

Wage and Hour Division, Labor

§ 780.140

§ 780.138 Application of the general principles.

Some examples will serve to illustrate the above principles. Employees of a fruit grower who dry or pack fruit not grown by their employer are not within section (f). This is also true of storage operations conducted by a farmer in connection with products grown by someone other than the farmer. Employees of a grower-operator of a sugarcane mill who transport cane from fields to the mill are not within section 3(f), where such cane is grown by independent farmers on their land as well as by the mill operator (*Bowie v. Gonzalez*, 117 F. 2d 11). Employees of a tobacco grower who strip tobacco (i.e., remove the leaves from the stalk) are not agricultural employees when performing this operation on tobacco not grown by their employer. On the other hand, where a farmer rents some space in a warehouse or packinghouse located off the farm and the farmer's own employees there engage in handling or packing only his own products for market, such operations by the farmers are within section 3(f) if performed as an incident to or in conjunction with his farming operations. Such arrangements are distinguished from those where the employees are not actually employed by the farmer. The fact that a packing shed is conducted by a family partnership, packing products exclusively grown on lands owned and operated by individuals constituting the partnership, does not alter the status of the packing activity. Thus, if in a particular case an individual farmer is engaged in agriculture, a family partnership which performs the same operations would also be engaged in agriculture. (*Dofflemeyer v. NLRB*, 206 F. 2d 813.) However, an incorporated association of farmers that does not itself engage in farming operations is not engaged in agriculture though it processes at its packing shed produce grown exclusively by the farmer members of the association. (*Goldberg v. Crowley Ridge and Fruit Growers Association*, 295 F. 2d 7 (C.A. 8).)

§ 780.139 Pea vining.

Vining employees of a pea vinery located on a farm, who vine only the peas

grown on that particular farm, are engaged in agriculture. If they also vine peas grown on other farms, such operations could not be within section 3(f) unless the farmer-employer owns or operates the other farms and vines his own peas exclusively. However, the work of vining station employees in weeks in which the stations vine only peas grown by a canner on farms owned or leased by him is considered part of the canning operations. As such, the cannery operations, including the vining operations, are within section 3(f) only if the canners can crops which he grows himself and if the canning operations are subordinate to the farming operations.

§ 780.140 Place of performing the practice as a factor.

So long as the farming operations to which a farmer's practice pertains are performed by him in his capacity as a farmer, the status of the practice is not necessarily altered by the fact that the farming operations take place on more than one farm or by the fact that some of the operations are performed off his farm (*NLRB v. O'Lea Sugar Co.*, 242 F. 2d 714). Thus, where the practice is performed with respect to products of farming operations, the controlling consideration is whether the products were produced by the farming operations of the farmer who performs the practice rather than at what place or on whose land he produced them. Ordinarily, a practice performed by a farmer in connection with farming operations conducted on land which he owns or leases will be considered as performed in connection with the farming operations of such farmer in the absence of facts indicating that the farming operations are actually those of someone else. Conversely, a contrary conclusion will ordinarily be justified if such farmer is not the owner or a bona fide lessee of such land during the period when the farming operations take place. The question of whose farming operations are actually being conducted in cases where they are performed pursuant to an agreement or arrangement, not amounting to a bona fide lease, between the farmer who performs the practice and the landowner necessarily involves a careful scrutiny