

## **Response to Comments submitted on revision of AJP Standards**

*The AJP standards are a work in progress and the AJP team will update the standards every five years. This round of revisions incorporates changes based on the 2008 AJP pilot projects in the Upper Midwestern region of the US and on the past 5 years of experience testing the standards against the reality of farms, retail stores and other food businesses. We have expanded them to include operations throughout the whole supply chain, and provided standards for Grower Groups. AJP posted the first draft revisions in September 2009. There was a public comment period from October through December 2009. In January 2010, we posted a revised draft for a second round of comments from February through April 2010. We also retain the right to seek urgent or emergency revisions, additions or otherwise improve specific sections or individual standards based on stakeholder and/or certifier petition, changes in national or international laws or rights or management input. All such revisions would include public comment periods and stakeholder consultation.*

*If you have sent us comments and you do not feel we have addressed them, kindly contact AJP – [agjusticeproject@gmail.com](mailto:agjusticeproject@gmail.com). Thank you!*

In response to our public appeal, AJP received comments on our standards from the following groups and individuals: the Organic Committee of CATA members and staff (principally Luis Tlaseca, Ana María Vasquez, Jose Arturo Zavala, Carlos Diaz, Carlos Marin), Alexa Malishchak (Farmworker Health and Safety Institute), Sean Doyle (General Manager, Seward Coop), Bonnie Wideman, (MOSA), Atina Diffley (Organic Farming Works), Andy Fellenz (Fellenz Family Farm), Jim DeLuca, (General Manager of Abundance Coop in Rochester, NY), Jose Oliva, (Restaurant Opportunities Centers United), Suzette Snow-Cobb (Manager, Green Fields Market), Kristen Woodhouse, (Organic Valley), Joann Lo, (Food Chain Workers Alliance), Liz Haywood, (General Manager of Bluff Country Coop in Winona, MN), Rosalinda Guillen and Erin Thompson, (Community to Community in Bellingham, WA), Wali Via and Jack Gray, (farmers at Wintergreen Farm in Oregon), Devin Yeager (Agricultural Workers Association), Jonell Michael (Peacework Organic Farm intern), Jose Perez (Quality Certification Services), Becky Ceartas (RAFI-USA), Chela Vasquez, (Pesticide Action Network), Holly Baker (Farmworker Association of Florida), and Gero Leson, (Director of Special Operations, Dr. Bronners Magic Soaps). The members of the AJP Standards Committee also raised questions, made comments and participated in the final discussions on standards language. Final decisions were made by the AJP Steering committee after consultation with the Standards Committee and the AJP Advisory Council.

### **Comments on the standards and our responses:**

The most frequent comment we have heard from farmers and other employers is that they sensed in our standards a distinct bias in favor of the unionization of employees. One farmer wrote: “What would be more appropriate is a set of standards which emphasizes fair and moral treatment of employees rather than an adversarial approach to

employer/employee relations.” In our introduction to the standards, we write in very similar terms explaining that our “goal is to build and maintain a mutually respectful and supportive relationship amongst the various parties in the food system (e.g., buyers, farmers, farm employees, cooperative employees, restaurant employees, and other food business owners and employees), rather than an antagonistic one.” AJP believes that farmers’ negative response to some of our terms comes at least in some measure from the intense and lengthy anti-union propaganda to which all of us in the U.S. have been exposed over many years. Nowhere in our standards do we require unionization. We do require that employers and buyers recognize the right of farmers and employees to freedom of association. We consider fair and just treatment of employees and of farmers as the bedrock for any claim of social justice and domestic fair trade. Some of our language does indeed come from labor contracts and the union movement which, in its best moments, has been in the forefront of the struggles of working people for social justice. In response to the comments, we have made every effort to clarify our language about open and transparent negotiations between farmers and buyers and between employers and employees. In several places, we substituted the word “negotiation” for “bargaining.” We have retained the phrase “collective bargaining” where we refer to a group doing the negotiating since we consider it the right of groups of farmers or groups of employees to freely associate and bargain as a group with their buyer or employer. We have added a definition of “democratically chosen” free from outside interference.

