning, the Department exceeded its authority and erred as a matter of law in its decision to exclude Daley Farm agricultural workers from the applicable exception. As a result, the Department's Order finding Daley Farm liable for overtime requirements is improper and should be reversed.

**D. The Department Exceeded its Statutory Authority and Erred as a Matter of Law In Determining that Daley Farm Employees Are Obligated to Overtime Since The Department's Interpretation of the Statute is Contrary to Its Purpose and Intent.**

The purpose of the Minnesota FLSA is (1) to establish minimum wage and overtime compensation standards that maintain workers' health, efficiency, and general well-being; (2) to safeguard existing minimum wage and overtime compensation standards that maintain workers' health, efficiency, and general well-being against the unfair competition of wage and hour standards that do not; and (3) to sustain purchasing power and increase employment opportunities.

Minn. Stat. § 177.22. As recognized and better articulated by the Administrative Law Judge who heard the contested case, there is a rational policy reason for the Court of Appeals' interpretation of the statute in Wenigar that supports the statute's purpose and intent.

In the FLSA, the legislature has set a floor defining how much agricultural workers should be paid without the usual overtime provision applying to wages earned. To apply the floor only to [salaried] (sic) workers would encourage agricultural employers to call all of their employees salaried and pay them less, knowing that the overtime requirements would not apply. Moreover, Daley Farm's relatively generous treatment of its

agricultural workers was consistent with the purpose to be served by the FLSA. Its workers earned hourly wages that were high enough to bring them well within the scope of the exception described in section 177.23, subd. 7(2).

(Ad., p. 29).

The FLSA overtime requirements pertain to a majority of Minnesota employees. It is only those specific employees, like agricultural workers, who are afforded special exemptions to those requirements. *See* Minn. Stat. § 177.23, subd. 7. Given the nature of agricultural employment and the fact that responsibilities on a farm, such as Daley Farm, require around-the-clock care, seven days a week, 365 days a year, it is reasonable that the legislature carved out an exception for agricultural workers in order to “sustain purchasing power and increase employment opportunities” in that field. *See* Minn. Stat. § 177.22.

If no exception was allowed, farms would have difficulty succeeding. Unlike other employment fields, farm employees are more likely needed to work more than 48 hours per week to care for crops and animals. This is especially true during the harvest season. If agricultural employers are forced to pay their workers overtime, it will cause significant economic damage to the farm, eventually resulting in decreased employment opportunities, which is contrary to the state purpose of the FLSA.

Obviously, if there were no exemption, agricultural employers could choose not to allow any overtime for its employees and hire additional workers for the extra workload. However, hiring additional workers increases expenses which most

agricultural employers are unable to afford. Their remaining option would then be to risk losing crops and animals for lack of proper care. Either option likely results in decreased production, decreased profit and decreased employment opportunities. Certainly, these results do not “maintain workers’ health, efficiency and general well-being,” nor “sustain purchasing power and increase employment opportunities,” the stated purposes of the state FLSA. Minn. Stat. § 177.22.

In fact, in this case, where Daley Farm is not taking advantage of its employees, but providing them with a generous compensation that is greater than the statutory threshold, the Department’s interpretation would end up negatively impacting the employees. While the workers may be entitled to additional overtime wages under the Department’s interpretation, Daley Farm would have to cut back on their operation (including labor) to pay the additional wages. (Transcript, p. 85). Unfortunately, like most agricultural employers, cutting back on the farm operation quickly spirals into less product to sell at market, which in turn results in less money for employees, and so on and so forth. Clearly, the legislature was intending to protect the agriculture field against such cases by carving out a special exception for agricultural workers and allowing them to be exempt from FLSA requirements. Therefore, a broad interpretation of the overtime exemption that includes hourly wage earners meets the statute’s stated purpose, while a narrow interpretation that only applies to predetermined wage earners does not.

Here, the Department's interpretation of the statute excluding hourly agricultural wage earners from the applicable exemption is contrary to the statute's purpose and intent. As a result, the Department exceeded its authority and erred as a matter of law in its determination that Daley Farm agricultural workers are "employees" under the state FLSA and its Order finding Daley Farm liable for overtime requirements is improper and should be reversed.

