
FARMWORKER JUSTICE FUND, INC.

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Poster used by the U.S. Employment Service in 1940 to recruit black American workers to cut sugar cane in Florida. In 1942, the U.S. Sugar Corporation was indicted for slavery. In 1943, the first West Indian workers were brought to Florida cane fields.

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Making a Difference 'Labor Peace' In Florida's Sugar Fields

MOST employers of foreign migrant farmworkers figure they have about as much chance of winning kudos from representatives of the impoverished laborers as they do of seeing the crops harvest themselves, but J. Nelson Fairbanks, president of the United States Sugar Company, did not take poor relations with the workers' advocates for granted.

The result was an extraordinary joint announcement Sept. 11 of "labor peace" by the privately held company, which is based in Clewiston, Fla., and three persistent critics — the Farmworkers Justice Fund Inc., the Migrant Legal Action Program and Florida Rural Legal Services.

"Each side had misconceptions about the other," said the 56-year-old Mr. Fairbanks, recalling the beginnings of the dialogue that led to the agreement. Among the peace provisions are a wage increase expected to average more than 11 percent, better disclosure to the foreign workers of their rights and a grievance procedure for settling disputes without litigation. Thanks to improved relations, some problems that led to major disputes in the past are now being solved with telephone calls, Mr. Fairbanks said.

Mr. Fairbanks hopes the reforms will make it possible to continue to use the foreign migrant workers, most of whom come north from Jamaica for the five-month harvest,



Barnaby J. Feder/The New York Times

At work for U.S. Sugar.

rather than switching completely to mechanized harvesters. Experienced cane cutters do a better job of harvesting only the valuable parts of the cane and do less damage to the soil. U.S. Sugar employs just over 2,000 seasonal workers, about 40 percent of the industry total.

The peacemaking effort has been part of a larger campaign to establish U.S. Sugar as a progressive voice on a variety of legal and environmental issues affecting Florida growers. Many longtime critics are impressed.

"There are still people in U.S. Sugar that don't like the change but that's not who Fairbanks sided with," said Robert Williams, an attorney with Florida Rural Legal Services in Tallahassee. "It's obvious that none of this would have happened without his support and leadership."

BARNABY J. FEDER

The Palm Beach Post

ATURDAY, SEPTEMBER 12, 1992

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THE AGREEMENT:

■ **U.S. SUGAR CORP.** will abandon its "task rate" payment system and instead pay workers a guaranteed rate of \$5.10 per net ton of cane cut during the five-month harvest season beginning in October. Under this new system, the average worker, based on past productivity, should earn \$7.28 an hour — a 75-cent-per-hour increase over last year's average wage and 28 percent more than is required by federal law.

■ **A FORMAL DISPUTE** resolution process will be established so that litigation can be avoided whenever possible. A grievance procedure will be instituted and a mediator will be named to rule on grievances that cannot be worked out between the parties.

U.S. Sugar revamps cutters' pay system

By LISA SHUCHMAN
Palm Beach Post Staff Writer

U.S. Sugar Corp. and farmworker advocates put aside a decade of differences Friday and announced an unprecedented agreement that will improve wages and working conditions for the men who hand-harvest sugar cane for the South Florida company.

Calling it a "labor peace," advocates and executives from the Clewiston-based company held a joint news conference in Washington to announce the details of the pact, which evolved over two years and follows years of criticism

of Florida's sugar industry.

"This agreement has been a long time in the making, but with it U.S. Sugar will set the standard for farm labor practices in American agriculture," said J. Nelson Fairbanks, president and chief executive officer.

The agreement applies only to U.S. Sugar — not to the other South Florida companies that employ cane cutters. Those companies, Okeelanta Corp., Osceola Farms Co. and the Atlantic Sugar Association, all are owned or controlled by the Fanjul family of Palm Beach.

Under the agreement, U.S. Sugar will abandon the confusing and somewhat arbitrary "task rate" payment system and instead pay workers a guaranteed rate of \$5.10 per net ton of cane cut during the five-month harvest season beginning in October.

This new system should allow the average worker, based on past productivity, to earn \$7.28 an hour — a 75-cent-per-hour increase over last year's average and 28 percent more than is required by law.

In return, advocates from Florida Rural Legal Services, Farmworker Jus-

tice Fund and the Migrant Legal Action Program have agreed to establish a formal dispute resolution process.

A grievance procedure will be instituted and a mediator — most likely a prominent labor specialist — will be named to rule on grievances that cannot be worked out.

Pending litigation will continue is not affected by the pact.

The agreement is especially significant for the thousands of cane cutters

Please see FANJULS/10A

Fanjuls to study labor pact

FANJULS/from 1A

who come to South Florida from the Caribbean under the U.S. government's temporary foreign worker, or H-2A program. Costly and seemingly endless labor disputes, combined with the increasing cost of hand-harvesting, have led companies to increase mechanization, leaving the future of the cane cutters' jobs in doubt.

This fall, Florida's sugar industry will bring in about 5,000 workers for the harvest. In 1989, more than 10,000 men worked in the South Florida fields.

But if this agreement proves successful, U.S. Sugar will be able to curb the increase in mechanization, Fairbanks said.

"As long as it's economical to harvest by hand, we will continue to do so," he said. "We want to maintain the H-2A program and those jobs."

For more than 40 years, sugar growers have been charged with exploiting foreign workers. But advocates say they have seen a changing attitude emerge at U.S. Sugar in the past year.

"The company approached us and asked us to outline what we thought was wrong with the program," said Rob Williams, an attorney with Florida Rural Legal Services. "It's very, very rare in Florida for farmers to sit down with workers or representatives of workers and try to make things

better."

One of the biggest grievances was the payment system, which advocates said was subjective and made it impossible to verify that proper wages were being paid.

U.S. Sugar's decision to change that system follows a Palm Beach County Circuit Court judge's recent ruling that all the companies employing cane cutters had shortchanged thousands of workers under the old system. She ordered them to pay almost \$51 million in back wages and interest.

The companies are appealing the ruling, but if upheld, it will cost U.S. Sugar about \$14 million — not including legal fees.

Other criticisms include a 1991 investigation of the H-2A program by the House Education and Labor Committee, which said the companies failed to repay cane cutters for some transportation costs, causing about \$500,000 in lost income.

U.S. Sugar has subsequently agreed to reimburse workers, but the Fanjul companies have not.

House Education and Labor Committee Chairman William Ford, D-Mich, called the agreement "a big step forward" and said the Labor Department should follow the company's lead in protecting sugar cane workers' rights.

"These problems came about in large part because the department failed to adequately enforce the wage laws designed to protect workers. I hope they will move

quickly to approve and administer this new system," Ford said.

Labor Secretary Lynn Martin defended her department's efforts to resolve disputes between advocates and H-2A employers, but hailed the agreement as a "historic breakthrough we hope will be a harbinger of a new era of cooperation which can be duplicated throughout the H-2A program."

But she pointed out that problems remain.

"The agreement does not end all controversy regarding the H-2A program in the sugar cane industry," she said. "Several other large growers are not parties to this settlement."

Joe Klock, general counsel for the Fanjuls, said they will watch to see how the new system works, but they will not pay by the ton. They are not convinced, he said, that their workers will make any less under the task system than U.S. Sugar's workers will earn under the new payment system.

Klock also said the Fanjul companies would be happy to talk with worker advocates when problems arise. But he stopped short of supporting the mediation effort.

"Any time workers' lawyers want to talk instead of sue, that's welcome," he said. "But we're not inclined to deal with lawyers who say if we won't talk to them, they'll sue. That's blackmail."

Former Permanent Secretary in the Jamaican Ministry of Labour
sentenced for conspiracy to defraud farm workers program.

Aitken gets 9 months

● Pleads guilty to farm work fraud

PROBYN AITKEN, 64, a former Permanent Secretary in the Ministry of Labour, was on Tuesday May 8 sentenced to nine months imprisonment at hard labour for conspiracy to defraud the farm workers' programme.

He pleaded guilty in the Kingston RM Court at Sutton Street to conspiring with former Minister of Labour J.A.G. Smith and others, to defraud the Government of funds held in farm workers' accounts in Canada and the USA.

Complete restitution of J\$420,000, surrendering his title of Justice of the Peace and National Honour of Commander of Distinction and character evidence by three prominent Jamaicans, were not enough to keep Aitken out of prison.

"I have a duty to the country, I

have a duty to the tax payers and to the farm workers who laboured under abominable conditions overseas to make a bread...", Her Hon. Mrs. Z. McCalla, Resident Magistrate, told Aitken in passing sentence on him.

Aitken was offered J\$250,000 bail, with surety, and ordered to surrender his travel documents, after Mr. Richard Small, his attorney-at-law, gave verbal notice of appealing the sentence.

The bespectacled Aitken, 64, wearing a dark blue blazer, grey pants and blue shirt, was very calm when he appeared before the court. His plea of "guilty" was barely audible and he was asked to repeat.

Mr. Glen Andrade, Q.C., Director of Public Prosecutions, outlined what he said was the fraudulent scheme concocted by Aitken and Mr. Smith. Aitken was Permanent Secretary in the Ministry of Labour from 1978 to 1987, after which he

went on a year's pre-retirement leave, when he was appointed Chief Liaison Officer to the U.S. Farm Work Programme based in Washington, D.C.

Resident Magistrate Mrs. McCalla, barely half Aitken's age, said in passing sentence:

"I agree with Mr. Small that this is a very sad case, that you in the twilight of your years, should be facing the court in a matter of this nature."

She noted that restitution had been made, National Honour and office had been surrendered and guilt had been admitted, and said: "As we sit here it is sad there is so much corruption in high places. One of the duties of the court is to deter people who are minded to engage in corruption to prevent them from doing so."

She said three years imprisonment was not too harsh for the "reprehensible crime" but taking into account the circumstances, the court

Mr. Small's plea into consideration and all the circumstances she was sending Aitken to jail for nine months at hard labour.

After Mrs. McCalla had passed sentence, Mr. Small urged her to consider suspending the sentence.

But the Resident Magistrate said she was unable to do so. She said one should not give the impression that there was one set of punishment for one set of people and another for others.

Mr. Small gave verbal notice of appeal and Aitken was offered bail. He was ordered to surrender his travel documents and to seek permission of the court, if he wished to travel.

Mr. Smith is expected to be one

NEWS

Loan for Mercedes-Benz

MR. Probyn Aitken, former Permanent Secretary in the Ministry of Labour, testified in court on May 31 that he questioned Mr. J. A. G. Smith, the former Minister, about when he would reimburse money he obtained from the U.S. Farm Work Programme to acquire a Mercedes-Benz car.

But, the witness said, the Minister asked whether anybody knew about it and "why am I bothering him about it?"

Mr. Smith, 61, a chartered accountant and J.P. Senator, is on trial in the Kingston Criminal Court at Sutton Street on charges of conspiracy to defraud and unlawfully receiving US\$70,000 US\$490,000 from the United States and Canadian Farm Work programmes.

(On May 8, Aitken pleaded guilty to conspiracy to defraud the farm work programmes and was sentenced to nine months imprisonment. He is out bail pen-

ding appeal against sentence.)

According to the witness, the Minister told him that a politician in St. Mary had many vehicles in the last administration and "no [?]ing officials bothering him about it, so why am I bothering him about it."

Difficult

Mr. Aitken testified that Smith had told him that he understood from his last Cabinet meeting that it would be becoming increasingly difficult, if not impossible, to import vehicles such as a Benz motor-car into Jamaica.

The accused told him he would "like to have one but he did not have the foreign exchange." Smith asked him to arrange to let him have the foreign exchange from the Washington, U.S. account and promised to reimburse the Ministry of Labour.

Mr. Aitken said he discussed with Mr. Harold Edward, Chief

Liaison Officer of the U.S. programme, the proposal for the funds. Although Mr. Edwards thought it was a most unusual request, he agreed to accommodate the Minister, but had him (Mr. Aitken) make the proposal in writing.

As requested, Mr. Edwards sent US\$7,500 to a bank in Belgium to buy the car. But later, on Smith's instructions, he (Mr. Aitken) requested an additional US\$12,750 from the funds because Smith said the original sum

represented only a deposit on the car.

Mr. Edwards also sent that money to the bank in Belgium. Mr. Aitken said that when he asked the accused when the Ministry would be reimbursed, the Minister requested another US\$6,000, stating that the money sent before was not enough to cover the cost of the car.

Request

But Mr. Aitken said he did not request that additional sum from

the U.S. funds. Instead, he got from the Canadian Farm Work funds.



Review/Film Festival

Hard Labor on the Plantation, Updated

By CARYN JAMES

As black workers cut sugar cane in the 1940's, a narrator notes that these happy laborers are following the "hereditary urge to go back to the plantation." That archival clip, included in Stephanie Black's "H-2 Worker," suggests how little the plantation mentality has changed in nearly 50 years, though today the sugar-cane growers rely on Jamaicans imported to Florida for six months every year.

Ms. Black's documentary follows the men who arrive on H-2 visas, tem-

porary permits that allow foreigners to take jobs for which employers cannot find Americans. According to the film, each year 10,000 Jamaicans respond to the promise of more money than they can make at home, and become virtual prisoners, crowded into dormitories that resemble army barracks, paid at most \$5 an hour — minus transportation and housing fees — for grueling field work.

Though Ms. Black's sympathy with the laborers is manifest, "H-2 Worker" is that rare hybrid that succeeds

as both film and advocacy. The documentary's look and form is smooth and sophisticated, combining reggae music, voice-overs of letters between the Jamaicans and their families at home, interviews with the workers and with a sugar industry representative, and archival material that sets the current situation in historical context. Ms. Black is not artistically innovative, but she has mastered some fundamental rules of effective documentary film-making. She assumes a calm, objective tone, allowing the visual images and interviews to speak for themselves. She lures viewers to her point of view rather than bludgeoning them.

Maryse Alberti's cinematography is a major element of the film's convincing realism. Ms. Alberti creates rich images of the men in the fields, bending to cut cane that stands taller than they do; even a glimpse suggests the strain on one's back. The dormitory, with laundry strung between the bunks, looks stark and demoralizing, but not exaggeratedly gruesome. Most important, the film never looks picturesque or condescending.

The workers are quietly angry, dignified and often resigned as they describe their thwarted expectations. Some say they were not told of the restrictions: workers cannot leave the

So That People Can Savor Sugar

H-2 WORKER, directed and produced by Stephanie Black; photography by Maryse Alberti; edited by John Mullen. At the Roy and Niuta Titus Theater, 11 West 53d Street, as part of the New Directors/New Films series of the Film Society of Lincoln Center and the Department of Film of the Museum of Modern Art. Running time: 70 minutes. This film has no rating.

Letters to and from workers read by Homer Heron, Oliver Stephenson, Jervis Anderson, George Cservette, Delroy Hunter, King David and Belinda Goffe

camp for more than 24 hours, and cannot go more than 30 miles away. But one man has been returning to Florida for 14 years, suggesting the dilemma facing poor people with limited opportunities. When the workers stage a stoppage to complain about low wages, the police are brought in to remove them from the camp; within a week 300 replacement workers are flown in from Jamaica.

"H-2 Worker" will be shown tonight at 9 and tomorrow at 6 P.M. at the Museum of Modern Art as part of the New Directors/New Films series. It does not pretend to offer any answers, but it solidly frames issues about the economy, employment and the treatment of workers who seem just steps away from slavery.

Get new ideas on the Op-Ed Page.

Review/Film Festival

A Japanese Stricken by

By VINCENT CANBY

"Beijing Watermelon," M. Ohayashi's new Japanese film is sentimental but never a conventional sweet tale about a Tokyo greengrocer who nearly bankrupts the business by helping a successful poor Chinese students.

The film will be shown at the Museum of Modern Art today and tomorrow at 8:30 P.M. at the New Directors/New Films series.

Shunzo, the greengrocer, is selling the students vegetables at a low cost. Later he gives them a bicycle and his wife's necklace. He sponsors the visits of relatives and makes himself available to them to and from the airport. His family and friends say, he is gripped by a Chinese fever.