Several food coop general managers have commented that coops do not need unions, and urged that AJP create distinct standards for coops. The coop managers tell us that benefits and the general well being of employees is an important part of the cooperative approach to doing business. In the experience of AJP, we have found that indeed many food coops have excellent conflict resolution procedures that ensure that employees are not treated unfairly. We do not think these fine workplaces need different standards from other businesses and we are confident that many coops will be able to comply with AJP standards. Please see the discussion below of “at-will,” which is a major sticking point.

In response to a general comment from a farmer on our apparent focus on small farms, we have removed most references to farm size since an accepted definition of small farm seems to be elusive. We do refer to small and medium sized farms and realize that this is vague. Perhaps we are wrong, but we do not expect farms with thousands of acres of vegetable production or hundreds of employees to attempt to meet our standards any time soon.

Our standards requirement for living wages has aroused a lot of discussion among all stakeholders. For some, this is a new term. AJP has done some research and in our technical assistance to AJP applicants, we provide resources on calculating living wages. What constitutes a living wage varies by region, but is also a matter of highly personal value decisions. How much is “enough” is a challenge for everyone involved in social justice to reflect upon, discuss and debate!

### **Food Business Responsibilities to Farmers, Section 1.**

There were several comments on the requirement that buyers provide full financial transparency to the farmer and farmers provide full transparency to employees. If the

buyer is purchasing raw ingredients for a multi-ingredient product, the correlation between the price of the raw ingredients and the full production costs of the product is difficult to calculate. While acknowledging this concern, AJP has left this standard in place. In providing training to certifiers and auditors, we will alert them to the need for flexibility in interpreting what documents a buyer must share with farmers. The intent behind these standards is to make transactions fair and open for all involved so that negotiations among the parties will be fair and more equal.

In section 3 on farmer responsibilities to employees, our standards maintain that if the living wage criteria cannot be met, the farmer/employer must share their cost of production information with the employees. Some farmers expressed nervousness about being asked to share their personal financial information. We have tried to clarify the documentation needed by adding that the farmer can share the most recent profit and loss statement from the farm business. The standard does not require that farmers provide information about their personal financial situation, only information about the farm business so that employees can understand why the farmer cannot pay a living wage. By holding a meeting with employees to explain the farm's finances, AJP certified farmers have found that employees are more willing to join in the responsibility to improve the farm's production and marketing.

In response to a comment on 1.1.7., Recapture of capital investment, that a farmer might try to hold the buyer on the hook by never paying off a debt, we strengthened our language on the responsibility of farmers to continually improve the quality of their production.

**Credit, 1.2.4:** We revised the standard on buyers offering credit to farms to make it an area for continuing improvement, rather than a requirement, and added the possibility of buyers supporting farmers in other ways such as providing organic inputs.

In response to a comment that the standards did not reward buyers who invest in the development of grower groups, we added the following standard for continuing improvement:

### **1.2.6 Buyer Responsibility to Grower Groups**

a. In cases where growers request it, buyers are encouraged to help support and develop grower groups with democratic Internal Control Systems.

In response to several comments about the importance of contributions to the local community, we added standards on Community Relations to sections 1, 2, 4 and 5. While not a requirement for initial AJP certification, engagement and investment in community relations is an important area for continuing improvement for all sectors of the food chain.

## **1.6. Community Relations**

- a. AJP certified food businesses are encouraged to cooperate with neighbors and to invest in their community for more sustainable and just community relations. Suggestions include (but are not limited to):
  - i. Developing a policy of hiring and training local people
  - ii. Purchasing from local and regional suppliers of products and services
  - iii. Providing resources to promote fair labor practices and living wages throughout the community.
  - iv. Supporting local schools, health and social services, cultural events and language classes and translation services.

