

1974/11



**THE AGRICULTURAL WORKERS (MARKET GARDENS)
ORDER 1974**

DENIS BLUNDELL, Governor-General
ORDER IN COUNCIL

At the Government Buildings at Wellington this 28th day of January 1974

Present:

THE HON M. A. CONNELLY PRESIDING IN COUNCIL

PURSUANT to Part III of the Agricultural Workers Act 1962, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

ORDER

1. Title and commencement—(1) This order may be cited as the Agricultural Workers (Market Gardens) Order 1974.

(2) Except as provided by subclause (3) of this clause, this order shall come into force on the day after the date of its notification in the *Gazette*, and shall continue in force until the 30th day of June 1974, and thereafter until a further order is made in substitution for this order.

(3) The provisions of this order relating to rates of wages shall be deemed to have come into force on the 1st day of July 1973.

(4) The rates of remuneration specified herein shall be subject to any General Order made under the General Wage Orders Act 1969 by the Court of Arbitration.

2. Application—(1) This order shall apply to workers employed in market gardens (including market gardens where soft fruit is produced).

(2) The conditions of employment set out in the First and Second Schedules to this order shall apply in respect of those workers (except that the conditions set out in the Second Schedule shall not apply in respect of workers of the kind described in subclause (3) of this clause).

(3) The conditions of employment set out in the Third Schedule to this order shall apply in respect of workers engaged specifically for the picking and harvesting of cauliflowers, peas, beans, tomatoes, mushrooms, asparagus, lettuce, or soft fruits. Harvesting includes all operations from picking or cutting until the produce is prepared for despatch from the employer's production unit.

3. Revocation—The Agricultural Workers (Market Gardens) Order 1971* is hereby revoked.

*S.R. 1971/251

SCHEDULES

Cl. 2 (2)

FIRST SCHEDULE

CONDITIONS APPLYING TO ALL WORKERS TO WHOM THIS ORDER APPLIES

Wages and Holiday Book

1. (1) In every market garden in which 1 or more agricultural workers are employed the employer shall at all times keep a record in English (called the wages and holiday book) showing in the case of each agricultural worker employed by him—

- (a) The name of the worker:
- (b) His age, if he is under 20 years of age:
- (c) The daily hours worked by the worker if he is not on a weekly wage:
- (d) The days on which he has actually been employed:
- (e) The wages paid on each pay day, the date of payment, and the period to which payment relates:
- (f) The days on which he is allowed any holiday:
- (g) The wages paid for each holiday and the date of payment:

Provided that in respect of any worker employed upon piecework, it shall be sufficient if the wages and holiday book shows the following particulars:

- (a) The name of the worker:
- (b) The rate agreed for piecework:
- (c) The days upon which or the period during which the worker was employed:
- (d) The wages paid and the date of payment:
- (e) The wages paid for each holiday and the date of payment.

(2) The wages and holiday book in use for the time being, and any such book used within the preceding 2 years, shall at all times be open to inspection by an Inspector.

Accommodation

2. (1) The employer shall provide suitable washing facilities and sanitary accommodation and also a suitable room for workers to keep their clothes and take their meals. Boiling water shall be made available for workers at morning and afternoon breaks and at meal times.

(2) Where more than 3 female workers are employed in addition to male workers, separate sanitary accommodation for each sex shall be provided.

(3) No tools, implements, manure, fertilisers, or other material shall be stored in the accommodation provided for workers.

First Aid

3. The first-aid appliances and requisites which every employer is required to provide and maintain by section 28 (1) of the Agricultural Workers Act 1962 shall be kept in a convenient place accessible to workers and shall be used only in the event of an accident.

Under-rate Workers

4. Sections 24 and 25 of the Agricultural Workers Act 1962 apply to employment under this order. The said sections read as follows:

“24. Permit to work for less than minimum wage—(1) If any agricultural worker satisfies an Inspector that he is incapable of earning wages at the appropriate minimum rate for the time being prescribed under any Order in Council made pursuant to Part III of this Act, the Inspector may from time to time grant him a permit to accept wages at such lower rate as may be specified in the permit. A permit granted to any agricultural worker under this section shall continue in force for the period specified in the permit; and while it continues in force the rate of wages prescribed in the permit shall be deemed to be the minimum rate of wages prescribed under Part III of this Act in respect of that worker.