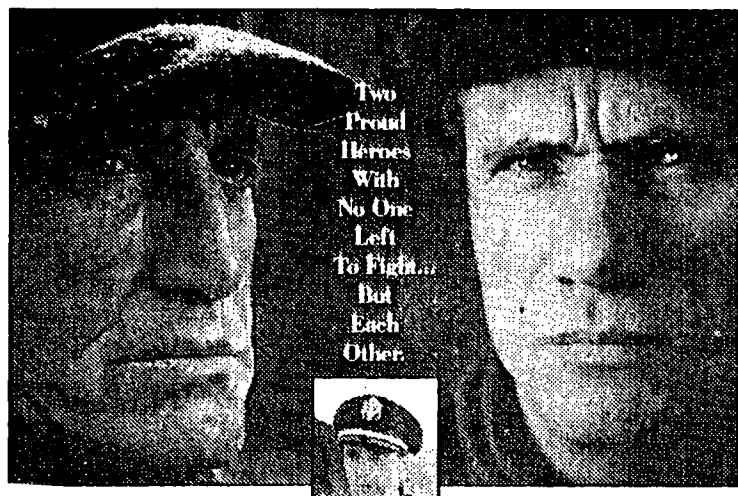
Shunzo often appears to be emotionally unhinged. His love for a Chinese girl is far more complicated than the movie can comfortably reveal. At one point it is learned that she died fighting in China. Shunzo is trying to atone for his sins in China in the 1930's.

He often acts like the rich kid in the block who attempts to buy the friendship of his poorer pals. Or it could be that "Beijing Watermelon" is saying something about Japan's responsibilities as a great creditor nation.

Nothing is clear.

"John Frankenheimer delivers a film in tune with today's world events. GO SEE IT!"

Mike Reynolds, NBC RADIO



"A SEDUCTIVE COMIC VALENTINE"

Congress of the United States

Washington, DC 20515

June 11, 1990

Dear Colleague:

We are writing to invite you to the showing of a remarkable film on Thursday, June 21, 1990. H-2 Worker is an award-winning documentary on West Indian laborers brought to this country each year to work in the Florida sugar cane fields.

The film follows the cane cutters through a season in the United States, exposing the brutal living and working conditions to which they are subjected and the depressed wages that deter many American workers from seeking these jobs. H-2 Worker, named for the visa program under which these temporary workers enter the United States, also visits Jamaica. The poverty, unemployment, and desperation endemic to much of the Caribbean drive almost 10,000 men desperate for work into the Florida cane fields each year. The film artfully combines shots of the cane fields and housing barracks, discussions with cane cutters, interviews with the government and industry personnel, and archival footage.

H-2 Worker was co-winner of the Grand Jury Prize for Best Documentary at the Sundance United States Film Festival in January, and has been shown at the Museum of Modern Art. It was invited as a U.S. representative at the Cannes Film Festival this year and has been praised highly in reviews from the New York Times, Newsday, Village Voice, and The Nation.

Producer and Director Stephanie Black will be at the Capitol Hill showing of her film, along with two Jamaican sugar cane cutters who will be available to answer questions about the film and about the H-2A program.

H-2 Worker will be shown on Capitol Hill on June 21 in the Mumford Room of the Library of Congress. A reception will precede the film, at 5:00 in the Mumford Room of the Madison Building. The film will begin showing at 5:30 P.M.

We are pleased to be sponsoring the showing of H-2 Worker with the Farmworker Justice Fund and Senators Simon, Bradley, and Kennedy.

Sincerely,

WILLIAM CLAY

BILL FORD

HOWARD L. BERMAN

GEORGE MILLER

AUGUSTUS F. HAWKINS

BILL GREEN

JOHN CONYERS

BRUCE A. MORRISON

Bringing the cane fields' pain to Cannes

By Stephen Schaefer
Special for USA TODAY

NEW YORK — Stephanie Black didn't realize she had seized a winning subject when she made *H-2 Worker*, a 70-minute documentary on the plight of Florida's immigrant sugar cane workers.

But *H-2 Worker*, Black's first film, won the best documentary and cinematography prizes at this winter's U.S. Film Festival in Utah.

And Tuesday night, *H-2 Worker* will be screened at the Cannes Film Festival, where it will compete for the Camera D'Or for best first film.

"That's a very big honor," Black says, "because they invite very few documentaries."

Coming up with the subject for *H-2 Worker* was "just a chance of fate," says the 28-year-old filmmaker.

She had won a \$10,000 grant while at New York University Film School to make a documentary on a Mexican migrant worker's family in Florida.

"But I met this Haitian minister down there and he brought me into the barracks where these immigrant sugar cutters were housed," she says.

"I saw urine dripping from the ceiling, 2,500 radios were blasting, and the men were lethargic, their faces glazed with despair."

From that moment, Black began a 3½-year odyssey investigating the lives of the



By Larry Ford

STEPHANIE BLACK: Her 'H-2 Worker' won two prizes at the U.S. Film Festival. Tuesday night, it will be shown at Cannes.

mostly Jamaican sugar cutters who are brought into Belle Glade, Fla., on a temporary work visa, an H-2.

"American workers won't do the demanding, backbreaking work," Black says. "So they bring in over 10,000 workers, who make more money there than on their islands."

"The workers are forced to

cut a ton-and-a-half an hour. Nowhere else in the world are workers forced to cut at such a rate. What other industry is allowed to pay subminimum wages?"

"Also, the men have no representation," she says. "What other American employer has that power over employees?"

Black and cinematographer

Other young hopefuls

Once again, the Cannes Film Festival will be a showcase for young U.S. filmmakers.

Last year, Spike Lee's *Do the Right Thing* and Steven Soderbergh's *sex, lies and videotape* received raves.

In addition to Stephanie Black's *H-2 Worker*, this year's crop includes:

► **Whit Stillman's *Metro-politan***, which was acclaimed at the U.S. Film Festival in Utah and in the New York Museum of Modern Art's New Directors series. Stillman's debut film is a satirical comedy focusing on Manhattan's seldom-seen debutante rites.

► **Norman Rene's *Longtime Companion***, a debut

film by a Broadway veteran. *Companion*, which opened last Friday in the USA to good reviews, is a bittersweet look at the effect of AIDS on New York's gay community.

► **Charles Burnett's *To Sleep With Anger***. Another hit at the U.S. Film Festival, *Sleep* uses myth and superstition to relate a fable about the influence of evil on a Los Angeles family.

► **Keith McNally's *End of the Night***. One of Manhattan's hippest restaurateurs cooks up a new career as a film director with this contemporary tale that is a real dark horse. *End* will have its world premiere at Cannes.

Maryse Alberti had to evade police and sugar officials to enter the camps.

"The cops scared me the most," she says.

"We had to rent a new car in West Palm Beach every couple of days so that the police, just by seeing the license plates, wouldn't stop us," she recalls.

The sugar cutters' plight has also been chronicled in *Big Sugar*, by New Yorker writer Alec Wilkinson, who last week received a Robert F. Kennedy book award.

"We didn't meet until we were both about three-quarters of the way through," Black says. "I think as a white woman I had an easier time of it, because I wasn't as threatening." *H-2 Worker* cost \$140,000 to make. Black worked nights as a proofreader and found last-minute funding from Britain's Channel 4 to finish her film.

In June, the documentary will have "its most important screening," Black says, when it's shown in Congress by the Farm Workers Justice Fund.

Cutting Cane: A Bitter Harvest

... **H-2 WORKER.** (U) Prize-winning documentary exposes the grueling conditions awaiting the 10,000 Jamaican laborers brought to this country every year to harvest the sugar crop. Directed by Stephanie Black. At the New Directors / New Films series at the Museum of Modern Art tonight at 9 p.m. and tomorrow at 6 p.m.

By Mike McGrady

THE PLANE from Jamaica lands in West Palm Beach at 1:20 in the morning and sleepy laborers file into buses that roll slowly past great mansions lit by a full moon on their way to Lake Okeechobee. There the men move into huge barracks and, over the next six months, live in squalor, dine on slop and spend long hours at brutal labor. When the sugar crop is harvested, they are corralled and shipped back to their families in Jamaica with a few new trinkets, a few new dollars and an invitation to repeat the experience the following year.

"H-2 Worker" is a revealing look at these men and the brutal treatment they receive on our shores.

Not that there's anything new about the mistreatment of migrant workers. Or in the exposure of such mistreatment. Edward R. Murrow's "Harvest of Shame" awakened the nation's conscience to the subject many years ago, and new exposes, both in print and on television, keep reappearing as injustices keep reoccurring.

"H-2 Worker," a documentary directed by 28-year-old Stephanie Black, focuses on a 1986 immigration law authorizing temporary H-2 visas to "guestworkers," who are allowed to stay in this country just long enough to do jobs too onerous to attract local workers.

The harvesting of sugar, still done by men who wield machetes while spending much of their day bent double, is grueling work. It is also work that has traditionally been rendered even more grueling by sugar barons who as far back as 50 years ago were indicted for conspiracy to enslave blacks.

There is still more than a little of the slave-owner mentality at play. Although the workers are guaranteed a minimum wage of \$5.50 an hour, wage slips are doctored, and in many cases the take-home pay averages a few pennies more than a dollar an hour. Should

they protest or try a work stoppage, as happens once during the course of "H-2 Worker," the men find themselves rudely rounded up by police and shipped home on the next plane, only to be replaced by new arrivals that same day.

By constantly poking about where she wasn't wanted and by speaking to many of the Jamaican cane cutters, young Stephanie Black manages to raise a great deal of Cain herself. Interspersing interviews with company spokesmen and industry representatives, along with government representatives from this country and Jamaica, she manages to capture the scope as well as the intensity of the problem.

Ironically, as troubling as the working conditions are, the program represents a major step up for the workers, who come from an island with skyrocketing unemployment and much lower average wages. "H-2 Worker" was a recent co-winner for best documentary at the Sundance United States Film Festival, and camerawoman Maryse Alberti, who at times shot clandestinely, won that festival's prize for best cinematography. //

**NEW
DIRECTORS
NEW FILMS
AT MOMA**

New York Newsday
March 24, 1990

Review/Film Festival

Hard Labor on the Plantation, Updated

By CARYN JAMES

As black workers cut sugar cane in the 1940's, a narrator notes that these happy laborers are following the "hereditary urge to go back to the plantation." That archival clip, included in Stephane Black's "H-2 Worker," suggests how little the plantation mentality has changed in nearly 50 years, though today the sugar cane growers rely on Jamaicans imported to Florida for six months every year.

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Letters to and from workers read by Homer Heaton, Oliver Stephenson, Travis Anderson, George Cresvette, Delroy Hunter, King David and Belinda Goffe.

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DukeDIALOGUE

VOL. 5, NO. 23

DUKE UNIVERSITY DURHAM, N.C.

NOVEMBER 16, 1990

Exposing the hidden abuses in the H2A farm program

by Geoffrey Mock

When filmmaker Stephanie Black first visited a Florida camp for migrant workers in the H2A program — designed to bring in foreign farmworkers — she found that the men were crowded into the barracks with roofs that leaked, sanitary facilities that didn't work and working conditions in sugar cane fields that scarcely differed from slavery.

Then she found out that this camp was one of the better ones.

Black turned her outrage into an award-winning documentary film, "H2 Worker," which was shown at Duke this week. The film was brought to campus by Duke's Center for Documentary Studies, with co-sponsorship by the Triangle Friends of the United Farmworkers and other groups. The film was also shown three times in Raleigh this week.

At a news conference held Monday at the Center for Documentary Studies, Black said the conditions for H2A workers have gotten worse since she made the film. "At the camp that I just visited, I saw men vomiting because the water hadn't been used in six months, so the water was filled with rust from the pipes," she said. "In the past they were afraid to talk because they could easily be fired from their jobs, but now the conditions were so desperate that they were willing to talk."

Designed to allow agricultural employees to bring in foreign farmworkers — mostly Jamaicans or

It is a very ominous trend. (The H2A) program is supposed to be used only if domestic workers are not available, but in North Carolina there is no need for the program.

Joan Priess

Mexicans — when there are shortages of U.S. farmworkers, the H2A program is most prominent in the fruit, vegetable and sugar-growing industries of Florida, Black said. However, provisions protecting the workers are not enforced against the powerful sugar industry, and the program gives the employer immense power over the workers.

"The H2A workers are allowed to work only for the employer who has hired them," Black said. "They are not allowed to try to find other jobs (at higher wages or better conditions), and if the employer fires the worker, he has to be immediately sent back to his country."

She said workers can be fired for the most minor of offenses, including talking to outsiders or getting sick. The provision effectively prevents the workers from organizing, she said. "The H2 worker is tied to the company," Black added.

According to the Farmworkers Legal Services of North Carolina, H2A workers have been denied basic legal rights given even to migrant workers — rights such as receiving an accurate written wage receipt or to have adequate drinking water and sanitation facilities. Wages for the hard-working cane cutters have been known to sink as low, after deductions, as \$17 a day.

Although predominantly used in Florida, the program is now being increasingly used in North Carolina, said Joan Priess of the Triangle Friends of the United Farmworkers at the news conference. The program was non-existent in North Carolina before 1989, but this year approximately 1,100 workers have been brought in, primarily from Mexico, to pick tobacco, cucumbers and other vegetables and peaches.

"It is a very ominous trend," Priess said. "It is supposed to be used only if domestic workers are not available, but in North Carolina there is no need for the program. There are plenty of unemployed and underemployed farmworkers."

The Center for Documentary Studies brought Black and her film to Duke to publicize the situation and to make people aware of it in North Carolina, said center officials. The center is active in bringing students to work with migrant workers in a variety of capacities including a migrant workers children's education program.

PHOTOCOPY
PRESERVATION

The sugar cane workers are 'certainly living a life that I couldn't bear to live myself.'

STEPHANIE BLACK
documentary filmmaker

H2 Worker raises Cain over camps

By ELLEN MCGARRAHAN
Herald Capital Bureau

In the fall, cane fires burn in western Palm Beach County, black smoke rising from a sea of green grass. It is then that the men arrive.

Ten thousand strong, they come from Jamaica for the sugar harvest to live in barracks and work amid flames in the fields, hacking the cane with knives. They are a ragged army breaking their backs under a high, silent sky.

Theirs are the stories told by the film *H2 Worker*.

The prize-winning documentary is the first film about life in the labor camps of the billion-dollar sugar industry, a fiefdom that lies between the Atlantic Ocean and the great lake Okeechobee.

A hit in Europe

The film won the Grand Prize at the prestigious Sundance U.S. Film Festival this year. It won praise at the Cannes Film Festival. It opened in Paris a week later.

But in Tallahassee, in the Florida State Legislature, *H2 Worker* played to an empty House — and Senate — when it was screened at the state capitol last week. Despite its international accolades, most lawmakers skipped the film.

"Some of these people in the Legislature would probably like to make the ostrich the state bird," said Rep. Mike Friedman, D-Miami Beach, one of only three legislators to attend the film's screening. "Ignorance is bliss."

Worked undercover

Not to Stephanie Black.

For four years, filmmaker Black, posing as a prostitute, smuggled her cameras into the cane workers' barracks and talked to them about their lives, their hopes and disappointments. Her film, named for the law

allowing Big Sugar to import men for the harvest, shatters the silence surrounding the program and draws, with precision and grace, a damning portrait of heartbreak and exploitation.

"They're certainly living a life that I couldn't bear to live myself," Black said Friday.

For more than 40 years, U.S. law has granted sugarcane growers a special dispensation to import workers for their annual harvest.

Over the years, legal watchdog groups such as Florida Rural Legal Services have challenged the program in court as inhumane, saying the men are underpaid, underfed, overworked and deported if they complain. The industry has always denied those charges.

The industry isn't going to like this film.

Vivid images

With the the kind of evidence only celluloid can offer, *H2 Worker* shows men holding pay stubs of \$22 after a full day's work in the field.

It shows men shoved into police cars and deported after daring to demand better wages.

It shows the devastatingly difficult stoop labor of the cane cutter, and the squalid conditions of the camps where the men live.

All with the same tropical elegance, clipped but soft, that graces the voices of the men.

"The film comes from a very non-partisan perspective," Black said. A 28-year-old New Yorker, she was living in Homestead with a Mexican family when, in 1986, she took a tour of the cane cutters' camps for the first time.

Now, after four years and \$140,000, after four years of holding down a full-time job as a proof-reader while trying to make the movie, "I've been spending my time and energy trying to get it into the hands of the decision-makers," she said.

But if the reception the film got in Tallahassee last week is any indication, that won't be easy. Only three legislators showed up for the screening, arranged by lobbyist Karen Woodall of Florida Impact, a workers' rights group. The next day, members of the House were asked by Friedman to send a formal request to Congress, urging the end of the H2 program. In an overwhelming chorus of boos, they declined.

"The program is a good one," said Rep. John Renke, R-New Port Richey, who has received more than \$1,000 in his campaign account over the last three months from the

sugar industry

"U.S. Sugar has very nice villages for their people to live in. However, many of these people don't know how to take care of property," said Rep. Marian Lewis, R-North Palm Beach, who has received more than \$4,000 in her campaign account since March from sugar growers.

Lewis hadn't seen the film.

