

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

In Re: Idaho Correctional Industries and Idaho Code § 20-413A,

Idaho Correctional Industries,
Petitioner.

DECLARATORY RULING

2015-DR0001

Filed January 9, 2015

By letter received December 31, 2014, Idaho Correctional Industries (ICI) petitioned the Commission to construe the provisions of Idaho Code § 20-413A. This declaratory ruling is a final agency action issued pursuant to Idaho Code § 67-5232 and the provisions of IDAPA 04.11.01, *et. seq.* This ruling is limited to the issues of fact, circumstances and entities identified in the aforementioned Petition and addresses only the narrow issue identified by Idaho Correctional Industries:

ICI would like to formally request a declaratory ruling on the applicability of workmen's compensation coverage for inmates participating in the agricultural work program and any obligation of ICI or the private agricultural employer to obtain workman's compensation for those inmates.

Therefore, our inquiry is limited to determining whether either ICI, or a private agricultural employer using inmate labor under the provisions of Idaho Code § 20-413A, is required to secure the payment of workers' compensation benefits as anticipated by Idaho Code § 72-301 for such inmate labor.

Adopted in 1974, the Correctional Industries Act (the Act), Idaho Code § 20-401 *et. seq.*, authorizes the Board of Corrections (the Board) to identify and oversee productive enterprises for inmates incarcerated in Idaho penal institutions. The Board is authorized to enter into such contracts and agreements with third parties related to the provision of inmate services, or the

manufacture of inmate-produced products. The Act also specifies that an inmate may, at the discretion of the Board, receive compensation for the work he performs for ICI. In this regard, Idaho Code § 20-412 provides:

Each prisoner, who is engaged in productive work in the institution under the jurisdiction of the board of correction as a part of the correctional industries work program, may receive for his work such compensation as the board shall determine, to be paid out of any funds available in the correctional industries betterment account. Such compensation, if any, shall be in accordance with a graduated schedule based on quantity and quality of work performed and skill required for its performance. Compensation shall be credited to the account of the prisoner, and paid from the correctional industries betterment account.

Nothing in this section or in this act is intended to restore, in whole or in part, the civil rights of any inmate. No inmate compensated under this act shall be considered an employee of the state or the board of correction, nor shall any inmate come within any of the provisions of the workmen's compensation laws, or be entitled to any benefits thereunder whether on behalf of himself or any other person.

Therefore, the payment of compensation, one of the hallmarks of an employer/employee relationship, is allowed under the Act, but not without important qualifiers. Specifically, notwithstanding that an inmate may be paid compensation for his services, such inmate shall not be considered to be an employee of the State, nor shall any such inmate fall within the provisions of the Idaho workers' compensation laws. *See Crawford v. Department of Correction*, 133 Idaho 633, 991 P.2d 358 (1999).

In 2014, the Act was amended by the addition of a new section at 20-413A which was adopted to allow ICI to contract with private agricultural employers for the use of inmate labor to assist in the production, harvesting and processing of perishable agricultural products. That section provides:

(1) The board may contract with private agricultural employers as that term is defined in section 44-1601, Idaho Code, for the use of inmate labor in the production, harvesting and processing of perishable agricultural food products as that term is defined in section 6-2002, Idaho Code. The use of inmate labor may

not result in the displacement of employed workers within the local region in which the agricultural work is being performed.

(2) The board shall establish by rule factors to be considered by the board prior to entering into such contract including, but not limited to, ensuring that employed workers are not displaced, inmate safety and any security risks and needs. All moneys derived from such contracts shall be deposited into the correctional industries betterment account established in section 20-415, Idaho Code.

(3) Inmates shall be compensated for their services pursuant to section 20-412, Idaho Code. The board shall establish by rule factors to be considered in dispersing inmate earnings. Deductions shall be made for:

- (a) Reducing or offsetting costs of incarceration from the general fund;
- (b) Satisfying court ordered restitution, fines and other legal judgments;
- (c) Providing resources for successful reentry by inmates; and
- (d) Other fees and deductions as deemed necessary by the board.

Therefore, 72-413A authorizes the Board to enter into a contract with a private agricultural employer for the use of inmate labor. All monies owed pursuant to such contracts shall be deposited in the Correctional Industries Betterment Account. The statute specifies that inmates performing labor pursuant to a contract between the Board and a private agricultural employer shall be compensated pursuant to Idaho Code § 20-412, quoted above.

By reference to the provisions of Idaho Code § 20-412, Idaho Code § 20-413A makes it abundantly clear that the Board cannot be deemed to be the “employer” of an inmate laborer assigned to a private agricultural employer. As between the Board and the inmate, the provisions of Idaho Code § 20-412 confirm that, as with other remunerative activities undertaken by the ICI, the inmate who performs the labor shall not be deemed to be an employee of the Board. Nor shall the inmate come within any provisions of the workers’ compensation law.