“(2) Notwithstanding that the rate of wages specified in a permit under this section may be less than the minimum rate for the time being prescribed in the Minimum Wage Act 1945, or any Order in Council made pursuant thereto, such permit shall have full effect as if issued under that Act.

“25. Permit for female to work for less than minimum wage—A permit may be granted under section 24 of this Act to any woman or girl employed as an agricultural worker if the Inspector is satisfied having regard to the conditions of her employment, the nature of work performed by her, the time occupied in the performance of her work, and any other relevant circumstances, that she is not reasonably entitled to wages at the prescribed minimum rate. Where a permit is granted for the purposes of this section the Inspector may also reduce to such amount as he thinks fit the amount (if any) payable to the woman or girl in respect of her board and lodging pursuant to any Order in Council made under Part III of this Act.”

Disputes

5. Should any matter arise, out of or connected with the provisions of this order, or connected with the employment of the workers coming within the scope of this order and not provided for herein, the matter shall be referred to a committee consisting of 2 representatives of the union, 1 to be such a worker, and 2 representatives of the employers. Failing such a committee arriving at a settlement, or on the failure

of either side to appoint such a representative within 7 days of being requested to do so, the matter shall be referred to the Conciliation Commissioner for the district, whose decision on the matter in dispute shall be final and binding on all parties.

CL. 2 (2)

SECOND SCHEDULE

CONDITIONS OF EMPLOYMENT FOR WORKERS (OTHER THAN THOSE COVERED BY THE THIRD SCHEDULE)

Hours of Work

1. (1) The ordinary hours of work shall not exceed 40 in any 1 week which 40 hours shall be worked within 5½ days, Monday to Saturday noon inclusive.

(2) No worker shall be employed for more than 5 hours continuously without an interval of three-quarters of an hour for a meal.

(3) Suitable arrangements shall be made for a break for refreshments during the forenoon and the afternoon.

(4) Workers who have not been notified on the previous day of being required to work overtime shall in all cases where they cannot reasonably get home be paid a meal allowance of 95 cents or furnished with a meal of equivalent value.

Overtime

2. (1) Time worked in excess of 8 hours on any 1 day shall be overtime and shall be paid at the rate of time and a half for the first 4 hours and at double time rates thereafter:

Provided that if a worker has worked 40 ordinary hours on the 5 days Monday to Friday and works before noon on Saturday, he shall be paid for such work on Saturday at time and a half rates.

(2) All work done on any of the holidays hereinafter prescribed or on Saturdays after noon or on Sundays shall be paid for at double rates.

(3) Notwithstanding the foregoing provisions, in cases of necessity when soft fruit is being picked, Sunday work may be undertaken without any payment if for every hour worked on such Sunday time off of 2 hours on full pay be granted to the worker on a week day.

Holidays

3. (1) In respect of workers other than hourly workers, the following days shall be observed as holidays and paid for: New Year's Day, New Zealand Day, Good Friday, Easter Monday, the birthday of the reigning Sovereign, Labour Day, Anzac Day, Christmas Day, Boxing Day, and 2 other days to be mutually agreed upon. Should any of these holidays other than Anzac Day and New Zealand Day fall on a Sunday, this holiday or a day's pay in addition to other payments due to the worker shall be given to the worker within 14 days following. Notwithstanding the foregoing provisions, no worker shall be entitled to more than a week's wages in respect of any week in which any holiday occurs unless he actually works on the holiday.

(2) In respect of hourly workers 1 day's holiday on full pay for each full 6 weeks of service with the same employer shall be granted.

Annual Holidays

4. (1) Except as otherwise provided in this clause, the provisions of the Annual Holidays Act 1944 shall apply to workers covered by this order.

(2) Payment of wages for annual holidays shall be on the basis of the worker's average weekly taxable earnings during the period of service which qualifies for the holidays and, for the purpose of calculating a worker's average weekly taxable earnings, the employer may fix a close-off date other than the anniversary date of the worker's commencement of employment:

Provided that the holiday pay shall not be less than the worker's ordinary pay at the time of taking the holiday nor more than 30 percent greater than such ordinary pay.