The film shows sewage from leaky pipes dripping from the ceiling onto men as they sleep. It shows men sleeping on narrow bunks lining a room, like beds in a prison. It shows cardboard crates being used as furniture, feeble light leaking in from small windows high on the wall.

Said Friedman: "I think maybe if they saw the pictures — worth 1,000 words — maybe the pictures would have illustrated that these aren't houses with white picket fences around them."

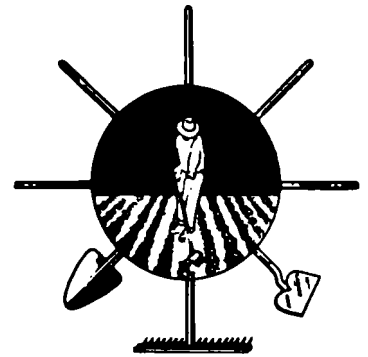
Filmmaker Black doesn't think the H2 program should be done away with. Instead, she hopes her film will spur the government to ensure that the workers are treated fairly — "to monitor the wages, the food, the housing of the men."

"It is our program," she said. "It is the American peoples' program. We have to monitor it."

Miami Herald
June 1, 1990

FARMWORKER JUSTICE FUND, INC.

2001 S Street, N.W., Suite 210
P.O. Box 53396
Washington, D.C. 20009
(202) 462-8192



FOR IMMEDIATE RELEASE
JUNE 21, 1990

CONTACT: Isabel Kaldenbach
or Mike Hancock (202) 462-8192

Attorneys for Florida farmworkers today demanded that the Department of Labor enforce its own regulations and end the brutal conditions under which temporarily imported farmworkers labor and live. "We are simply asking that Secretary Dole enforce the law," said Michael Hancock, Executive Director of the Farmworker Justice Fund (FJF). FJF wrote a letter to Dole with Florida Rural Legal Services asking the Department to look into the program, known as "H-2A," that allows sugar companies to import Caribbean guestworkers each year to work the Florida sugar cane fields.

"Much of the misery in the H-2A program exists because of DoL's outrageous dereliction of its duty to enforce protections mandated by Congress or by the Department itself," Hancock continued. "The beneficiaries of this hands-off attitude are the politically and economically powerful Florida sugar cane companies, and their profits are being fueled by the impoverished and exploitable third world workers desperate for jobs."

The letter coincides with a Congressional screening of a prize-winning documentary film, "H-2 Worker," that documents shocking labor abuses in the sugar cane fields of Florida. Earlier this year, the film won the U.S. Sundance Film Festival award for Best Documentary, and was invited and shown at Cannes. It has received praise from the New York Times, Newsday, the Village Voice, and other papers. Ms. Black and a former cane cutter were scheduled to speak following the showing of the film at the Library of Congress.

"The film, which follows the Caribbean workers and takes a frank look at the lives they live, is a brave expose of one of this country's most shameful secrets. The film is a wonderful accompaniment to the letter we are sending today," said Hancock. He noted that Florida sugar companies began importing West Indian laborers after a 1942 indictment alleging conspiracy to enslave black Americans. "That the program began is not a surprise. That it continues is an embarrassment and a blot on our national conscience," said Hancock.

Today's 30-page letter demands an investigation into several business practices. In particular, the letter questions the deduction of 23% of workers' wages, required by their work

- more -

agreement. These funds are held in trust by the West Indies Central Labour Organization (WICLO), the agency that coordinates the farmworker program for Caribbean governments. Some of these wages can be recovered when the workers return home. "We are concerned about where that money sits, who collects interest on it, and whether this enforced withholding violates Labor Department regulations regarding wage deductions," said Hancock.

Another 2% of worker wages are deducted to pay for health insurance plans for the workers. The attorneys asked DoL to look into this fund, noting that of the \$800,000 collected from the workers in 1989, less than \$250,000 was actually paid to insurers. There has been no accounting of the remainder of the funds.

Heightening concern over improper use of funds is the recent sentencing of former Permanent Secretary in the Jamaican Ministry of Labour, Probyn Aitken. Aitkin pleaded guilty and was sentenced to nine months in prison for his role in a conspiracy to defraud the Jamaican-U.S. and Jamaican-Canadian farmworker programs. Jamaica's former Minister of Labour J.A.G. Smith is currently standing trial for his alleged role in the conspiracy. Most of the 10,000 guestworkers in the Florida sugar cane fields are Jamaicans.

The letter also criticizes DoL's apparent willingness to cut deals with sugar companies rather than vigorously enforce workers' rights. The letter noted a situation in 1988 when one branch of DoL found wage violations by several sugar cane companies. The settlement reached with the cane companies included an agreement that the wage violations would not be reported to a different branch of DoL responsible for enforcing the temporary foreign worker program.

FJF is a non-profit advocacy group based in Washington, D.C. that works to protect the rights of migrant and seasonal farmworkers.

#

*The Farmworker Justice Fund
is pleased to announce the Washington, D.C. premiere of
Stephanie Black's award-winning documentary*

"H-2 WORKER"

a film about the Florida sugar cane
industry's abuse of Caribbean guestworkers
imported each year under the H-2A visa program

Sunday July 1 at 6 pm
Monday July 2 at 8:30 pm

Presented by the American Film Institute
At the John F. Kennedy Center for the Performing Arts
Tickets are \$6.00 at the door

The New York Times said "'H-2 Worker' is that rare hybrid that succeeds as both film and advocacy." The film is a devastating indictment of the sugar cane industry's labor practices and the U.S. government's complicity in this exploitation. The documentary combines thoughtful interviews with the West Indian workers, officials of the U.S. and foreign governments, and company representatives, with footage of the sugar plantations. "H-2 Worker" received a major award at the U.S. Sundance Film Festival and has been shown at the Cannes Film Festival and the New York Museum of Modern Art.

Guest Speakers: On Sunday night, D. Michael Hancock, executive director of the Farmworker Justice Fund, will speak following the film. On Monday night, the speaker will be attorney Gregory Schell. Greg, who works for Florida Rural Legal Services in Lake Worth, Florida, graduated in 1979 from Harvard Law School. He has extensive experience litigating on behalf of sugar cane workers against the sugar companies and the United States Department of Labor, which routinely violates its obligation to stop abuses of domestic and foreign sugar cane workers.

The Farmworker Justice Fund, is a nonprofit litigation and advocacy group working on behalf of migrant and seasonal farmworkers. Its address is 2001 "S" Street, N.W., Washington, D.C. 20009, (202) 462-8192.

PLEASE POST

BIOGRAPHIES OF KEY PERSONNEL

Stephanie Black - Director/Producer

Stephanie Black is twenty-eight years old, and was born and raised in New York City. Her previous film work includes producer, editor and collaborator with Jacob Berger on A Name for Her Desire (18 min., 16 mm, color), an award-winning experimental short. She has also been pre-production assistant for Robert Richter Productions, and assistant to director Jill Godmilow on Far From Poland.

A strong background in environmental studies (with a B.A. from SUNY Binghamton) complements Stephanie Black's graduate studies at the NYU Film School. Her past experience in this field includes assistant director of Operation Green Thumb for the New York City government, and environmental educator in the Broome County Public Schools. She began her research for H-2 Worker in 1986.

Maryse Alberti - Cinematographer

Born and raised in the south of France, Maryse Alberti, thirty-four years old, now lives in New York City. Her cinematography experience includes Poison, a dramatic feature directed by Todd Haynes; The Lear Tapes, a documentary directed by Jill Godmilow, and a forthcoming new feature film by Raul Ruiz. She was Co-cinematographer on Paris is Burning, directed by Jennie Livingston, and shot several "Frontline" segments and PBS documentaries in the Soviet Union, Poland, and Israel. Her additional cinematography work includes music videos for Ziggy Marley, Aretha Franklin, and others, and short dramatic films for Apparatus Productions.

John Mullen - Editor

John Mullen's editing career spans thirty years, and most recently includes the feature-length documentary Beirut: The Last Home Movie, directed by Jennifer Fox, which won the 1988 U.S. Film Festival's Grand Prize and the Cinema du Reel's Grand Prize. His other editing credits include Headin' for Broadway, a theatrical release produced by 20th Century Fox; "Rock World," a half-hour television special on music for NBC; "Working," a PBS documentary; and a Time-Life series of television shorts. From 1970-73, John Mullen was the supervising editor of the Emmy Award-winning children's television series "Big Blue Marble."

CREDITS

DIRECTOR/PRODUCER	STEPHANIE BLACK
CINEMATOGRAPHER	MARYSE ALBERTI
EDITOR	JOHN MULLEN
ASSOCIATE EDITOR	LISE ENGEL
Assistant Producer	Jean Casella
Additional Editing	Nancy Salzer Nancy Baker
Archival Research	Jo Applebaum
Additional Camera	Tom Sigel
On-location Sound Florida	Dan Walworth Hannah Silverman Scott Breindel Neil Danziger David Isay
Jamaica Washington New York	
Assistant Picture Editors	Jo Applebaum Chong D. Lee
Still Photographer	Gilles Moreau
Best Bro'	Adam Black
Original Song 'H-2 Worker'	Mutabaruka
* * * * *	
Post-Production Assistant	Sue Jones
UFW Convention	
Camera	Gianluca DiRe
Asst. Camera	Pam Katz
Sound	John Gurin
Edit	Marguerite Oerlemans
On-location Research	
Florida	Elia Suleiman, Cathy Lewis, Jacob Berger
Jamaica	Jan Baracz
Soundtrack DJs	Belinda Goffe, Dilip Harris
Archival Assistance	Stetson Kennedy, Ben Blake
Sound Mixer	Mel Zeiniker

Apprentice Editors

David Straus, Liz Lazlo

Deborah Khalek, Michael Pugh

Janet Colleti, Elizabeth Goldberg

Legal Counsel Courtesy of

David M. Given, Esq. and Roberta

Korus, Esq./Phillips, Nizer,

Benjamin, Krim & Ballon

Letters to and from workers

Homer Heron, Oliver Stephenson,

read by

Jervis Anderson, George Cesvette,

Delroy Hunter, King David,

Belinda Goffe

Music Courtesy of

Shanachie Records ("H-2 Worker" by Mutabaruka and "Police in Helicopter" by John Holt) Island Records ("Redemption Song" by Bob Marley and "Fire & Brimstone" and "What is Life" by Derek Simpson /Performed by Black Uhuru), Errol Lewis and Enid Marshall ("Crazy Girl" by Lindon "Half Pint" Roberts), C.S. Dodd ("Bobby Bobylon" by Freddie McGregor), King Jammy ("Come Again" by Coco Tea and "Don is Don" by Pinchers), the Library of Congress Archive of Folk Culture ("Run, Old Jeremiah"), Red Dog Express and EMI Blackwood Music ("Sugar Sugar" by the Archies), and the Everest Record Group and Unichappell Music/Elvis Presley Music ("Sixteen Tons" by Merle Travis/Performed by Big Bill Bronsey).

Archival Materials Courtesy of

Archive Film Productions, Mr. Patrick Montgomery, Movietonews, Inc., Mr. Hall Potter, Sherman Grinberg Film Libraries, Inc., Mr. Bernie Chertok, the Library of Congress and the National Archives, Virgin Records, and the Jamaica Tourist Board.

FUNDING FOR H-2 WORKER PROVIDED BY

The J. Roderick MacArthur Foundation

The Jerome Foundation

The Samuel Rubin Foundation

The American Film Institute

The Needmor Fund

The Funding Exchange/

The Paul Robeson Fund and The Women's Project

Channel Four Television/U.K.

The L.J. Skaggs and Mary C. Skaggs Foundation

The Writers Guild of America, East, Foundation

The Edelman Family Fund/FIVF

The Arca Foundation

The Unitarian-Universalist Social Concerns Panel

The A.J. Muste Memorial Foundation

The American Can Company

and by

The New York State Council on the Arts

The New York Council for the Humanities

(a state program of the National Endowment for the Humanities)

The Brooklyn Arts Council/BACA

Produced in Association with Valley Filmworks, Inc.

H2

worker

a film by
Stephanie
Black

H-2 Worker documents the lives and reveals the exploitation of the 10,000 Caribbean guestworkers who are brought to Florida each year to harvest cane for American sugar corporations.

"H-2 Worker is that rare hybrid that succeeds as both film and advocacy."
--The New York Times

Valley Filmworks, Inc. 135 Hudson St. NYC 10013

Cinematography: Maryse Alberti. Editor: John Mullen. Associate Editor: Lise Engel. Production: Jean Casella, Jo Applebaum, Chong Lee.

DATE: June 9, 1998
TO: Julie Fernandes, DPC
FROM: John Fraser, DOL 
SUBJ: H-2A Program "Streamlining" Concepts and Possible Timeline

This forwards for your consideration and further discussion a summary of previously-discussed possible proposals for administrative and regulatory "streamlining" of the H-2A temporary nonimmigrant agricultural worker program based on DPC-led discussions among DOL, USDA and INS staff. The proposals are grouped in implementation packages, with discussion of estimated time frame for completion - obviously for further discussion.

As we discussed earlier, the Deputy Secretary wants to assure that future discussions of these proposals occurs in the context of broader concerns about additional steps that the Federal government can take to address other substantive impediments to use of the H-2A program - such as the limited availability of farm worker housing.

I'll take the liberty of forwarding a copy of the attachment to Keith Collins at USDA and Bob Bach at INS for their perusal and to facilitate their consideration/reaction. They have not seen this before or collaborated in its development though that certainly would have been desirable if time had allowed.

Please let me know if you have questions and how you would like to proceed from here.

Attachment

----- DRAFT 6/9/98 DRAFT -----

TEMPORARY NONIMMIGRANT AGRICULTURAL (H-2A) WORKER PROGRAM "STREAMLINING"

Concepts and Timeline

Pursuant to:

- A 1997 request from Congressman Sanford Bishop (D-Ga) on behalf of Georgia farmers;
- The recommendations of - and agencies' response to - the GAO's December 1997 report, *"H-2A AGRICULTURAL GUESTWORKER PROGRAM: Changes Could Improve Services to Employers and Better Protect Workers"*; and,
- DPC-led discussions among various White House offices, DOL, USDA and INS about proposals for H-2A program "streamlining":

there is some consensus to consider proceeding with a package of proposed H-2A program reforms that could serve to streamline operations of the program without significantly weakening existing farm worker protections. These reforms - which, if adopted, could all be implemented through rulemaking or administratively - stand in contrast to legislative proposals that keep resurfacing which achieve H-2A program "streamlining" principally by eliminating and weakening existing worker protections.

The H-2A reform package consists of the following components - organized in categories relating to the manner in which they would need to be implemented - for ease of discussion of the associated time frame for implementation:

A. DOL Administrative Implementation

1. In the DOL/ETA/USES labor certification process, require "positive recruitment" of U.S. farmworkers only in areas where DOL finds that there are a significant number of qualified workers willing to make themselves available for employment at the time and place needed.

This change in H-2A program procedures has already been implemented via ETA/USES General Administrative Letter (GAL) directive.

2. Post employers' H-2A job orders on America's Job Bank (AJB).

AJB provides this facility; some H-2A orders are already so posted. Greater exploitation of AJB depends on simplification of the job order information, as discussed below (see item 13. below).

3. ETA/USES count as "available" for employment - and, thereby, certify fewer H-2A workers than requested by the employer - only those U.S. workers who are identified by name, address and SSN.

This change in H-2A program procedures has already been implemented via ETA/USES General Administrative Letter (GAL) directive.

4. ETA/USES consistently meet existing seven (7) day deadline - after initial receipt of employers' application - to give written notification to the employer of deficiencies precluding adjudication of the application.

This performance improvement is to be facilitated by approval of a pending reprogramming request to provide automated support for the labor certification process. Such automation could be implemented within six-to-eight months of the availability of funding. Even additional resources may be required to achieve the performance goal.

5. ETA/USES consistently meet existing 20 day deadline - prior to the employers' "date of need" - to issue approved certifications.

Like 4. above, this performance improvement is to be facilitated by approval of a pending reprogramming request to provide automated support for the labor certification process. Such automation could be implemented within six-to-eight months of the availability of funding. Even additional resources may be required to achieve the performance goal.

6. Increase number of H-2A workers certified to replace ostensibly U.S. workers with invalid SSN who are hired and subsequently abandon employment.

Current H-2A program procedures accommodate additional certification within 72 hours of request.

B. DOL Rulemaking Proposals

7. Require employers' H-2A labor certification applications to be submitted 45 - rather than 60 - days before the employers' "date of need."

8. Reduce the deadline for employer-provided housing to be available for inspection (from 30) to 15 days before the "date of need."