**IV. Minnesota Agricultural Workers Are Exempt From Receiving Overtime Pay Under the Federal Fair Labor Standards Act, 29 U.S.C. § 213(b)(12),(13).**

The Department's Order should also be reversed since it erred as a matter of law in its determination that the agricultural worker exemption provided in the Federal FLSA is not applicable. *See* 29 U.S.C. § 213(b)(12),(13)(2006).

The Federal FLSA establishes a variety of labor requirements, including overtime pay for

employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

Id. at § 207(a)(1). However, like the state FLSA, the Federal FLSA also has a number of exceptions to those requirements, including exceptions for agricultural workers.

The Federal FLSA states that the provision of the maximum hour requirements under the FLSA, as provided in 29 U.S.C. § 207, *shall not apply* to "any employee employed in agriculture..." or "any employee with respect to his employment in

agriculture by a farmer.” 29 U.S.C. § 213(b)(12),(13) (2006)(emphasis added). It should be noted that the agricultural exemption was meant to apply broadly and to embrace the “whole field of agriculture.” Maneja v. Waialua Agric. Co., 349 U.S. 254, 260 (1955).

The Federal FLSA does not completely preempt state laws but only preempts them to the extent that they are less generous. *See* Morales v. Showell Farms, Inc., 910 F.Supp. 244 (M.D.N.C.1995). The FLSA provisions regarding payment of overtime do not prevent states from applying more generous overtime laws. *See* Howe v. City of St. Cloud, 515 N.W.2d 77 (Minn. Ct. App. 1994). Yet, upon the exercise of federal jurisdiction, the federal law supersedes the state jurisdiction to the extent of any inconsistency, but, where not inconsistent, the state provisions and federal law jointly govern. *See* Butte Miners’ Union No. 1 v. Anaconda Copper Mining Co., 118 P.2d 148 (Mont. 1941). In Wenigar, the Minnesota Court of Appeals held that a Minnesota employee engaged and working in “agriculture” was not entitled to overtime pay because the employee was exempt under the Federal FLSA. 712 N.W.2d at 200-04.

In the present case, Daley Farm employees are all engaged and working in the agriculture field. (Ad., p. 8, Transcript, p. 133). As a result, they are exempt from overtime pay under the Federal FLSA. Nevertheless, the Department has determined that the Federal FLSA is inapplicable since it argues that Minnesota’s agricultural exemption is more generous than the Federal exemption (Ad., p. 19). The Department

bases its decision on the belief that Minnesota's exemption results in greater number of agriculture workers having a right to overtime. (Id.).

Yet, the Department's inquiry into the generosity of the statute is incorrectly focused on the agricultural employee, and not on the intended beneficiary of an agriculture exemption, the agricultural employer. As stated previously, the purpose of the state FLSA is not only to maintain workers' health, efficiency and general well-being against unfair competition, but also "to sustain purchasing power and increase employment opportunities." Minn. Stat. § 177.22. Having a specific exemption for agricultural workers from FLSA requirements is not meant to protect the employee, but is intended to assist the employer so they are financially capable of maintaining their businesses and thereby increase employment opportunities. Therefore, when looking at whether or not the state or federal exemption is more generous, one needs to look at who the intended beneficiary is of that generosity. Here, the state exemption is less generous to agricultural employers and the federal exemption must be applied. As a result, the Department's Order should be reversed since the Department exceeded its authority and erred as a matter of law in its determination that the Federal FLSA exemption is inapplicable to Daley Farm agricultural workers.

### **CONCLUSION**

The Department exceeded its authority and erred as a matter of law in ordering Daley Farm to pay its agricultural workers overtime when its employees are exempt from such requirements under both the Minnesota FLSA and the Federal FLSA.

Therefore, since Daley Farm's substantial rights have been prejudiced, Daley Farm respectfully requests that this Court reverse the Department's Order.

Dated this 20<sup>th</sup> day of December, 2011.

Respectfully Submitted,

ADAMS, RIZZI & SWEEN, P.A.

By 

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