(3) For the purposes of this clause lump sum special payments shall be excluded from the computation of average weekly taxable earnings, and ordinary pay shall be as defined in the Annual Holidays Act 1944.

(4) Upon completion of 2 years' continuous service with the same employer, each worker shall for the second and subsequent years be entitled to an annual holiday of 3 weeks instead of 2 weeks as prescribed in subclause (1) of this clause. The third week's holiday may be allowed either in conjunction with, or separately from, the first 2 weeks as may be mutually arranged between the employer and the worker.

(5) Where a holiday is taken in more than 1 period the amount payable under this clause shall be divided proportionately.

(6) Where a holiday is allowed wholly or partly in advance of the date fixed by the employer as provided in subclause (2) of this clause it shall be sufficient compliance with this clause for payment to be assessed on the percentage formula prescribed in subclause (7) of this clause subject to final adjustment and payment of any remainder after that date:

Provided that the holiday pay shall not be less than the worker's ordinary pay at the time of taking the holiday.

(7) Where the employment of any worker is terminated at the end of a period of employment which is not less than 3 weeks but less than 1 year, the employer shall forthwith pay to the worker, in addition to all other amounts due to him, an amount equal to 4 percent of his gross taxable earnings but not exceeding 5.2 percent of his gross ordinary pay for that period of employment.

(8) Where the period of employment is less than 3 weeks, the amount to be paid as proportionate holiday pay shall be as prescribed by the Annual Holidays Act 1944.

(9) Where it is customary for any employer to allow annual holidays to his workers or to any class of his workers during a period in each year when his premises are closed or the work of these workers is for any reason discontinued, and at the date of the commencement of any such period any such worker has not become entitled to an annual holiday then the worker shall not be entitled to any wages for 2 weeks following that date, but the employer shall before that date pay to him, in addition to all other amounts due to him, an amount equal to 4 percent of his gross taxable earnings but not exceeding 5.2 percent of his gross ordinary pay for the period of his employment up to that date and the next year of his employment shall be deemed to commence on that date.

(10) Where a worker is entitled to an annual holiday of 3 weeks instead of 2 weeks the provisions of subclauses (7) and (9) of this clause shall be modified to provide payment of an amount equal to 6 percent of the worker's gross taxable earnings but not exceeding 7.8 percent of his gross ordinary pay for the period of his employment.

(11) Subject to subclause (4) of this clause, the employer shall, where practicable, give at least 1 week's notice to his employees of annual holidays pending and each employee shall be advised of the date at which he is required to commence his holiday period.

Wages

5. (1) The minimum rates of wages shall be:

(a) Males: Youths—

| | Per Week \$ | Per Hour cents |
|---|----------------|-------------------|
| Under the age of 16 years | 18.88 | 47.2 |
| Of the age of 16 but under 17 years | 22.24 | 55.6 |
| Of the age of 17 but under 18 years | 27.80 | 69.5 |
| Of the age of 18 but under 19 years | 33.32 | 83.3 |
| Of the age of 19 but under 20 years | 38.88 | 97.2 |
| Thereafter adult rates. | | |

(b) Adult males

| | | |
|--|-------|-------|
| | 50.00 | 125.0 |
|--|-------|-------|

(c) Females—

| | | |
|---|-------|------|
| Under the age of 16 years | 18.88 | 47.2 |
| Of the age of 16 but under 17 years | 21.12 | 52.8 |
| Of the age of 17 but under 18 years | 25.60 | 64.0 |
| Of the age of 18 but under 19 years | 28.00 | 70.0 |
| Of the age of 19 but under 20 years | 31.12 | 77.8 |
| Thereafter adult rates. | | |

(d) Adult females

| | | |
|--|-------|-------|
| | 40.00 | 100.0 |
|--|-------|-------|

(2) Save in respect of piecework, minors may be employed in a proportion of not more than 2 to each 3 or fraction of 3 adults; but in special circumstances this proportion may be increased by arrangement between the union and the employer.

(3) No person under the age of 16 years shall be employed, except for the harvesting of peas, beans, tomatoes, and soft fruits, or other work of a light nature.

(4) After 6 weeks' employment the engagement shall be deemed to be a weekly one.