### **Farmer Responsibilities to Farm Employees and Interns, Section 3**

We received several comments suggesting we strengthen the language on employer support for disabled workers, forced labor and protections for minors. We were asked to clarify that employers should never require a sick worker to come to work, though asking for a written doctor's excuse is a reasonable request. We also received a comment urging that all meetings and training sessions on worker rights, health and safety be on the clock. There were several suggestions about worker housing including space for recreation and living wages including money for recreation. We accepted all of these suggestions.

**Labor Contractors, section 3.1.10.** Our prohibition on the use of labor contractors in the earlier version of the standards generated many comments and lengthy discussion within the steering committee and between the steering committee and both farmers and farm workers. Farmers who have fruit and vegetable crops that require large numbers of workers for short periods of harvest told us that they need to use contractors. Farm workers told us that historically farm contractors have been responsible for some of the worst abuses of farm labor. We heard stories of cheating on wages, requirements of excessive hours of work under horrible conditions, and even virtual enslavement. In revising this standard, our goal has been to leave a tiny window and to provide a path to reforming the practice of labor contractors as the long-term solution. We also added an allowance for using the services of a labor contractor if the farm experiences a genuine emergency, with the requirement that this be reported to the certifier and trigger the development of a plan to avoid such emergencies in the future.

We believe that for many parts of the US there is an on-going need for labor contractors for specialized labor practices –such as, citrus, tree fruits, pruning, pole beans, burdock digging, etc.

Our goal would be to raise the bar through greater transparency and rigor of this practice and that a variance to the standard be recognized only after steps to find alternatives have been documented and the contractor and workers are inspected. This could be somewhat similar to the commercial availability clause for organic ingredients or inputs.

Our goal remains one of discouraging labor contractors in general, because of the brutal history and the reality that it still represents one of the largest areas of on-going worker abuse. Our goal, however, should also be to encourage major reform of labor contracting by encouraging new AJP compliant models through a documented allowance for AJP

compliant licensed labor contractors, thereby raising the bar on which contractors are allowed and under what circumstances. These allowed contractors must be audited along with their workers, their files and be required to maintain a clean labor violation record. Farms that use labor contractors may need a transition period to achieve this reformation and to fully establish an AJP compliant labor contractor service.

Through our technical assistance, AJP will be encouraging all of our clients who now use labor contractors to consider building a community- supported AJP compliant contract labor service model to meet the specialized needs of their farmers.

**Guestworker Programs:** As expected, there was heated discussion of the use of the H2A and H2B guestworker programs: **3.3.1.a.** We considered changing our ban on the use of these programs and instead allowing farmers to use H2A if their employees requested that they do so. However, the negative experience of AJP certified farmers who tried this led us back around to prohibiting the use of H2A and H2B. The very workers who asked for H2A were not accepted by the H2A program or allowed to return to the US after crossing the border to visit their families. AJP will reconsider this standard if and when immigration reform occurs.

**Piece Rate: 3.3.1.c.** In response to comments on piece rate, we strengthened our language requiring that employers eliminate piece rate, and not require a certain level of production in order to earn the hourly wage. We ask that if a farm is paying piece rate, they develop a plan to eliminate this form of payment since it discriminates against older workers and often forces workers to push themselves beyond a safe pace of work.

**Termination: 3.1.14 and 4.1.13.** We received several comments from both farmers and other employers on the requirement that unjustly fired workers be reinstated if a full conflict resolution procedure finds that this would be fair. We recognize that in a small workplace, the atmosphere can be poisoned if people are forced to work together who really do not get along. In response, we added a standard allowing the employer in this situation to offer a mutually agreeable severance package to the worker.

No black list: we also added a prohibition on employers blacklisting employees they have fired.

**Overtime, 3.3.4, 4.3.4:** We received a comment urging that any work over 50 hours should be voluntary. We also received several comments on the overtime that is often heaped on salaried workers who are exempt from legal overtime limits. We decided to clarify that any overtime work should be voluntary, and that all overtime should be carefully documented.