9. Provide an exception from current program requirement - that growers use registered farm labor contractors (FLCs, or "crew leaders") as a source of U.S. workers where such use is the prevailing practice in the crop/area - for any FLC who has a demonstrated history of employing illegal (unauthorized) workers or other labor abuses.
10. Allow H-2A program applicant-employers to include a bonding requirement for FLCs they may employ so as to protect themselves from risks such as the FLC employing illegal workers or failing to perform.
11. ETA/USES extend to Wage and Hour the authority to temporarily debar violating employers which commit serious labor standards or H-2A program violations from future use of the H-2A program.
12. Eliminate requirement that certified H-2A employer provide notice of H-2A workers' departure for the place of employment.

With the absolutely minimum amount of time for DOL activities, a rulemaking process involving these proposals (nos. 7. - 12.) - which under more normal procedures would require at least 14 months to complete - could be completed within about 11 months of initiation, as follows:

- 30 days (1 month) - DOL draft and internally clear proposals
- 90 days (3 months) - OMB review/clearance
- 45 days (1.5 months) - Public review/comment period (NOTE: extension requests are likely)
- 60 days (2 months) - DOL review public comments and, based thereon, draft/ internally clear final rule
- 90 days (3 months) - OMB review/clearance
- 15 days (0.5 month) - Finalize for publication

Of course, this schedule could be substantially reduced by shortening OMB's review time at two stages in the process, but there are many factors that can contribute to delays in such timetable.

If there is a need to complete a rulemaking within the next 6-7 months - in time for most H-2A applications for next season - the only realistic approach would be to further reduce the scope of the rulemaking - for example, to items 7., 9., and 11. above. Even so, it will be extremely difficult to accomplish in such a timeframe.

Other H-2A reform proposals requiring DOL rulemaking include:

13. Simplify H-2A application and related documentation - both job order application and accompanying disclosure documentation - for ease of integration with AJB, to

accommodate electronic filing by employer-applicants, and to further ease application information burden on previous program users found in compliance with program requirements.

These proposals could be included in the rulemaking package (items 7. - 12.) discussed above but would likely be even more controversial and contentious, and therefore possibly slow down the entire process substantially. It is, therefore, suggested that these important reforms be approached on a separate track through an attempt at "negotiated rulemaking" involving principal stakeholders. This approach would add six months before any rulemaking process commenced.

DOJ/INS and DOL Rulemaking Proposal

14. INS delegate H-2A petition approval authority to DOL allowing reduction (from a three-) to a two-step process (DOL and State, without INS adjudication) and simultaneous approval of H-2A certification and petition approval (by DOL).
15. INS – or DOL – issue petition approval (I-797) for replacement of certified H-2A worker on proof of worker's repatriation.

It is DOL's view that proposed implementation of these proposals would require rulemaking by both DOJ and DOL. These rulemaking proceedings would not have to be sequential, but neither could they be simultaneous – at least without very substantial lead-time for coordination/preparation. DOL estimates that the timetable for completing companion rulemaking initiatives by INS and DOL would be about 20 months from initiation (subject to further consultations with INS and State).

Carl Whillcock - USDA
Linda DelGado - USDA
(from Boxers)

Charles Hauser
393-1010

Tony Podesta

Podesta Assoc.

Growers Groups supporting effort on H11
to reform H2A

Mark-up on Thursday

of Smith Bill

HR 2377

AG letter

Labor response

USDA response to

Not currently an inter-agency process on
this leg.

2 yrs. ago broader proposal
Admin. opposed

Smith: creates a new pilot program
sunset w/ cap

increase

20-25K ~~200K~~ increase

Lots of flexibility on the bill

Sen. Wicker & Graham (Fla.)

working on Dem. bill

Wants Labor not to throw a wet blanket

Big issue: currently: labor cert

proposal: more like an attestation

(Ch. #12)

talked
to OMB
yesterday
Didn't know
of mark-up

introduced
last
fall

Why?

GAO report came out a few weeks ago.

No shortage in H2A program.

He says: no shortage b/c lots of illegals

Sens. Widen/Graham etc. trying to craft
a compromise

when attestation and labor cert.

Mark-Up on Thurs.

They are worried about Labor doing something.

DOL/USDA available to answer questions.

Urging an inter-agency process
Help folks on the Hill craft

⊕ Q:

What steps do we need to take to do #1?

take INS out of the process

Guestworkers (H2A)

Tasks

Data sharing

① INS to get more info on FLC process.

Do they compile a list of bad actors? If so, do they then transmit it to DOL? How? When?

② From DOL — do they now have the authority to determine who is a bad actor and then exempt employers from using them?

YES

③ DOL — more info on how they presently transmit Form I-797 to consulates. Can this be done electronically? Capacity issues?

④ DOL — more info on how (technology?) to better ensure that DOL meets 20 day and 7 day statutory deadlines.

⑤ DOL — status of whether did Admin. implementation of counting as available only U.S. workers identified by name, address, and S.S.#.

YES

⑥ DPC — we need to set up a meeting with SSA and Treasury to understand penalty for employers who employ workers who present false SS#s (who acted in good faith).

⑦ DOL — status of Admin. solution on requiring positive recruitment only where DOL finds there are a significant # of qualified workers etc. Burden shift

Done

Guidance

Reprogram
\$ from OMB
\$275K
automated case
processing & tracking
system
training
policy & interp

→ ⑧ DPC — Process of developing a regulation to permit issuance of I-797 for replacement H2A worker on proof of original worker's repatriation.
(?)

→ ⑨ DPC — Process including Emp. Section, Farmworker advocates and growers re: undertaking of employment service review to identify any procedural barriers to effective U.S. worker recruitment and referrals.

CRITICS OF THE PILOT TEMPORARY FOREIGN AGRICULTURAL WORKER PROGRAM MISS THE POINT AND ARE WRONG

1. CRITICS IGNORE THE GAO FINDING THAT THE CURRENT H-2A PROGRAM DOESN'T WORK AND MISSES STATUTORY DEADLINES FOR ADMITTING WORKERS. THE FAILURE OF THE H-2A PROGRAM IS THE REASON A TEST OF AN ALTERNATIVE PROGRAM IS NEEDED.

The 2 year pilot program is a test run for a better alternative to the H-2A program that GAO says doesn't work, involves layers of bureaucratic red tape, can't meet statutory deadlines critical for producers of perishable commodities, and needs reform.

A tight agricultural labor market and tighter control of illegal immigration have increased the demand for H-2A workers by nearly 50% in the last two years. H-2A has responded poorly.

If a program doesn't work, Congress has a duty to try to come up with a workable alternative. The pilot program is a limited test of a better alternative. It authorizes only 20,000 workers annually for two years.

2. CRITICS DISTORT THE ISSUE OF THE NEED FOR A PILOT PROGRAM -- THEY WRONGLY CLAIM NEED IS MEASURED BY CROPS ROTTING IN THE FIELDS ON A NATIONAL BASIS.

Need is measured, as the GAO found, by the absence of a LEGAL workforce in agriculture. H-2A cannot provide a legal workforce in a timely manner.

Agriculture needs a workable program that can provide a legal workforce when needed. GAO indicates that, conservatively, 40 percent of the agricultural workforce is illegal. GAO and INS don't blame agriculture for this. In fact, they state that agriculture has no choice but to hire workers who give them work documents that appear genuine, even though many of these documents are actually counterfeit.

As recognized by GAO, need is measured by the fact that labor shortages occur in specific crops in certain geographical areas, and that concentrated INS enforcement in agricultural areas leaves the agricultural workforce vulnerable.

As reported in the March 11, 1998 *Washington Post* and *Times*, increased Border Patrol activities have resulted in major successes in restricting illegal immigration. This affects agricultural and all other employers who rely on illegal migrant workers who seek work with work documents that employers must accept under federal standards.

3. CRITICS WRONGLY CLAIM THE PILOT PROGRAM HAS NO LABOR PROTECTIONS.

The pilot program provides foreign and domestic workers with all the labor protections of federal and state labor laws. In addition, it imposes special obligations on participating employers such as payment of at least the prevailing wage. It is not a cheaper alternative than hiring domestic workers!

The pilot program is modeled after the existing H-1B program for specialty occupations – except that it provides more labor protections. It requires employers to recruit domestic workers, and assures that domestic workers receive first preference for jobs.

The pilot program provides strict penalties for employers who don't meet labor standards, including fines, back wages, and debarment from future program participation.

4. CRITICS WRONGLY CLAIM THAT TEMPORARY FOREIGN WORKERS DO NOT GO HOME AFTER THEIR VISAS EXPIRE

The GAO study finds no reliable data indicating that H-2A workers overstay their visas. Industry experience shows that seasonal alien agricultural workers *do* go home. However, as an additional incentive not included in the current H-2A program, the pilot program requires withholding a percentage of wages to be paid to the workers (with interest) in their home country upon a timely return. In addition, workers lose the privilege of future participation if they overstay.

5. CRITICS WRONGLY CLAIM THAT THE PILOT WILL DEPRESS DOMESTIC WAGES AND THAT AGRICULTURAL WORKER WAGES HAVE BEEN STAGNANT

Farmworker wages are rising more rapidly than nonfarmworker wages. From 1989 to 1995, the period examined by the GAO, nonsupervisory farmworker wages increased 21.3 percent while nonsupervisory production worker wages increased by only 18.3 percent, according to BLS and USDA wage surveys. The average wage for nonsupervisory farm workers for 1997 was \$6.64 per hour, an increase of 4.9 percent over 1996. The average nonsupervisory farmworker wage in January, 1998 was \$6.98, up 6.2 percent from a year earlier. This is not a minimum wage job!

**SIDE-BY-SIDE COMPARISON
OF THE CURRENT H-2A TEMPORARY ALIEN
AGRICULTURAL WORKER PROGRAM AND H.R. 3410,
A PROPOSED SIMPLIFIED PILOT PROGRAM**

PROGRAM COMPONENTS	CURRENT H-2A PROGRAM	H.R. 3410
1. ELIGIBLE EMPLOYERS	Any U.S. employer of temporary or seasonal agricultural workers, including employer associations and farm labor contractors, unless disqualified because of past violations.	Same.
2. ELIGIBLE JOBS	Temporary and seasonal agricultural employment; limited to jobs of 12 months duration (less for annually recurring seasonal employment).	Temporary and seasonal agricultural employment; limited to jobs of 10 months or less duration in any 12 month period.
3. APPLICATION FILING	Alien labor Certification Application and Interstate Clearance Order (Multi-page documents) must be submitted simultaneously to DOL and local Job Service. Application must be submitted no later than 60 days before employer's estimated date of need. Separate application required for each occupation and period of employment. DOL reviews applications within 7 days of filing and notifies employer of acceptance or rejection. Specific time frames laid out for resubmittals and appeals to DOL Administrative Law Judge.	One page Labor Condition Attestation (LCA) submitted to state or local Job Service. LCA must be filed and approved before aliens may be employed. One LCA may be filed for multiple occupations and multiple periods of employment. Job Service reviews LCA only for completeness and obvious inaccuracies and notifies employer of acceptance or denial within 7 days of filing.
4. CONTENTS OF APPLICATIONS	Exhaustive job order describing conditions of employment (including wages and benefits), including Interstate Clearance Job Order for U.S. worker recruitment. Assurance that no alien will be employed in any job opportunity vacant because former occupant is involved in strike or labor dispute.	Simple attestation made by employer agreeing to comply with requirements of the program and to submit a local job order for U.S. worker recruitment. Same.

PROGRAM COMPONENTS	CURRENT H-2A PROGRAM	H.R. 3410
4. CONTENTS OF APPLICATIONS (CONT'D)	No similar provision. Agreement to employ qualified U.S. workers through first 50% of contract period.	Attestation that employer has provided notice of LCA to workers employed in occupation (notice must be provided to workers' bargaining agent or must be posted in conspicuous locations). Agreement to employ qualified U.S. workers for first 25 days after filing job order or until 5 days before date of need, whichever is later.
5. WORKER BENEFITS REQUIRED	Highest of prevailing wage or Adverse Effect Wage Rate (AEWR). Free housing for all non-local workers. Housing may be grower-provided or rental or public accommodation housing. Grower housing must meet Federal farm labor housing standards. Rental or public accommodation housing must meet applicable state or local standards. "Inbound" transportation reimbursed to workers who complete 50% of work contract period; "outbound" transportation paid for those who complete total contract. State workers compensation insurance or equivalent if not covered by State law. Meals at specified cost or cooking and eating equipment. Guarantee to provide work for 3/4 of total contract period. Special requirements with respect to frequency of pay, hours and earnings statements, deductions, records retention. DOL free to impose any other worker benefit it deems to be "prevailing practice".	No less than prevailing wage rate. Housing (or housing allowance) to non-local workers, when it is prevailing practice in area and occupation to do so. Charge may be made for maintenance and utilities. Housing must meet Federal labor camp standards or applicable state or local rental or public accommodation standards at employer's option. If transportation assistance is provided, it must be provided to aliens and domestic workers on a comparable basis. Same. No similar provision. No similar provisions. Requirements of existing law also apply to aliens. Minimum benefits limited to those specified in statute.

PROGRAM COMPONENTS	CURRENT H-2A PROGRAM	H.R. 3410
6. U.S. WORKER RECRUITMENT	Interstate clearance job order circulated by Job Service throughout U.S. and its territories. Employers required to conduct "positive recruitment" independent of Job Service. Employers required to hire available U.S. workers through 50% of work contract period, irrespective of alien worker presence.	Local job order used to recruit local U.S. workers locally. DOL may disseminate non-employer specific job information about potential labor needs throughout U.S. No similar provision. Qualified and available U.S. workers must be hired for first 25 days after filing of job order or until 5 days before date of need whichever occurs later.
7. ENFORCEMENT	DOL (Wage and Hour Division) authorized to monitor employer work sites for compliance with contract provisions. Complaints investigated by DOL Wage and Hour Division. No time limits for complaint filing. Penalties may include restitution for back wages due, civil monetary penalties and disqualification from program.	Employers subject to DOL labor law compliance enforcement on some basis as other employers. Special investigation and enforcement upon filing of complaint. Same, except that complaints must be filed within 2 years of alleged violation. Same.
8. DOL ROLE RE ALIEN ADMISSIONS	DOL reviews and accepts applications; oversees domestic worker recruitment; makes certification determination 20 days before date of need; adjudicates requests for redeterminations and extensions. No similar provision.	State Job Service reviews and accepts LCA's. DOL maintains public registry of approved LCA's.
9. INS ADMISSION PROCEDURES	Petitions filed with INS Service Centers. Special handling depends on SC procedures, work load, etc. No fixed time limit on approval.	Petitions filed with INS district directors and adjudicated within 3 working days.
10. PROGRAM LIMITATIONS	No similar provision. No similar provision.	Pilot program period limited to 24 months beginning 6 months after date of enactment. Limited to a maximum of 20,000 aliens allocated equally among 5 geographically and agriculturally diverse areas designated by the Secretary of Agriculture.

PROGRAM COMPONENTS	CURRENT H-2A PROGRAM	PROPOSED PILOT PROGRAM
11. REGULATIONS	Attorney General in consultation with the Secretaries of Labor and Agriculture shall approve all regulations implementing the program.	Secretary of Labor consults with the Secretary of Agriculture, and the Attorney General must approve, DOL regulations. Attorney General consults with the Secretary of Agriculture on regulations dealing with approval and extension of aliens.
12. MISCELLANEOUS PROVISIONS	Aliens admitted and extended on a job-by-job basis. Three year maximum length of stay for an individual alien. Wages paid to aliens exempt from FICA and FUTA taxes. Aliens not eligible for FICA and FUTA benefits. Certification fee of \$100 plus \$10 per worker certified, to maximum of \$1,000 per application certified. No similar provision. No similar provision.	Same. Two year maximum length of stay of an individual alien. Same. User fee equivalent to employer share of FICA and FUTA tax, (currently 8.45 percent of payrolls paid to aliens). Portion of alien's wages withheld and paid into U.S. treasury trust fund. Rebated with interest to alien in home country upon timely return. Aliens excluded from receipt of public welfare benefits except emergency services.