(5) A *casual worker* is a worker employed for more than 30 hours per week but for less than 6 consecutive weeks, and shall be paid the appropriate hourly rate set out above.

(6) A *part-time worker* is a worker who is employed for 30 hours or less in any week. After 6 weeks' employment as such, part-time workers shall be entitled to give or receive 1 week's notice of termination of employment:

Provided that where payment or deduction is made in lieu of notice, such shall be based on the average hours worked by the worker during the preceding 6 weeks of employment.

(7) Part-time workers shall be employed on the following conditions:

(a) Where the worker is unable to work full time the appropriate hourly wage shall be paid.

(b) Where the worker is able to work full time but the employer requires a part-time worker only, the appropriate hourly wage plus 10 percent shall be paid.

Piecework

6. Piecework may be worked at such work and at such rates as are agreed upon between the local organisations of workers and of employers, the rates to be such as will enable an ordinary capable worker to earn the rates provided for in clause 5, plus 10 percent. Should any dispute arise regarding piecework rates, the matter shall be referred to the Inspector, whose decision shall be final.

Terms of Employment

7. (1) No deduction shall be made from the wages of weekly workers except for time lost through sickness or accident or for time lost by default of the worker.

(2) Wages shall be paid weekly on a regular pay day, being not later than Thursday. Wages shall be paid during working hours.

(3) Except in the case of hourly workers, 1 week's notice of the termination of employment shall be given by the employer or the worker, as the case may be; but this shall not prevent any employer from summarily dismissing a worker for misconduct. On termination of the service, all wages due to the worker shall be paid forthwith.

(4) Where notice of termination of employment is not given in accordance with the provisions of this clause or clause 5 (6), the party improperly terminating the employment shall pay or forfeit, as the case may require, wages equal to the unexpired period of notice.

(5) Workers employed under this Schedule may perform work under the Third Schedule to this order between Monday and noon on Saturday.

Workers to be Members of Union

8. (1) Every worker employed within the scope of this Schedule shall immediately become and remain a financial member of a union affiliated to the New Zealand Federated Labourers' and Related Trades Industrial Association of Workers, and it shall be the duty of the employer, on representations being made to him, to see that the worker complies with the requirements of this subclause.

(2) Subject to subclause (3) of this clause, each employer shall recognise and act on authorities signed by employees for the deduction of the appropriate union membership fees.

(3) Wage authorities for the deduction of union membership fees shall be presented to and acted upon by the employer only once in respect of each worker during the union's financial year:

Provided that where a worker transfers from employment to which the Third Schedule hereto applies to employment to which the Second Schedule hereto applies a further wage authority shall be recognised, and acted on by the employer.

(4) The employer shall, on request from the union, supply the names, and, where possible, the addresses of workers to whom this Schedule applies and who are employed on the date of receipt of the request:

Provided that such requests shall not be made more frequently than once in every 6 months.

Cl. 2 (3)

THIRD SCHEDULE

CONDITIONS OF EMPLOYMENT FOR WORKERS ENGAGED SPECIFICALLY FOR THE PICKING AND HARVESTING OF CAULIFLOWERS, PEAS, BEANS, TOMATGES, MUSHROOMS, ASPARAGUS, LETTUCE, OR SOFT FRUITS

Hours of Work and Overtime

1. (1) The ordinary hours of work under this Schedule shall not exceed 8 per day or 40 per week on any 5 of the 7 days of the week.

(2) Overtime shall be paid at the rate of time and a half for the first 4 hours and double time thereafter for time worked in excess of 8 hours per day, or 40 hours per week, or 5 days in any week:

Provided that work performed on a Sunday by workers who have worked not less than 32 hours during the preceding calendar week shall be paid for at time and a half rates.

(3) Workers covered by this Schedule may not perform work other than that covered by this Schedule on Saturday after noon or on Sunday.

(4) Such workers may perform work covered by the Second Schedule to this order between Monday and noon Saturday for up to 20 hours in any week.

