

## The Season for Lawsuits

It must be the season for lawsuits. For they are flying fast and furious around the users and promoters of the H-2A federal program who hire legal visa'ed migrant workers. By increasing, the lawsuits also show the desperate measures and the ferocity of groups like the Hispanic Caucus and the illegal immigrant crowd to deprecate and destroy this, the only legalized system of hiring foreign workers.

Two entries on the same story stand as testament to this measure of desperation. They come from *The Fergus Falls Daily Journal* of the small town of Fergus Falls, Minnesota. On Thursday, March 20, 2008 this excerpt appeared in the publication:

“A Fergus Falls agri-business will pay more than \$25,000 to six workers it allegedly underpaid under a federal labor program.

“Loomer Brothers Co., a custom grain harvester based in Fergus Falls, has agreed to pay \$25,676 to the workers — including four from South Africa — who were paid a salary less than required under the U.S. Department of Labor’s H-2A program, a federal program that, among other things, allows people from foreign countries to work in farm fields in several midwestern states, including Minnesota.

“According to the U.S. Department of Labor, the workers were paid on a salary basis below the adverse effect wage rate required under the H-2A program.

... “The H-2A worker program is intended to help meet the legitimate needs of U.S. employers while at the same time protecting the wages and working conditions of U.S. workers,” said Jose Medina, district director of the Labor Department’s Wage and Hour Division office in Minneapolis. “As this case shows, violations of the temporary foreign worker program will be vigorously pursued.”<sup>1</sup>

So, did the Loomer Brothers violate this agreement? There seems to be some debate on the question, reference the follow-up article on Saturday, March 22, 2008—also by *The Fergus Falls Daily Journal*:

“Tony Loomer will be the first to tell you he didn’t always understand the federal labor laws regarding the hiring of foreign farm hands.

“But after a \$25,000 settlement in which his family business, Loomer Brothers Co., paid back wages to six workers, he, his father Butch and uncle Michael all understand the United States Department of Labor’s 35-page manual on its H-2A program to near perfection.

... "In the Loomer Brothers case, the workers were being paid a weekly salary that came out to about \$9.25 an hour, Tony Loomer said. But one of the four South African workers hired by the company that summer filed a complaint at season's end after returning to Africa alleging that workers had worked extra hours causing the weekly salary, when divided by actual hours worked, to be far below the federal mandate.

"Tony Loomer said the company failed to keep sufficient documentation that could refute the employee's claims. When the complaint triggered an audit, Loomer Brothers found itself in big trouble.

"The burden of proof was on us to prove them wrong," Tony Loomer said. "It doesn't seem fair."

"The Loomers at first tried to handle the audit themselves, but soon found they were over their heads.

"It got to the point that we needed professional help," he said.

"With the help of an attorney the Loomers reached a settlement with the Department of Labor. By doing so, the company avoided a lengthy trial, the high costs associated with trial, and any civil penalties assessed by the court had the company been found guilty.

..."We've learned how to do it properly the hard way," Loomer said.

"The company has absorbed the \$25,000 in wages and looks forward to the future.

"We made an honest mistake, but didn't have the proper records to discredit (the workers') allegations," Tony Loomer said."<sup>2</sup>

<sup>1</sup> Jeff Hage, "*Local firm violates federal labor laws*," March 20, 2008. Website at: <http://www.fergusfallsjournal.com/news/2008/mar/20/local-firm-violates-federal-labor-laws/>. (accessed 3-25-08)

<sup>2</sup> Jeff Hage, "*Loomers: 'We made an honest mistake'*," March 22, 2008. Website at: <http://www.fergusfallsjournal.com/news/2008/mar/22/loomers-we-made-honest-mistake/>. (accessed 3-25-08)