**SIDE-BY-SIDE COMPARISON
OF THE CURRENT H-2A TEMPORARY ALIEN
AGRICULTURAL WORKER PROGRAM AND S. 1563,
A PROPOSED SIMPLIFIED PILOT PROGRAM**

PROGRAM COMPONENTS	CURRENT H-2A PROGRAM	S. 1563
1. ELIGIBLE EMPLOYERS	Any U.S. employer of temporary or seasonal agricultural workers, including employer associations and farm labor contractors, unless disqualified because of past violations.	Same.
2. ELIGIBLE JOBS	Temporary and seasonal agricultural employment; limited to jobs of 12 months duration (less for annually recurring seasonal employment).	Temporary and seasonal agricultural employment; limited to jobs of 10 months or less duration in any 12 month period.
3. APPLICATION FILING	Alien labor Certification Application and Interstate Clearance Order (Multi-page documents) must be submitted simultaneously to DOL and local Job Service. Application must be submitted no later than 60 days before employer's estimated date of need. Separate application required for each occupation and period of employment. DOL reviews applications within 7 days of filing and notifies employer of acceptance or rejection. Specific time frames laid out for resubmittals and appeals to DOL Administrative Law Judge.	One page Labor Condition Attestation (LCA) submitted to state or local Job Service. LCA must be filed and approved before aliens may be employed. One LCA may be filed for multiple occupations and multiple periods of employment. Job Service reviews LCA only for completeness and obvious inaccuracies and notifies employer of acceptance or denial within 7 days of filing.
4. CONTENTS OF APPLICATIONS	Exhaustive job order describing conditions of employment (including wages and benefits), including Interstate Clearance Job Order for U.S. worker recruitment. Assurance that no alien will be employed in any job opportunity vacant because former occupant is involved in strike or labor dispute.	Simple attestation made by employer agreeing to comply with requirements of the program and to submit a local job order for U.S. worker recruitment. Same.

PROGRAM COMPONENTS	CURRENT H-2A PROGRAM	PROPOSED PILOT PROGRAM
4. CONTENTS OF APPLICATIONS (CONT'D)	No similar provision. Agreement to employ qualified U.S. workers through first 50% of contract period.	Attestation that employer has provided notice of LCA to workers employed in occupation (notice must be provided to workers' bargaining agent or must be posted in conspicuous locations). Agreement to employ qualified U.S. workers for first 25 days after filing job order or until 5 days before date of need, whichever is later.
5. WORKER BENEFITS REQUIRED	Highest of prevailing wage or Adverse Effect Wage Rate (AEWR). Free housing for all non-local workers. Housing may be grower-provided or rental or public accommodation housing. Grower housing must meet Federal farm labor housing standards. Rental or public accommodation housing must meet applicable state or local standards. "Inbound" transportation reimbursed to workers who complete 50% of work contract period; "outbound" transportation paid for those who complete total contract. State workers compensation insurance or equivalent if not covered by State law. Meals at specified cost or cooking and eating equipment. Guarantee to provide work for 3/4 of total contract period. Special requirements with respect to frequency of pay, hours and earnings statements, deductions, records retention. DOL free to impose any other worker benefit it deems to be "prevailing practice".	No less than prevailing wage rate. Housing (or housing allowance) to non-local workers, when it is prevailing practice in area and occupation to do so. Charge may be made for maintenance and utilities. Housing must meet Federal labor camp standards or applicable state or local rental or public accommodation standards at employer's option. If transportation assistance is provided, it must be provided to aliens and domestic workers on a comparable basis. Same. No similar provision. No similar provisions. Requirements of existing law also apply to aliens. Minimum benefits limited to those specified in statute.

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7. ENFORCEMENT	DOL (Wage and Hour Division) authorized to monitor employer work sites for compliance with contract provisions. Complaints investigated by DOL Wage and Hour Division. No time limits for complaint filing. Penalties may include restitution for back wages due, civil monetary penalties and disqualification from program.	Employers subject to DOL labor law compliance enforcement on some basis as other employers. Special investigation and enforcement upon filing of complaint. Same, except that complaints must be filed within 2 years of alleged violation. Same.
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10. PROGRAM LIMITATIONS	No similar provision. No similar provision.	Pilot program period limited to 24 months beginning 6 months after date of enactment. Limited to a maximum of 25,000 aliens allocated equally among 5 geographically and agriculturally diverse areas designated by the Secretary of Agriculture.

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WHY IS AN ATTESTATION SYSTEM NECESSARY AND WHY ISN'T A FEDERAL OR STATE EMPLOYMENT SERVICE CERTIFICATION WORKABLE?

A. Why is an attestation necessary? Simply, the alien labor certification process has a history of not working. See attached summary of H-2A certification problems.

B. Does the attestation concept have a precedent and does it protect workers?
Yes.

1. The proposed pilot's attestation feature is based upon the attestation provision put into the H-1B category in 1990. It has a precedent and that is why it was selected for the pilot.

2. The purpose of the H-1B attestation was to get away from the unworkable labor certification requirement previously imposed on the admission of skilled workers. In 1990, Congress went to an attestation approach for H-1B. The approach eliminated the bottlenecks of labor certification at the front end of the process but provided labor protections at the backside by allowing DOL and domestic workers notice of the attestation and an opportunity to challenge an employers' compliance with the attestation and labor protection requirements. Congress clearly expressed its intent that any challenge to an H-1B attestation should come after the workers come into the country.

See statement of House Immigration Subcommittee Chairman, Bruce Morrisson at 136 Cong. Rec. H8673 (daily ed. Oct. 2, 1990).

3. While the pilot program borrows the attestation concept from the H-1B program, it includes *more labor protections than the H-1B program*.

a. H-1B does not require U.S. worker recruitment.

b. Pilot does require local recruitment and the hiring of domestic workers for a specified period.

Why won't a state labor certification process, rather than federal, work?

1. The basic problem with any labor certification process, state or federal, is that it requires domestic recruitment and a determination after a fixed period that domestic workers are unavailable. Certification doesn't occur at either level until the process is exhausted and much discretion is left to the labor department officials.

2. While some state labor departments may not be antagonistic to agricultural employers, others will be. Thus, the shift in certification authority may provide a more friendly environment for growers in some states, but clearly not others that are antagonistic to foreign worker programs.



NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS ISSUE PAPER

GAO FINDINGS ON H-2A AGRICULTURAL GUESTWORKER PROGRAM SUPPORT RATIONALE FOR PENDING GUESTWORKER PROPOSALS

On December 31, 1997, GAO issued a report to Congress on the H-2A agricultural guestworker program. The report was mandated as a result of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). IIRIRA represents a major congressional effort to reduce illegal immigration into the U.S. Through expanded Border Patrol activities and tough provisions restricting employment of unauthorized workers, including increased INS enforcement and pilot programs to screen out fraudulent employment documents, IIRIRA seeks to cut off the "job magnet" into the U.S.

National and regional agricultural groups believe that an alternative to the H-2A program is needed and sought the GAO report to support this position. Among the reasons agriculture believes an alternative is necessary are:

- The current H-2A program is not practicable because it loaded with burdensome, inconsistent regulations, excessive paperwork, a bureaucratic certification process, and untimely and inconsistent decision making by DOL and other agencies.
- There is an *inadequate legal* workforce in agriculture and any significant increase in enforcement through audits of agricultural employers or expansion of pilot electronic employment record verification programs will adversely impact agricultural employers. Agricultural employers want to be able to obtain a legal workforce rather than hoping that INS won't verify the work eligibility of their workers.
- Agricultural employers have experienced labor shortages as a result of INS audits or enforcement activity on a regional basis and in tight labor markets. This activity has resulted in increased use of the H-2A program which has failed to meet employer needs in a timely manner, a critical factor for the producers of perishable commodities.

The GAO reports says the following about the above concerns of agriculture:

- Employers using the H-2A program are often confused by multiple levels of government with redundant levels of oversight, often resulting in conflicting administrative procedures and regulations. DOL's 325-page manual on the H-2A labor certification requirements employers must comply with is outdated, incomplete and not user-friendly. The H-2A housing requirements are a good example of this problem (GAO Report pp. 9, 53-58. See charts on pp. 40-41 showing complicated administrative process required of agricultural employers).
- There is agreement that a substantial portion of the agricultural workforce is not authorized to work in the U.S. GAO estimates the number at 600,000 out of a workforce of 1.6 million. DOL estimates it at 37% and data indicate that seasonal agricultural workers (SAW) legalized under IRCA declined in FY 1995 to 19% of the farm workforce. Of the 18% of all farmworkers who were in their first year of farm work during FY 1995, 70% were unauthorized foreigners (GAO Report, pp. 5, 7, 26, 30).

- Both INS and agricultural employers agree high quality fraudulent documents are readily obtainable and it is virtually impossible for employers diligently reviewing work documents as required by law to be certain that they have not hired illegally documented workers (GAO Report, p. 35).
- The prevalence of such a large number of unauthorized and fraudulently documented farmworkers leaves individual employers vulnerable to sudden labor shortages if INS targets enforcement efforts at their establishments (GAO Report, pp. 5,7, 24).
- Limitations of available data make direct measurement of a labor shortage difficult. While a *widespread* labor shortage does not currently exist, the lack of evidence of such does not preclude the potential for, or existence of, localized shortages particular to specific crops or geographic areas. Experts and USDA officials agree that targeted or concentrated INS enforcement on the agricultural workforce leaves agricultural employers vulnerable (GAO Report, pp. 24).
- While it is premature to draw conclusions about pilot programs created by Executive Order and IIRIRA that screen out fraudulent employment documents, early pilots have been well received by employers (GAO Report, 35-36).
- Since Congress began consideration of IIRIRA in 1995, the number of H-2A applications, and workers certified has increased. The number of workers requested in the first 9 months of 1997 was 49% higher than in 1994 (GAO Report, p. 105).
- While DOL may eventually approve a high percentage of H-2A labor certification applications, in at least a third of the certifications, it missed the statutory deadline and a number of applications are not processed until after the date of need. DOL missed the statutory deadline in over 40% of the cases where employers filed applications at least 60 days before the date of need (GAO Report, pp. 8, 46).
- DOL doesn't collect data that would allow it to determine if and why it misses statutory deadlines. It keeps no data on timeliness of its processing of emergency applications (GAO Report, 47,48).
- There is no reliable data to indicate that H-2A workers overstay their visas. One cannot assume all the people INS does not have a departure record for have in fact overstayed their visas. This is especially true of those who leave the U.S. by overland transportation, which includes most H-2A workers, since INS does not inspect traffic at land borders (GAO Report, p. 53).

Conclusion

The GAO report largely supports the foundation for pending legislation (H.R. 2377 and S. 1563) that would create a pilot guestworker program to overcome the administrative and bureaucratic problems that GAO finds characterizes the existing H-2A program. While some initial press reports on the GAO study stated that the absence of a finding of a widespread shortage of agricultural workers may lessen the case for such legislation, those reports ignore the premise of the legislation. The legislation is not based on the existence of a *current* widespread labor shortage. It is based on the vulnerability of agricultural employers to INS enforcement activity due to its largely fraudulently documented workforce, whether INS enforces the law on a regional, local, limited or widespread basis. As GAO recognizes, agricultural employers are subject to shortages when enforcement occurs.

When shortages occur, a workable guestworker program must be available. It is especially important that a guestworker program for labor intensive agriculture, characterized by highly perishable commodities, provide workers on a timely basis. GAO highlights the H-2A program's inability to do so. GAO supports agriculture's conclusion that the H-2A program could be improved to better serve employers. H.R. 2377 and S. 1563 make necessary improvements by reducing the labor certification bottleneck described by GAO.

THE H-2A PROGRAM DOES NOT MEET THE NEED OF AMERICAN AGRICULTURE FOR A WORKABLE TEMPORARY ALIEN WORKER PROGRAM

The only legal means for admitting aliens for temporary and seasonal work in agriculture under current law is through the provisions of Sec. 101(a)(15)(H)(2)(a) of the Immigration and Nationality Act, the so-called "H-2A program". Agricultural employers who used the predecessor H-2 program attempted to streamline it and make it more workable in creating the H-2A program in the Immigration Reform and Control Act of 1986 (IRCA). Instead the program has become more unworkable than ever. Usage of the program has actually declined since the passage of IRCA, from about 25,000 workers in 1986 to a mere 17,000 in 1995 out of a total U.S. hired agricultural work force of about 2.5 million. The H-2A program has now been discredited even by its traditional supporters and users, who have joined agricultural employers nationwide in advocating for complete reform of the temporary alien agricultural worker admission process.

- **The H-2A program is mired in excessive paperwork and bureaucracy.**

Attached is a two-page list of the steps employers must take to participate in the H-2A certification process. (It must be remembered too that labor certification is only permission to apply for admission of, and to employ, aliens. After obtaining a labor certification, the employer must still petition INS for admission of workers, the workers must secure visas at U.S. consulates, and must travel to the U.S. work site.) The two principal H-2A application documents (ETA 750 and ETA 790) are rarely less than a dozen pages when fully completed, and can grow to several dozen. Most users of the program are forced to do so through grower associations formed specifically for the purpose of engaging in the paperwork required by the program. One rancher who filed H-2A applications on his own for approximately a dozen workers accumulated a file of 28 pounds of paper in 5 years of participating in the process!

- **The time frames required by the H-2A program are too long and inflexible.**

Growers are required to initiate the H-2A application process a minimum of 60 days before the date workers are needed. Some crops are not even in the ground at that point. "Emergency" application procedures are provided for in the H-2A regulations, but are very uncertain and rarely used. Failure to timely file any required piece of paper during the application process will almost certainly delay certification. In any event, certification does not occur until a maximum of 20 days before the date of need, after which employers still must file and get approval of an admission petition by INS, contact the alien workers and have them travel to a U.S. consulate abroad, secure U.S. visas, and travel to the U.S. work site. Even after that, employers who employ H-2A aliens are required to hire (and provide housing to) any qualified U.S. worker who applies through 50 percent of the work period, without regard to whether the employer is already fully staffed or his housing is full.

- **The required terms and conditions for employing H-2A workers substantially exceed prevailing practice and prices the program out of the market for many growers.**

H-2A employers must pay the higher of an administratively determined Adverse Effect Wage Rate (AEWR) or the prevailing rate in the occupation in the area of intended employment. The AEWR is the average wage for all field and livestock worker occupations in a particular region of the country as determined by USDA wage surveys. Obviously if this is the average wage for all occupations, it is higher than the prevailing rate in many of them. Thus, in many occupations the AEWR constitutes a "super wage" which can be substantially higher than the prevailing wage for the occupation. In addition, employers must offer free housing to all non-local workers, and must reimburse inbound transportation to workers who complete 50 percent of the contract period and return transportation to workers who complete the contract period. Such benefits are rare among non H-2A users. H-2A employers must also guarantee full pay for the first week of the contract, regardless of whether there is work available, and must guarantee to pay workers for at least three-quarters of the total anticipated period of employment on the H-2A application. Such guarantees are nonexistent outside the H-2A program. Thus the H-2A program is only financially viable for the most profitable growers and for commodities effectively shielded from global competitive markets.

- **The H-2A process does not assure timely access to workers.**

Many circumstances arise, including timing of paperwork requirements, that provide DOL an excuse to delay certification until later than 20 days before the date of need. Even under the best of circumstances, certification is denied for each job opportunity which a domestic worker has accepted, and in some cases merely for job opportunities for which DOL thinks a domestic worker might become available. A high proportion of domestic worker referrals fail to report for work on the date of need. When this occurs the employer must file an application with DOL for a certification redetermination. Even though DOL is required to respond to such applications within 72 hours, that is already 3 days after the growers' date of need. Even when the redetermination is granted promptly, the employer still must petition the INS for admission of the aliens, contact the aliens and have them travel to a foreign consulate, obtain visas, and travel to the job site, a process that takes a week or more. Sometimes DOL offers a second round of domestic referrals in response to a request for a certification redetermination, which can delay arrival of aliens further. Delays in securing workers can be disastrous for highly perishable crops.

- **The H-2A domestic worker recruitment requirements are unproductive and costly and meet only a tiny fraction of the labor needs of applicants.**

DOL requires employers to conduct "positive recruitment" in addition to filing job orders with the state Job Services, and has broad latitude to impose specific recruitment requirements on employers, including traveling to remote locations to interview workers during employers' busiest seasons. DOL uses positive recruitment requirements as a means of discouraging employers from using the H-2A program, and to protect themselves from litigation, as much as a means of

identifying able, willing and qualified U.S. workers. "Positive recruitment" also requires newspaper and often radio advertising that is costly and produces few or no responses. These requirements are imposed year after year, even after they have repeatedly failed to produce results. Employers can be, and sometimes are, required to travel to distant locations to do "on-site" recruiting of workers who have applied at job service offices. The "show-up" rates for such interviews is extremely low, and the number of workers who accept job offers and actually report to the job site is abysmal. Yet these recruitment itineraries are required, or threatened, repeatedly. Certification can be denied if the employer fails to undertake a recruitment activity demanded by DOL.