Wages

2. The minimum rates of wages shall be:

(a) Males: Youths—

| | Per Hour cents |
|-------------------------------------|-------------------|
| Under the age of 16 years | 47.2 |
| Of the age of 16 but under 17 years | 55.6 |
| Of the age of 17 but under 18 years | 69.5 |
| Of the age of 18 but under 19 years | 83.3 |
| Of the age of 19 but under 20 years | 97.2 |
| Thereafter adult rates. | |

(b) Adult males

(c) Females—

| | |
|-------------------------------------|------|
| Under the age of 16 years | 47.2 |
| Of the age of 16 but under 17 years | 52.8 |
| Of the age of 17 but under 18 years | 64.0 |
| Of the age of 18 but under 19 years | 70.0 |
| Of the age of 19 but under 20 years | 77.8 |
| Thereafter adult rates. | |

(d) Adult females

Piecework

3. Piecework may be worked at such rates as will enable an ordinary capable worker to earn the rates provided for in clause 2 plus 10 percent. Should any dispute arise regarding the piecework rates, the matter shall be referred to the Inspector, whose decision shall be final.

Terms of Employment

4. (1) Engagement shall be on an hourly basis. Workers shall be paid weekly in the employer's time on a regular pay day which shall be not later than Thursday. All waiting time shall be paid for.

(2) Where the worker terminates the engagement all wages due shall be paid within 24 hours of ceasing work. Where the worker is dismissed all wages due shall be paid immediately.

(3) Subject to the provisions of subclause (2) of this clause, all time that workers are kept waiting for wages shall be paid for at ordinary rates of pay.

Restriction of Weight Lifting by Female Workers

5. No female worker shall be required to lift a weight in excess of 25 lbs (11.34 kgs).

Board

6. Where an employer supplies a worker with board or partial board, the value thereof shall be assessed by agreement between the official representative of the union and the employer. In the case of any dispute, the matter shall be referred to the Inspector, whose decision shall be final.

Workers to be Members of Union

7. (1) Every worker employed within the scope of this Schedule shall be a member of a union affiliated to the New Zealand Federated Labourers' and Related Trades Industrial Association of Workers, and the union fees payable by such members shall be as follows:

- (a) No entrance fee:
- (b) Adult male workers, \$3 for season:
- (c) Adult female workers, \$2 for season:
- (d) Juvenile workers, \$1 for season.

(2) The above-mentioned fees are for a season not exceeding 4 months commencing with the date of the worker's employment by the first employer. If a worker is required in the season for more than 4 months, he or she shall pay an additional fee at the proportionate rate. The employer shall, on behalf of the workers employed by him, forward to the union office within 7 days after the date of the employment the respective fees for each of the workers employed by him under this Schedule who is not already a member of one of the said unions.

NOTE—The addresses of the union offices are as follows:

Wellington, Nelson, Westland, and Marlborough Local Bodies', Other Labourers, and Related Trades Industrial Union of Workers, Semple House, 84A Oriental Parade, Wellington. (P.O. Box 2786).

Northern and Taranaki Labourers', General Workers and Related Trades Industrial Union of Workers, Union House, Galatos Street, Auckland. (P.O. Box 8009).

Canterbury and Otago and Southland General and Builders' Labourers and Related Trades Industrial Union of Workers, Trades Hall, Gloucester Street, Christchurch. (P.O. Box 13032).

P. G. MILLEN,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the order, but is intended to indicate its general effect.

This order replaces the Agricultural Workers (Market Gardens) Order 1971. The main changes are as follows:

- (a) The order has been extended to cover the picking of lettuce and asparagus.
- (b) It now defines harvesting to include all operations from picking or cutting until the produce is prepared for dispatch from the employer's production unit.
- (c) New Zealand Day is to be a paid holiday. After 2 years continuous service with the same employer a worker is to be entitled to an annual holiday of 3 weeks.
- (d) The order prescribes increased rates of wages and an increased meal allowance. Adult female rates are now 80 percent of adult male rates. The provisions relating to rates of wages are retrospective to 1 July 1973.
- (e) New definitions of casual and part-time workers have been included.
- (f) The provisions relating to termination of employment have been altered.
- (g) Hours of work and overtime are now specifically prescribed in respect of workers covered by the Third Schedule namely those specifically engaged for harvesting soft fruits or certain vegetables.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 31 January 1974.

This order is administered in the Department of Labour.