Our standards maintain that workers on farms should not be expected to work more than an **average** of 48 hours per week, because there may be times where inclement weather causes back-ups in the work load. We also added a standard requiring that employers must make clear to workers upon hiring them that overtime may be requested. Additionally, we ask that as continuing improvement employers develop an overtime plan, in negotiation with employees, to make it a goal to pay time and a half for overtime hours even when not required by law.

We have changed our standards in section **4.3.4 b**, which would apply to employees of food businesses; any work over 40 hours per workweek must be voluntary. We have included exempt workers, that is, workers who receive salaries and are not paid by the hour. In many workplaces, including social justice ngos, the expectation is that salaried employees will work a lot more than 40 hours a week. We added language requiring that employers who use salaried employees provide a written statement on overtime expectations and regularly review the overtime hours.

**Pay ratio:** We received several comment on **3.3.2. e.** and **4.3.2.a.**, the limit on the ratio between the highest and lowest paid employees, including the CEO. In response, we changed it from 1:4 to 1:8 for farms and 1:12 for food system businesses. In the case of situations in developing countries where the living wage for most employees and the farmers themselves would be modest, but an executive who works in a city or needs to travel might require a much higher wage to afford a car, etc., certifiers will have leeway to allow exceptions.

**Interns, 3.6.1:** One farmer urged us to eliminate any support for internships on farms since some farmers have abused this concept to avoid paying their employees a living wage with benefits. AJP prefers to provide standards for internships on farms that require fair, negotiated wages (which in states like NY must be at least the federal minimum wage with workers compensation) and also a learning contract that stipulates the educational goals for the internship. While there certainly has been abuse of internships, many young organic farmers who do not come from farm backgrounds have enjoyed positive mentoring relationships with farmers who have invested a lot of time and energy in training the next generation of farmers. There has been a steady growth in Collaborative Regional Agricultural Farm Training (CRAFT) programs that provide support for farm internships and organizations like MOFGA and the Biodynamic Farming and Gardening Association have made long-term commitments to young farmer training through carefully designed internships.

#### **Food System Employer Responsibilities to Employees, Section 4.**

**At-will: 4.1.13. g.** This is truly a thorny issue. The AJP standard requiring that employers drop at-will from their employee handbooks has generated almost as much comment and discussion as our ban on labor contractors. In 49 of the 50 states, state law declares that businesses are at-will, that is, an employer can fire an employee without cause, although in reality there are many limits to this freedom such as laws banning discrimination of many kinds. Only the state of Montana does not have “at will,” but requires an initial 6-month probation period during which an employer is free to fire. That should eliminate situations where employers are stuck with employees with whom they just do not get along.

Basic to social justice is the requirement that no employer ever fire a worker without just cause. Nevertheless, the finest, most progressive and sustainable food businesses in this country (food coops, certifiers, employee owned cooperatives, food justice ngos, marketing coops) almost to a one have “at-will” in their employee handbooks. After much discussion, the AJP steering committee, with strong support from our Standards Committee, made the decision not to allow “at-will.” We will give businesses 2 years to

eliminate it from their employee handbooks. Meanwhile, we are doing research on legal alternatives. Employers are convinced that at will protects them from unnecessary law suits by disgruntled former employees. Yet every employer who has commented to us on this matter has given examples of law suits they had to endure despite at will! We make a firm commitment to provide guidance on this issue and to outline best practices to help employers protect themselves from frivolous law suits.

### **Grower Group Responsibilities, Section 5**

We received a comment from a buyer that this section does not allow for the less formal kind of grower group that they have sponsored among groups of farmers who supply them. It is our belief that Section 1, the AJP standards on buyers' responsibilities to farmers, would in fact allow the certification of these informal groups.

*Future Changes: The AJP team is dedicated to conducting transparent and orderly revisions and welcomes your comments on our standards at any time. Please email your comments or questions to [agjusticeproject@gmail.com](mailto:agjusticeproject@gmail.com). Full revision of standards will be done every 5 years, allowing for emergency standards revisions and minor standards revision options as needed.*