- **The H-2A process saddles growers with unqualified, unproductive and unreliable domestic workers.**

DOL uses the domestic worker referral process as a means of blocking or delaying certification rather than as a means of providing employers with able, willing and qualified workers. DOL's interest is in assembling lists of names against a numerical request for workers. Referred workers are often uninformed and sometimes misinformed about the nature of the work and the terms and conditions of employment, or are unable or unwilling to perform the required work. The proportion of domestic workers referred by the Job Service who actually report to the job and work a significant portion of the season generally averages less than 5 percent of growers' needs. The management burden and cost of dealing with this turnover is extremely high for growers during their busy seasons, and often results in costly litigation.

- **The H-2A program is administered in an antagonistic fashion.**

DOL has broad discretion in administering the H-2A program. This discretion has been exercised in ways designed to discourage use of the H-2A program. DOL employees have been known to openly advocate employing illegal aliens rather than using the H-2A program. DOL approaches program users with the assumption that they are scoundrels and lawbreakers who are trying to cheat their workers and take advantage of the system. DOL uses its labor law enforcement authority to "punish" employers for using the H-2A program by subjecting them to frequent, "white glove" compliance audits while ignoring other employers who employ workers of questionable legality or fail to comply with labor laws.

- **The H-2A program is bogged down in costly litigation.**

The H-2A program is highly regulated yet so loosely structured that there are innumerable opportunities to foment litigation against users. Such litigation, undertaken by so-called farmworker advocates, has cost H-2A users literally millions of dollars in recent years, and is one of the biggest impediments to use of the program. Growers also often have to resort to litigation against DOL to enforce access to the program or to contest unjustified conditions or requirements imposed by DOL as a condition for certification. When potential litigation costs are added to the administrative and paperwork costs and the costs of the worker benefits required by the H-2A program, the financial costs of attempting H-2A certification become prohibitive.

EMPLOYER STEPS IN H-2A CERTIFICATION PROCESS

Prior to Application Filing

- Determine specific need for workers; identify numbers and types of jobs to be filled; establish estimated starting and ending dates of employment; identify housing suitable to accommodate numbers of workers to be requested.
- Determine level of benefits that must be offered; determine prevailing wage rates and adverse effect wage rate (AEWR); determine if any prevailing practice determinations affect situation (e.g., advance transportation, family housing).
- Identify key event dates requiring action; e.g. deadline for application filing; 7-day DOL turnaround date; target date for housing inspection; period for domestic worker recruitment; DOL certification determination date; date of need; expiration of 50% hiring period requirement.

Application Filing

- Prepare DOL forms (ETA 750 and ETA 790) for submittal no less than 60 days before date of need.
- Submit original copy of forms to ETA Regional Office. Duplicate copy submitted simultaneously to ES local office.
- If housing not ready for inspection, submit request for conditional access to clearance system pending inspection and approval of housing. (If housing has been inspected and approved, submit proof of successful inspection with application and job order to Regional Office and ES office.
- Assist local office in preparing local job order and clearance order for recruitment of S. workers.
- If application accepted by DOL within 7-day review period, assist local ES office in finalization of clearance order and commence U.S. worker recruitment through ES system.
- If application not accepted and returned for modification by DOL, prepare modifications and resubmit for approval - taking into account that delays in acceptance of application will delay DOL certification determination on day-to-day basis. (If modifications required by DOL are not acceptable, and opportunity to request expedited ALJ review is pursued, request review or hearing from DOL ALJ office and notify RA).

- Arrange with local ES office for establishment of referral/interview procedures. Interview U.S. worker referrals during specified recruitment period. If appropriate, commence any special positive recruitment efforts required by DOL in its acceptance notification. Arrange for any advertising required by DOL. Document results of interviews with workers.
- If conditional access to clearance system requested and granted, arrange for State official inspection of housing no later than 30 days before date of need. If deficiencies are found upon inspection, arrange for them to be corrected and follow-up reinspection to take place within five days.
- As appropriate, notify DOL and ES of any changes in employment situation that may occur during recruitment period; secure official approval of job order modifications that may be necessitated; e.g. change in date of need; change in number of workers requested.
- On 22nd day before date of need, notify DOL of results of recruitment efforts; e.g. workers interviewed, workers hired, workers not hired and reasons for not hiring.
- On 20th day prior to date of need, DOL renders certification determination. Review for consistency with recruitment/processing experience. If DOL determination not acceptable and opportunity to appeal to ALJ to be pursued, take steps to file ALJ appeal.

After Certification

- Continue to interview for employment U.S. workers referred after certification determination is rendered (assuming all openings not filled by U.S. worker referrals.) Continue to engage in positive recruitment until time foreign workers depart for place of employment.
- If necessary, apply to DOL for redetermination of previously denied certifications based on U.S. worker availability when U.S. worker shortfalls are encountered.
- Prepare and give copy of work contract to all workers who arrive for employment at job site.
- Interview all U.S. workers referred through 50% of work contract period. Document and report all instances of U.S. worker quits and discharges to local ES office.
- Cooperate with ES system and DOL in any actions these agencies may undertake as the result of worker complaints or requirement to conduct field checks.

Congress of the United States

Washington, DC 20515

October 7, 1997

The Honorable Dan Glickman
Secretary of Agriculture
U.S. Department of Agriculture
Main Administrative Building
14th Independence Avenue SW
Washington, D.C. 20250

Dear Secretary Glickman:

The undersigned strongly urge you and the Administration to support H.R. 2377, supported by many of our colleagues on a bipartisan basis. H.R. 2377 addresses a critical issue in our districts. This issue was brought to your attention by the Chairman and Ranking Member on the House Committee on Agriculture in a letter to you dated January 8, 1997.

The farmers and ranchers in our districts are finding it increasingly difficult to hire and continue to employ an adequate workforce. This is caused by current high levels of employment and increasing INS and Social Security Administration activity that is removing a substantial number of agricultural employees from law abiding employers. The severity of this problem has increased significantly in the past year in our districts and in those of our colleagues throughout the U.S.

The only current program to address the labor shortage problem is the H-2A program. Despite past efforts by Congress to streamline it, it simply does not work. H.R. 2377 provides an alternative approach to admitting temporary and seasonal alien agricultural workers. It is a modest two year pilot that admits a maximum of 25,000 workers annually and provides ample protections for domestic and alien workers while ensuring alien workers will not overstay their visas.

While the Administration opposed a much broader guestworker program last year, H.R. 2377 is a pilot of limited scope and duration that would allow a fair test of a streamlined structure. We wish that H-2A could be streamlined administratively to meet our farmer's needs. Some of us recently met with top officials at the Labor Department to explore administrative reforms to the H-2A program but are not confident that the essential changes we seek can be achieved administratively. Efforts between USDA and DOL to achieve administrative improvements last year were not successful.

Mr. Secretary, we believe that support of H.R. 2377 is in the best interests of our farmers and workers and ask that you seek Administration support for it. Equally important, we believe that the increased need for this legislation and the limited pilot approach taken in H.R. 2377 should convince the Administration not to oppose it. We ask for your leadership in this regard.

Sincerely,

Page 2

Letter to Secretary Dan Glickman
October 7, 1997

Sanford Bishop

Dorene Hadley

F. Allen Boyd Jr

Barbara Kennedy

Clay Cook

cc: Alexis Herman

9123772713

WIGHT PURCH & PERSNL

SECOND DISTRICT, GEORGIA
EMOCRATIC WHIP AT-LARGE

COMMITTEE ON AGRICULTURE

SUBCOMMITTEES:

PEER MANAGEMENT AND SPECIALTY CROPS
DEPARTMENT OPERATIONS, NUTRITION AND
FOREIGN AGRICULTURE

COMMITTEE ON VETERANS' AFFAIRS

SUBCOMMITTEES:

BENEFITS
OVERSIGHT AND INVESTIGATIONS

PERMANENT SELECT COMMITTEE
ON INTELLIGENCE



Congress of the United States
House of Representatives
Washington, DC 20515-1002

January 12, 1998

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DUBLIN, GA 31702
PHONE: (912) 585-3591

230 FEDERAL COURTHOUSE
VALDOSTA, GA 31601
PHONE: (912) 247-3705

The Honorable David Poythress
Commissioner
Department of Labor
Sussex Place Building
148 International Boulevard Suite 600
Atlanta, Georgia 30303

Dear Commissioner Poythress:

Thank you for contacting me concerning recent progress or commitments made by the United States Department of Labor (USDOL) to administratively reform certain aspects of the temporary foreign agricultural H-2A "guest worker" program. I welcome this opportunity to respond.

On January 8 of 1998, I received from the U.S. Department of Labor the first written reaction to six of the ten reforms as proposed by Georgia agricultural producers. I requested this written response during a November 7, 1997 meeting with the USDOL officials responsible for administering the H-2A program, held in my Washington office. I have enclosed the USDOL's response for your review.

In the way of an update on my attempts to seek administrative reforms of the H-2A program, last spring I submitted the ten grower proposals to the Congressional Research Service (CRS) requesting a legal analysis of the grower proposals to determine which, in the opinion of CRS, could be administratively modified, and which would require legislative action. Of the ten reforms proposed by the Georgia growers, four were identified by attorneys at CRS as being subject to administrative modification. It is these four that represent the substance of the USDOL response enclosed. The USDOL also included in its response comment and clarification, which I requested, on two of the remaining six grower proposals.

On another--no doubt related-- front, the U.S. General Accounting Office (GAO) released on December 31, 1997 a 150 page report entitled "H-2A Agricultural Guestworker Program: Changes Could Improve Services to Employers and Better Protect Workers." I am attaching this report.

The GAO report supports the cause of Georgia growers in specifically recommending that

the H-2A application be submitted by the grower to the USDOL regional office 45 days before the date of need, rather than the current 60 day requirement. While GAO's 45 day requirement recommendation represents a move in the right direction, I question whether it will ultimately prove workable for Georgia growers of highly perishable commodities. In the course of the meeting I had with USDOL officials, I argued on behalf of the Georgia growers' proposed 30 day lead time. Nonetheless I am pleased for now to see that USDOL has agreed to a 45 day requirement, as indicated in its letter to me.

Perhaps we can take comfort that the GAO also recognizes the Georgia growers' contention that the ability to predict planting and harvesting activity with accuracy is at best an inexact science, and at worst, a virtual impossibility.

Other conclusions and recommendations in the GAO's report, while not specifically proposed by the Georgia growers, would likely result in additional simplification and streamlining of the H-2A program. For example, the GAO has recommended that the Immigration and Naturalization (INS) be taken almost entirely out of the H-2A visa petition process. The GAO found that the INS role in this regard amounted to little more than "rubber stamping," and added unnecessary paperwork and fees, causing up to three weeks delay in the H-2A process. All parties seem to agree with this conclusion and recommendation, so I expect this administrative change to take place this year.

The GAO concluded that the current information provided by the USDOL to prospective H-2A employers is "incomplete, hard to understand and outdated." I agree with this finding. In this regard, the GAO recommended that the USDOL update and revise its H-2A handbook.

The implementation of the Georgia grower and GAO recommended reforms and the subsequent revision of the handbook and printing of revised forms is not likely to be complete before this spring's peak season in Georgia. Therefore, I am now encouraging USDOL officials and staff to agree to meet with Georgia Department of Labor officials and staff to begin discussing in the interim an agreement for the operation of a more fluid H-2A approval process for Georgia growers in light of the commitments made to me by USDOL, and the findings of the GAO report.

I am pleased to see that USDOL is willing to adopt at least part of the Georgia growers' proposals and GAO recommendations for administrative modification, and am confident that I and other Members of Congress in our oversight role can successfully push for administrative implementation by the end of the year. Meanwhile, it is my hope that better communication and understanding of the program can begin in the immediate future, especially to meet the needs of Georgia growers who experience localized labor shortages caused by INS enforcement activities.

I look forward to continuing to work with you to make this program workable in the upcoming planting and harvesting seasons, as well as the longer term.

Sincerely yours,

Sanford D. Bishop, Jr.
Member of Congress

SDB:kk

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210



JAN - 8 1998

The Honorable Sanford D. Bishop, Jr.
U.S. House of Representatives
Washington, DC 20515-1002

Dear Congressman Bishop:

We appreciated the opportunity to meet with you on November 7 to discuss in detail several of the changes to the H-2A temporary nonimmigrant farm worker program proposed by your constituent Georgia growers. In addition, thank you for providing a copy of the Congressional Research Service's (CRS) analysis of the growers' proposals.

As you requested, this confirms information and views we provided in this meeting regarding the proposals for changes to the H-2A program the CRS believes do not require legislative change. We have identified each proposal by the number listed in the CRS analysis. Our comments are as follows:

1. The requirement that a prospective employer's H-2A application must be filed at least sixty (60) days prior to the date of need should be reduced to thirty (30) days.

The Department of Labor (Department) is required by law to issue H-2A labor certifications at least 20 days before the first date of need for H-2A workers. As a result, the Department believes that reducing the filing period from 60 to 30 days will not provide adequate time for potentially effective domestic recruitment. Ten days would not be adequate to perform meaningful domestic recruitment.

The Department does recognize the difficulty growers face in predicting the number of workers that will be needed 60 days before the date of need and, therefore, intends to reduce the lead time for filing applications for H-2A workers from 60 days to 45 days. In addition, the Department will discuss with the Immigration and Naturalization Service (INS) possible streamlining in the INS H-2A visa petition process.

2. H-2A employers should be allowed to end the contract period based on the "duration of crop" activity, including market conditions (as well as "acts of God").

Under current regulations, growers must specify the contract period for which they need workers (initially for recruitment purposes) and provide both domestic and foreign workers with a "three quarter guarantee" of the number of hours in the job offer contract period or pay for any shortfall. This requirement is an attempt to insure that both domestic and foreign workers who may travel long distances and/or forgo other employment opportunities to accept an H-2A job offer are

Working for America's Workforce

treated fairly. Growers have the latitude to reduce the contract period by up to 25 percent without any justification. In addition, growers can further reduce the contract period based upon "acts of God", such as weather conditions, but not for market conditions. Growers also have the latitude to assign alternative work if it is incidental to the job described in the application and can seek the assistance of the State employment service in securing alternative jobs for domestic workers in the event the grower is not able to provide the 75 percent of the work which had been guaranteed.

The Department believes that the regulations afford growers a significant amount of flexibility, especially since it is the grower/applicant which unilaterally establishes the contract period in the first place. The Department also believes that it would be unfair for low-wage farmworkers -- both domestic and foreign farmworkers -- to assume an even greater portion of the grower-employer's business risk should the farmworker choose to take employment, and that this change would contribute to discouraging domestic farmworkers from accepting such employment.

4. Change the "50 percent rule" so that, once certified, H-2A employers are obligated to hire only local workers (non-migrants who reside within commuting distance) for the duration (100%) of the H-2A work period (i.e., the duration of crop activity).

The current "50 percent rule" represents a compromise between domestic farmworkers who believe they should benefit from a hiring preference through the end of the contract period and growers who believe that any requirement to hire domestic workers should end with labor certification (i.e., well before the start of work). Migrant workers often travel significant distances for short term seasonal work and a change to the "50 percent rule" as proposed would further reduce seasonal work opportunities available for domestic farmworkers who often seek to link a series of short-term, possibly overlapping jobs.

9. Eliminate the requirement that farm labor contractors (FLCs) must be used by employers who apply for H-2A certification if use of FLCs is the prevailing practice in the area and crop.

One of the primary objectives of the H-2A program is that domestic farmworkers be given preference in agricultural employment and that every avenue is explored and utilized in recruiting domestic farmworkers prior to allowing foreign workers into the country. In some regions and crops FLCs are used as a matter of practice by growers for securing sufficient domestic farm labor during peak periods. It is in those regions and those crops that the Department of Labor requires use of the licensed FLCs by growers submitting H-2A applications. This requirement helps assure that every effort is made to secure a domestic workforce; failure to require the use of licensed FLCs would ignore a significant resource for domestic recruitment.

Nonetheless, the Department acknowledges and agrees that some FLCs are the cause of serious labor abuses. In this context, your staff inquired as to whether an exception to this requirement could be made in those areas where the FLCs have a history of relying on undocumented workers or labor abuses. We have asked our legal staff to examine this issue more closely and we will further advise when we have completed this review.

In our conversation with you and your staff, we also discussed two grower proposals that CRS had not identified as regulatory in nature:

7. Allow foreign workers to move from one H-2A certified employer to another at any time during the certified period of employment, with the final employer responsible for transportation costs back to the worker's country of origin.