It is not quite so easy to appreciate that the private agricultural employer on whose premises the work is being done is also not an employer and that inmate laborers also do not fall within the provisions of the workers’ compensation laws, vis-à-vis, such private agricultural employer. However, we believe that the statute, as adopted, and the legislative history

underlying the statute, demonstrate that it was the Legislature's intention to afford private agricultural employers the same protections afforded to the Board. First, it is notable that the provisions of Idaho Code § 20-413A do not anticipate that the private agricultural employer will have any contractual employment relationship, express or implied, with an individual inmate. Rather, such private agricultural employer's agreement is with the Board and the private agricultural employer's obligation is satisfied by payment to the Correctional Industries Betterment Account. In this regard, the arrangement is somewhat analogous to that of a temporary services provider who reaches an agreement with a worksite employer to provide laborers. The laborers remain the employees of the temporary services provider, and are not regarded as employees of the worksite employer. *See* Idaho Code § 72-103. In both cases, the contract is made with the entity providing the worker, not with the individual worker, as is typically the case in an employer/employee relationship. The inmate laborer who performs work at a facility owned by a private agricultural employer is in no different a position than the inmate laborer who performs work for ICI within the walls of a penal institution. In both cases, it is the work of ICI that the inmate laborer has been assigned to perform. His relationship is with ICI, and any compensation that is payable as the result of that relationship is payable by ICI.

That the private agricultural employer is not to be regarded as an entity who employs an inmate laborer is made more clear by the legislative history of Idaho Code § 20-413A. The original version of the bill, prior to amendment, read as follows:

The board may contract with private agricultural employers as that term is defined in section 44-1601, Idaho Code, for the use of inmate labor in the production, harvesting and processing of perishable agricultural food products as that term is defined in section 6-2002, Idaho Code. The use of inmate labor may not result in the displacement of employed workers within the local region in which the agricultural work is being performed. Contracts entered into pursuant to this section shall provide that the inmate will be an employee of the private

agricultural employer and that the inmate shall be paid at least the Idaho minimum wage.

Emphasis supplied.

Therefore, the original Bill anticipated that the private agricultural employer would actually be deemed to be the employer of the inmate laborers performing work on such employer's premises. Senate Bill 1374 was subsequently amended to redact the language emphasized above and to specify that inmates shall be compensated pursuant to the provisions of Idaho Code § 20-412. We think this makes it clear that the Legislature intended that inmate laborers are not to be regarded as employees of the private agricultural employer. Since an employer's liability under the Idaho workers' compensation laws is predicated on the existence of a contract, express or implied between the employer and an employee, we believe that for this reason, the statute as adopted by the Idaho Legislature makes it clear that under Idaho Code § 72-413A a private agricultural employer who enters into a contract with the ICI for the performance of services on that employer's premises is not an employer of the inmate laborer such as to require a private agricultural employer to comply with the provisions of Idaho Code § 72-301.

Even if it be assumed that an employment relationship exists between an inmate laborer and a private agricultural employer, we believe that the provisions of Idaho Code § 20-412 further insulate a private agricultural employer in these circumstances from liability under the workers' compensation laws of this state. Recall that in addition to specifying that an inmate compensated pursuant to Idaho Code § 20-412 shall not be considered to be an employee of the State of Idaho, that section further specifies that no inmate engaged to perform work pursuant to the Act shall come within any of the provisions of the workers' compensation laws of this state. Therefore, even if it could be said that a private agricultural employer qualifies as an employer because of the degree of direction or control it exercises over the activities of an inmate laborer,

the provisions of Idaho Code § 20-412 simply take the entire realm of work performed pursuant to the Act outside of the operation of the Idaho workers' compensation laws.

Based on the foregoing, we conclude that the provisions of Idaho Code § 20-413A relieve both the ICI, and private agricultural employers who enter into contracts with the ICI, from the obligation to procure workers' compensation coverage for inmate laborers who perform work pursuant to such a contract.

Pursuant to Idaho Code §§ 67-5270 and 67-5272, you may appeal this declaratory ruling to the District Court of Ada County within 28 days of the date of service of this ruling.

DATED this 9th day of January, 2015.

INDUSTRIAL COMMISSION

/s/

R.D. Maynard, Chairman

/s/

Thomas E. Limbaugh, Commissioner

/s/

Thomas P. Baskin, Commissioner

ATTEST:

/s/

Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of January, 2015 a true and correct copy of the foregoing **ORDER ON PETITION FOR DECLARATORY RULING** was served by regular United States Mail upon the following:

ALAN ANDERSON
GENERAL MANAGER
IDAHO CORRECTIONAL INDUSTRIES
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/s/ _____