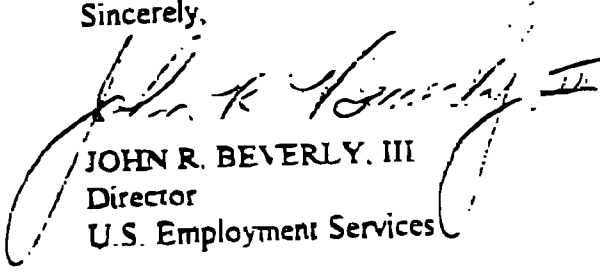
The H-2A program does allow for movement of H-2A workers among certified employers and, in fact, it is a common practice in some areas and crops. We would be pleased to speak with Georgia growers interested in pursuing transfer of H-2A workers.

8. Strengthen the program of registering FLCs by requiring both certification/licensing and bonding. At a minimum, allow an employer to require bonding as a condition of employment of an FLC.

As we explained, the Administration did attempt to broker an agreement between growers and worker advocates for legislation on this issue a few years ago, although this initiative was not successful. The Department would be pleased to work with you in achieving such a requirement and would also note that some states already impose this requirement on FLCs operating in their jurisdictions.

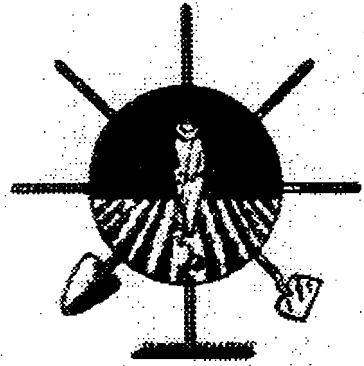
Again, we appreciated the opportunity to meet with you and your staff to review the Georgia growers' proposed changes to the H-2A program. We understand your commitment to making the H-2A program more responsive for the growers and we look forward to further discussions on how we might be able to assist you.

Sincerely,


JOHN R. BEVERLY, III
Director
U.S. Employment Services


JOHN R. FRASER
Acting Administrator
Wage and Hour Division

FARMWORKER JUSTICE FUND, INC.
1111 19th Street, N.W., Suite 1000
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FAX COVER SHEET

Please Deliver to:
Diana Fortuna

Fax #: 456-7431
Company: Domestic Policy Council

From: BRUCE GOLDSTEIN

Pages: 4

Message:

The high-tech industry's request for more temporary foreign (H-1B) workers occurs at the same time as a similar request by the agricultural industry's demand to "reform" the H-2A visa program or create a new "H-2C" program.

The attached paper draws your attention to a new GAO report on the guestworker issue.

Thanks for your time.

This fax may contain confidential or privileged information. If you receive it in error, please contact the sender and do not distribute. Thank you.

*To Julie Fernandes -
I think this is
your issue. This guy
is a good advocate.
-Diana*

Press Release Farmworker Justice Fund, Inc.
For more information, contact Bruce Goldstein, (202) 776-1757

January 6, 1997

Congressional Report Contradicts Agribusiness Demands for New Guestworker Program and Finds Failure to Protect Farmworkers

A new Congressionally-sponsored study repudiates arguments by tobacco, fruit and vegetable growers who are lobbying for a new temporary foreign agricultural worker program. On December 31, 1997, the U.S. General Accounting Office issued "H-2A Agricultural Guestworker Program: Changes Could Improve Services to Employers and Better Protect Workers." Nonetheless, legislative hearings are expected on the report and on bills promoted by agribusiness (H.R. 2377, H.R. 2595, S. 1563 and S. 169).

No Impending Agricultural Labor Shortage

The GAO concludes that agribusiness does not now and will not soon face an agricultural labor shortage. The GAO's finding of a labor surplus echoes the conclusions of the U.S. Commission on Agricultural Workers (1992), the U.S. Commission on Immigration Reform reports (1995 and 1997), and recent academic studies.

High unemployment in America's major agricultural counties; the special agricultural worker immigration amnesty program of the late 1980's, which legalized the status of 1.1 million farmworkers; employers' hiring of unauthorized immigrants; a lack of INS resources devoted to worksite enforcement in agriculture; declining real wage rates in labor-intensive agriculture; and former welfare recipients' entry into the low-wage labor force -- all point to continuing agricultural labor surpluses. (pp. 24-29)

While the GAO suggests that there could develop localized labor shortages, it noted the widespread belief that employers should respond to the market place by increasing wages, improving recruitment and modernizing their labor practices. (pp. 29-30) The GAO reports that the dollar value of production of fruits, vegetables and horticultural varieties (labor-intensive agriculture) increased by 52% between 1989 and 1995, to \$15.1 billion, and continued investment in new farm production reflects "a long term confidence that agricultural labor would be available." (p. 29, 98) GAO cited a study which concluded that substantial wage increases would have little effect on consumer produce prices or international competitiveness. (p. 30 fn. 27)

The GAO estimates that two-thirds of the agricultural field labor force of 1.6 million workers are citizens or permanent resident aliens. (p. 31) Growers have been exaggerating the percentage of unauthorized immigrants in the farm labor force in support of their argument that they are facing labor shortages (but also claim that they do not "knowingly" hire unauthorized immigrants). The percentage of undocumented farmworkers would be much lower if not for the growers' low wages, harsh working conditions and use of unscrupulous labor contractors. U.S. workers can't compete against desperate unauthorized immigrants or vulnerable guestworkers.

The Current Guestworker Program Does Not Prevent Growers From Securing Guest Workers When Sought

GAO finds no evidence to justify agribusiness' radical demands on Congress to eliminate current wage, working-condition and recruitment requirements in the current H-2A guestworker program. Contrary to agribusiness claims that the H-2A program is too burdensome, the GAO finds that the Department of Labor approves 99% of employers' applications. GAO rejects the growers' claim that the H-2A program could not meet agribusiness' needs if labor shortages developed. (p. 63)

Presently there are about 15,000 workers brought in each year under the H-2A program (pp. 45, 101), and GAO says, "non-H-2A employers joined others in asking why one agricultural employer would be unable to find a single domestic worker, while a neighboring employer could find all he or she needed." (p. 59)

"The Department of Labor has gone out of its way to approve employers' applications for temporary foreign workers even though for at least the last decade there has been an oversupply of agricultural workers who are citizens or legal permanent residents," said Goldstein of the Farmworker Justice Fund.

GAO notes DOL's failure to meet certain time deadlines, although DOL blamed that on employers' failure to supply required information. (p. 47) GAO suggests some ways to speed up the Department of Labor's process for approving employers' requests for foreign workers, primarily by reducing time limits on filing applications and eliminating the INS role. (p. 48-49, 67). Although GAO would retain the current recruitment period, it nonetheless sends the wrong message. Employers who claim that they cannot find workers from year to year should be spending **more time** planning to secure workers.

Foreign and Domestic Farmworkers' Rights Are Not Enforced

The GAO concludes that there are "impediments in enforcing" the worker protections under the H-2A program that should be fixed. (p. 10) The GAO finds that many foreign workers lack knowledge of their rights or are too fearful of losing their jobs to file complaints. (p. 58) Such fear is inherent in the second-class status of "non-immigrants" under guest worker programs. It is an indentured servant status.

GAO correctly concludes that H-2A growers' "positive recruitment" (private-market efforts to find workers inside the U.S.) rarely succeeds, and that the job service rarely refers U.S. farmworkers, especially to H-2A growers. (p. 58) "It is common knowledge that H-2A employers do not want U.S. farmworkers," said Goldstein.

GAO correctly points out that the H-2A minimum work opportunity -- "the three-fourths guarantee" -- is important and apparently has been evaded on a large scale by North Carolina H-2A employers. Requiring employers to provide a minimum amount of work opportunities is important for workers who have traveled long distances, and discourages employers from over-recruiting to take undue advantage of an oversupply of

labor. An employer's failure to comply with this requirement also discourages U.S. workers from returning to such employers; guest workers, by contrast, are desperate enough to return each year. Growers have established artificially long work seasons and when the workers "quit" before the "end" of the season, the employers claim that the work guarantee has been forfeited. (p. 60)

GAO notes that no employer has ever been barred by the DOL Employment and Training Administration from using the H-2A program for violations of law. GAO recommends that DOL's enforcement arm, the Wage and Hour Division, be granted the power to bar employers when violations occur (subject to court review). "We support this recommendation," said Goldstein, "because ETA has been too cozy with the H-2A growers and their consultants -- some of whom are former DOL officials -- and at least the Wage and Hour Division, while weak, views its mission as law enforcement."

Unfortunately, the GAO limited the scope of its study -- probably due to active political pressure by growers' supporters in Congress -- and failed to investigate many practices by the government and employers that deprive workers of their lawful earnings and other rights. GAO was also hampered by DOL's failure to collect and maintain H-2A data (which DOL blames on Congress's limited appropriations). For example, GAO does not examine

- the DOL/USDA methodology for determining the H-2A "adverse effect wage rate" (AEWR), which, contrary to the purpose of the law, allows wage rates that are depressed by the presence of foreign workers and not attractive to U.S. workers
- DOL's policy of allowing U.S. taxpayers to bear most of the cost of supplying foreign workers to agricultural employers
- the legality or fairness of the fact that 100% of guestworkers are male, nor the gender discrimination in the hiring of U.S. workers
- the recent spate of former H-2A officials who have taken jobs with H-2A employers and their lobbyists.

"Agribusiness should stop spending its money on lobbying for more exploitable 'guestworkers' and should begin to enter the 20th century in labor relations and its treatment of farmworkers as the rest of us enter the 21st century," said Goldstein.

The Farmworker Justice Fund, Inc. is a nonprofit advocacy group for migrant and seasonal farmworkers, 1111 19th Street, N.W., Suite 1000, Washington, D.C. 20036, (202) 776-1757, fax (202) 776-1792. For more information contact co-executive director Bruce Goldstein.

newgao

THE
CARTER CENTER

January 16, 1998

To Pedro Lopez

I have been following the continued hunger strike of farm workers in Immokalee. The issue of fair compensation for farm workers is highly complex. Recent letters made public between the Florida Fruit and Vegetable Association and Governor Lawton Chiles, and statements made by The Coalition of Immokalee Workers on behalf of the hunger strikers demonstrate a clear difference of views on the appropriate means for communication between workers and growers and on the basis for wage calculations.

I am concerned that the relevant facts and the appropriate compensation cannot be agreed unless there are direct talks between employers and workers on this issue. Open discussions between employers and employees' representatives are a fundamental tenet of acceptable labor relations, in all industries. I encourage both sides to act quickly on Governor Chiles' call to begin a meaningful dialogue, both in the interests of preventing any further harm to the hunger strikers and of productive relations between growers and pickers. While The Carter Center does not provide the kind of mediation services appropriate to this situation, there are a number of possible mediating bodies to whom we could refer you, if requested by all parties.

Sincerely,

Pedro Lopez
Coalition of Immokalee Workers
215 F West Main St.
PO Box 603
Immokalee, FL 34142

copy to: Michael Stuart, Florida Fruit & Vegetable
Association

DOL/USDA Presentation
April 14, 1998
Homestead, FL

First I'd like to thank you both, Secretary Herman and Secretary Glickman, for taking the time to come and show your concern for the tens of thousands of farmworkers of Southwest Florida, the men and women who work so hard every day yet receive so very little in return from these fields that feed our country.

The situation here is bad and, in many ways, getting worse. Here are just a few of the headlines to emerge from South Florida fields over the past 5 months alone (since November, 1997):

- * In two major lawsuits against area citrus producers, orange pickers accuse their employers of systematically bilking thousands of workers out of the minimum wage, paying some workers as little as \$18 for a full day's work, sunup to sundown.
- * Child labor makes a come back, with children as young as 4 years old discovered "helping" their parents pick.
- * The most extensive slavery operation in the post-Civil War history of Florida is brought to justice in a joint effort involving the farmworker community and the U.S. Justice Department, ending in twin 15-year sentences for two Southwest Florida crewleaders, Miguel Flores and Sebastian Gomez, for peonage and extortion.
- * In Immokalee, after 2,000 workers sign cards calling for a raise, and over a thousand workers walked out of the fields in several days of protest over falling wages, 6 workers begin an unprecedented hunger strike, starving themselves for 30 days for one simple demand: the right to talk to their employers about their wages. The growers never agree to a dialogue, stating publicly that nothing short of a crippling strike will bring them to sit at the same table with their workers.

In any other industry, conditions like these would have brought about some form of concerted action for reform -- either by industry leaders themselves shamed into action, or by government officials moved to bring their own weight to bear on the problems. When reports of similar abuses began to trickle out of the sweatshops of New York City last year, where, for example, workers toiled in outrageous conditions to produce a line of clothing endorsed by Kathie Lee Gifford, the response was swift and strong. With only minimal prodding, Kathie Lee joined with government officials to lend new momentum to a campaign to expose and eliminate such abuses in the garment industry.

Florida agriculture, on the other hand, continues to react to reports of abuse with

Florida to join with their workers in talks on the picking piece rate. These talks could serve as a model for the rest of the industry in Florida, and eventually, the entire East Coast.

2) Bring behind the scenes pressure on the growers to address workers' concerns in direct discussions with workers' representatives. If there is no response...

3) Hold public hearings on the intolerable conditions and labor relations that still prevail today in the fields, conditions being brought to light by workers organizing for change.

4) Launch a campaign, like that in the sweatshops, to encourage growers, through a combination of public pressure and rewards, to participate in a meaningful dialogue with workers' representatives for an industry-wide solution.

5) Use all levers available to you, including the generous tax breaks and subsidies for research and marketing that have forever been granted to growers unconditionally, to move the growers closer to a more modern relationship with their workers. Condition those monies on demonstrable respect for certain fundamental tenets of labor relations, including and most importantly, open discussions between employers and employees' representatives.

In summary, we must agree on three things for change to be possible:

1) There is a need for change

2) The Departments of Labor and Agriculture must be committed to using the many forms of leverage available to them to help bring about change

3) The locus of change is necessarily the farmworker/grower relationship.

As that relationship goes, so go the conditions in the fields.

If we can agree on those things, then we can begin to work more effectively together, and we can make change.



TOM FIEDLER

Published Sunday, September 27, 1998, in the Miami Herald

Jeb Bush is picking the issues

Imagine yourself, man or woman, toiling as a Florida farm worker. You'd be up before dawn to be bused to the fields, where you'd stay as a scorching sun rose. Stooped over endless rows of fruits or vegetables, you'd exchange full buckets for empty ones, while ignoring the cuts on your hands, the ache in your back, the mind-numbing boredom, the taunts of the foreman.

And at the end of the day someone would tally the buckets and count out your pay — 40 cents for each bucket you filled, totalling perhaps \$150 a week before deductions for rent and food.

If you're picking tomatoes, it's the same pay you would have gotten 20 years ago.

Little wonder that last November an Immokalee farm worker named Lucas Benitez petitioned farm owners to meet with pickers to discuss a 10-cents-per-bucket wage hike. The owners refused to talk.

A sit-down strike by some workers similarly failed to move the owners. So last December, six workers staged a hunger strike.

After 30 days, former President Jimmy Carter persuaded the six to abandon that tactic before they killed themselves. Still, only one company, Gargiulo, has responded; with the growing season approaching, the impasse goes on.

So what has this to do with politics?

Last month St. Petersburg Times columnist Bill Maxwell urged the two candidates for governor to pay attention to the farm workers' plight. Maxwell, however, expressed scant hope of interesting Republican-nominee Jeb Bush who, he wrote, was likely "out of touch with dirty-hands issues."

Maxwell missed that call. On Sept. 5, in the middle of a holiday weekend, Bush appeared in Immokalee, the decrepit farming town where poverty and hopelessness delimit the human condition.

For two hours that night, this son of power and privilege met with Benitez and the Coalition of Immokalee Workers and several religious leaders who support their cause. The workers emerged impressed with Bush's sympathetic response and his ability to speak Spanish.

"He said he came so he could understand more," Benitez told me last week. "He said he couldn't give us an answer yet. But he told us that he didn't discard the possibility that if he becomes governor he would intervene as a matter of justice."

In truth, Bush didn't give the farm workers much other than his time. But even that is noteworthy when measured against what election opponent Buddy MacKay, the lieutenant governor and a Democrat, gave them, which is to say: nothing.

Benitez called this a "disappointment because the Democratic Party has always distinguished itself for being the party of the poor."

What is disappointing to Benitez should be humiliating to MacKay and other Democrats. The Immokalee meeting marks yet another instance where Bush outflanked MacKay on an issue that Democrats should own.

But that's largely been the story of the MacKay campaign. For the past several weeks, my fax machine has received a steady drip-drip of campaign releases announcing Democrats who are endorsing Bush.

Now the drip has become a gusher. In the past week Bush became the first Republican ever endorsed by the Florida Nurses Association. He also won the backing of 41 county sheriffs, including 15 Democrats. And those come on top of endorsements he won earlier from state Sens. Ron Silver of North Miami Beach and James Hargrett of Tampa, two solidly liberal Democrats.

A common thread connects these to Immokalee: Bush wins endorsements in that old-fashioned way, by picking them up, one at a time, and moving on down the row. It's hard work.

Which may be why this Republican understands the farm workers.

Herald Political Editor Tom Fiedler can be reached by e-mail at tfiedler@herald.com



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Getting in touch with HERALDlink

National Report

The New York Times

Florida Tomato Pickers Take On Growers

Making Less Than They Did 20 Years Ago, Workers Are Fed Up

By MIREYA NAVARRO

IMMOKALEE, Fla. — Jose Rocillo, who first came here from Mexico in 1981 to do farm work and at 67 still picks tomatoes, can look around this town of migrant workers these days and say that things are better. The streets are cleaner, he says, and there is less crime.

But financially, Mr. Rocillo is caught in a time warp. Seventeen years ago he made 45 cents for each bucket of tomatoes he picked; now he makes 35 cents. He used to save and send money back home, he says, but now the pay, less than \$10,000 a year, is barely enough to live on.

"Things are more expensive and the job pays less," Mr. Rocillo said recently as he sat on a rock drinking juice at the store parking lot where buses let out workers whose shirts were stained with the green of tomato at the end of the workday. "You make enough to eat poorly."

The plight of about 2,500 nonunionized tomato pickers here — mostly Haitian, Mexican and Guatemalan immigrants — is similar to that of other farm laborers in the nation whose wages, in real or inflation-adjusted terms, have fallen over the last two decades. But in this, the second-largest tomato-growing area in Florida, the state that produces nearly half of the nation's winter tomato crop, workers seeking higher wages are staging work stoppages and hunger strikes, and meeting with public officials and concerned residents to call attention to what they see more as a human rights issue than a pay dispute.

In mid-January, former President Jimmy Carter, whose Carter Center in Atlanta is devoted to resolving conflicts, added his voice to that of Gov. Lawton Chiles and Roman Catholic church officials who have urged a dialogue between growers and workers.

Mr. Carter's intervention ended a 30-day hunger strike by six workers, but the growers have yet to respond to demands for discussions. So far the 10 tomato companies that operate here have maintained through their trade association that their wages compare favorably with those



"You make enough to eat poorly," said Jose Rocillo, 67, a picker.

of growers around the country, and they contend that they are going through hard times because of increased competition from Mexican tomato growers under the North American Free Trade Agreement.

The Florida Fruit and Vegetable Association, which represents the farmers, estimated that foreign competition had forced more than half of Florida's tomato farms out of business in the last five years, shrinking the industry to 80 farms from 200. Only since 1995, when a settlement agreement set a minimum price for Mexican imports so that domestic growers could remain competitive, has the industry gained some stability, the companies say.

"Farms are holding on in a very tight competitive market," said Ray Gilmer, a spokesman for the group. "Volume out of Mexico remains very high. The only farms that are able to

survive are the very large farms that can achieve economies of scale."

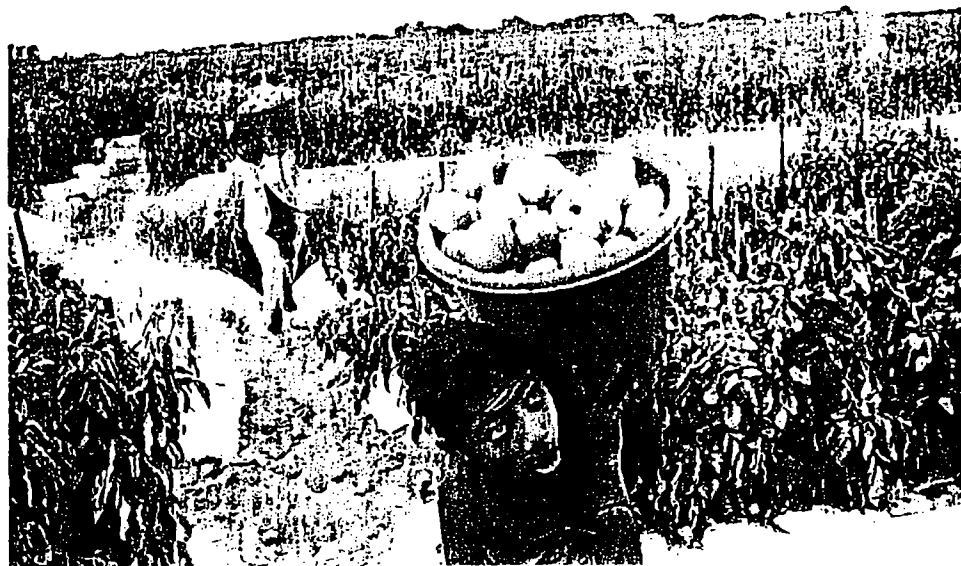
But good times and bad times in farming have made no difference to those at the lowest rung. Agricultural economists and some surveys have found that over the last two decades the wages of the nation's more than two million farm workers have declined, some by 20 percent or more, after accounting for inflation. They attribute the decline to factors like a surplus of workers and the diminishing clout of labor unions. Also, it is estimated that 40 percent of agricultural workers are in the United States illegally and are thus easier to exploit.

Immokalee, a town of about 20,000 people in southwest Florida with one of the biggest and poorest labor reserves in the state, sits in sharp contrast near wealthy municipalities like Naples. Tomato pickers in Immokalee say all production costs have gone up except their pay, with growers covering their higher costs by saving on pickers.

Depending on the time of the picking season, which runs from September to May, workers can make as much as \$100 a day or as little as \$30, they say, but by year's end most of them average a salary of \$8,000 to \$10,000, well below the poverty level of \$13,300 for a family of three. That is enough for a life style of crowded housing conditions, often in trailers, with no telephone, no car and no meat on the table most days. There are no health, vacation or pension benefits, either.

Pressing their case through the Coalition of Immokalee Workers, a grass-roots group with about 750 members, the tomato pickers are seeking an average raise of 20 cents a bucket, to 60 cents, which they say would have a negligible impact on tomato prices. They also want to end a practice called "day and a dime," which pays a flat wage for the day plus 10 cents per 32-pound bucket picked. Coalition members say that the system encourages workers to pick more but that at the end of the day it pays less than the piece rate.

"Our focus is to restore our salary



Photograph by Philippe Duchesne for The New York Times

Tomato pickers in Immokalee, Fla., are hoping to make 20 cents more a bucket than they do now. The average picker makes less than \$10,000 a year, advocates say. But the workers have begun to press their case.

to the equivalent of what it was 20 years ago — that's 20 cents more per bucket," said Lucas Benitez, 22, a former picker who now works for the coalition. "We're not asking for an increase or any benefits."

Last year 2,000 workers signed cards supporting the coalition's call for a raise. In December, 700 to 1,000 workers participated in three one-day strikes, a calibrated action that is used sparingly because most workers cannot afford to miss a day's pay. But only one grower has even acknowledged the workers' request to meet.

That grower, Gargiulo Inc., one of the biggest, agreed to raise the pay per bucket by 10 cents, to 50 cents over the next year, an action the coalition says shows that its salary demand is one growers can afford. Gargiulo and other tomato growers in the area contacted for comment did not return telephone calls.

Mr. Gilmer, of the growers' group, said a recent survey of tomato growers in the area showed workers making \$6 to \$12 an hour, with the average worker making \$8 to \$9 — higher

Farmers say they can't compete. Workers say they can't live.

than the national average for farm workers of \$7.31. But coalition members counter that the figures are inflated and that the implied annual salary, more than \$16,000 for a 40-hour week, 52 weeks a year, is not representative because picking is not a regular job. If the growers wanted to pay workers an annual salary, the coalition says, pickers would gladly accept less, like \$15,000.

Greg Ashed, a coalition staff member, said: "You can work anywhere from one to seven days a week, for two to ten hours in a day, due to weather conditions, crop conditions and availability of labor. But there's still an unspoken contract between growers and workers, which is, 'You

be there every day even if I don't have work for you.' What needs to be done is to make it a viable occupation by increasing the wage for when they do work."

The coalition, which has some victories to its credit, including exposing harsh working conditions and dissuading a company from lowering wages by staging a five-day strike in 1995, plans to step up actions with more hunger strikes, boycotts and even union organizing if the growers continue to ignore them. The pickers are also planning to send a delegation to Washington to meet with members of Congress and the Department of Labor.

Workers like Mr. Rocillo support the coalition's work — he participated in two of the work stoppages — but harbor no hope of a better life. In the end, he said, "the ones that rule are the companies."

After trying his luck in the Carolinas picking cucumbers and earning even less because of rains and the small size of the crop, Mr. Rocillo is staying put and plans to work "as long as the body takes it."

LOCAL NEWS

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Daily News

News of Naples, the region and the state

Tuesday, October 6, 1998

IMMOKALEE FARMWORKERS

Coalition: Rally makes progress against bill

By RACHELLE BOTT
Staff Writer

It took them two hours of hard discussion, but representatives of the Coalition of Immokalee Workers feel their concerns were heard Monday.

About 80 to 100 people — including 35 Immokalee farmworkers — rallied in front of Sen. Bob Graham's Miami office Monday to protest legislation that Congress is expected to vote on this week. An amendment to Senate Bill 2260, which Graham, D-Miami Lakes, is co-sponsoring, would allow local farmworkers to be replaced with workers from other countries who would work for growers on a temporary basis.

"It went well," said Greg Asbed, Coalition spokesman, of the rally.

The Coalition collected hundreds of signatures from farmworkers in the community on a petition opposing the bill. The petitions and a papier-mache "ball and chain" were presented to Graham's staff today. The ball and chain symbolize the workers' belief that if the legislation were passed, farmworkers would be unable to strike, negotiate wages, complain or even change jobs.

Asbed said Monday night a delegation of Coalition representatives met with Graham's staff and talked to representatives in Washington, D.C., via a conference call.

"We'll just keep fighting to make sure our wishes become a reality."

Greg Asbed

Coalition spokesman

"They said they're still looking into the legislation," Asbed said. "We're continuing to talk with them."

Graham's staff members weren't aware of concerns that Immokalee farmworkers had, Asbed said.

"At some point we'll need to sit down with them and talk more in depth about our concerns," he added.

Six Immokalee farmworkers protested poor wages in a 30-day hunger strike earlier this season that ended Jan. 18 after former President Jimmy Carter urged growers and workers to talk to one another. Workers have said the pay of 40 cents per 32-pound bucket of tomatoes has not changed in nearly 20 years.

If the legislation passes, Asbed said the Coalition will refocus their protests to the White House, where a presidential veto can occur.

"We'll just keep fighting to make sure our wishes become a reality," he added.

St. Petersburg Times

Florida's Best Newspaper

W 75;
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WEDNESDAY, AUGUST 19, 1998

OPINION

Farm workers need a governor's help

Florida farm worker advocates who want our next governor, either Buddy MacKay or Jeb Bush, to help those who put food on our tables had better prepare for continued disappointment.

If the campaign money chase means anything, then neither MacKay nor Bush will seek to improve the lot of farm workers. Both candidates, MacKay to a less extent, are in the pockets of Florida's \$6-billion-a-year agriculture industry — a group responsible for some of the world's worst labor practices.

Neither candidate has shown signs of focusing on farm worker issues. Yet Bush implied that he would do so. A few months ago during an interview, he suggested that, if elected, he would take up the cause of farm workers. He may keep his word.

"As to who represents people in the political process that don't have lobbyists, it's the governor," he said. "If the cause is just, I think it's appropriate for governors to intervene. In the case of farm workers, they do play a critical role. If laws are being violated, if health and safety laws are being violated, if laws related to pay are being violated, we should enforce the laws.

"The disenfranchised are deserving of a voice. And while I might not agree with every case in this regard, I will listen to every case because I believe that it is an important responsibility of being governor to represent people who have been left out or who don't have the ability to hire a lobbyist."

While Bush's words seem sympathetic toward farm workers, his campaign pursues wealthy growers — mostly conservatives dismissive of farm workers and their issues. Florida's agribusiness, in fact, has dumped megabucks into Bush's campaign. And the nation's largest sugar cane grower, U.S.



BILL MAXWELL

COLUMNIST

Sugar, has divvied up as much as \$300,000 among Bush and other GOP hopefuls.

Recently, writes Mark Hollis for the *New York Times*, Bush mailed letters to GOP members of Congress asking them to support a federal proposal requiring country-of-origin labeling on import products. Growers want the legislation. Supermarket executives oppose it.

"Jeb is an advocate of free enterprise and capitalism," Luis Rodriguez, a fifth-generation farmer who heads an agricultural consulting firm in Fort Lauderdale, told Hollis. "When he talks about ... getting government off your back, that is very attractive to people in agriculture. I think MacKay understands it, too. But he (MacKay) puts it in the scale and weighs it with the environment."

Indeed, many farmers hate MacKay's support of the environment. Big Sugar, especially, despises him for backing efforts to force growers to pay their fair share to clean up the Everglades.

To add insult to injury, MacKay hired Robin Rorapough as his campaign manager. Rorapough, a former labor organizer, moved to Florida two years ago to lead the Save Our Everglades campaign, which, while failing to win a penny-per-pound tax on sugar, won two less glamorous measures aimed at Everglades cleanup. Big Sugar cannot for-

give her and her boss.

Still, MacKay, like Bush, is no friend of farm workers. Belonging to an old farming family, MacKay enjoys loyal support among many citrus growers. Although the citrus industry always has been one of the most abusive to farm workers, MacKay and his running mate, former state Sen. Rick Dantzler, who represented farmers in his native Polk County, are making overtures toward citrus mogul Ben Hill Griffin III and other growers.

Obviously, these overtures do not include improving the plight of farm workers. And, like Bush, MacKay has concocted various plans to improve education, to bring money into inner cities and to increase farmers' profitability. Where are their slick plans to help farm workers?

Let me suggest to MacKay and Bush that the cause of farm workers is a just one, that their rich pals routinely violate health, safety and wage laws. This just cause needs the next governor's blessings, political skills and moral leadership to convince legislators and voters that farm workers are humans worthy of fairness and decency.

Our new governor ought not ignore the plight of farm workers. If he does, he will be as morally insensitive as his predecessors. He, along with the secretaries of labor and agriculture, should remember that they represent not just farmers but farm workers and their children, as well.

To start their understanding of the problems that farm workers face, I challenge MacKay and Bush to telephone Lucas Benetiz of the Coalition of Immokalee Workers at (941) 657-8311.

COMMENTARY

The feds 'see' plight of Florida farmworkers

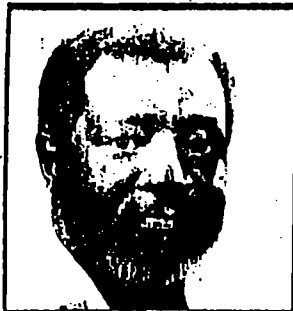
FLORIDA CITY — U.S. Labor Secretary Alexis Herman and Agriculture Secretary Dan Glickman came here, 30 miles south of Miami where most of the nation's winter vegetables and exotic fruit are grown, to investigate reports of poor conditions under which Florida farmworkers struggle.

Here to save face, Herman and Glickman seemed out of place walking through rows of zucchini and yellow squash. They appeared apprehensive touring migrant housing, buffoonish playing with toddlers in a day care center.

The White House duo came because a tomato boycott and a 30-day hunger strike, carried out earlier this year by the Coalition of Immokalee Workers, drew international attention to Florida's continuing harvest of shame.

Why were a boycott and the electronic images of starving men needed to remind Herman and Glickman that, in addition to looking after the welfare of growers, they are legally — and ethically — obligated to protect farmworkers?

The two Cabinet members are the highest-ranking federal officials to visit the Sunshine State in the interest of farm workers since then-Labor Secretary Elizabeth Dole did so in 1990. Eight years after Dole's visit, Herman and Glickman saw many of the same conditions during their 24-hour tour. Some conditions, each secretary acknowledged, have worsened.



Bill Maxwell

Like Dole, Herman focused on reports about young children working as field hands. "What we have to make sure of," she said, "is that our children have the ability to do homework — and not farm work."

Herman has good reason to worry. According to state and federal investigators, child labor abuses are making a comeback. An Associated Press

reporter said that, in a single day, for example, he observed eight underage children picking beans on a nearby farm. On any given day, children can be found in fields throughout Florida. Farm worker advocates claim to have seen children as young as 4 years old picking in fields.

Why are children working as field hands?

Jorge Fuentes, a 22-year-old Mexican who earns \$165 a week, had an answer that is shared by most farm workers: "We have no choice but to bring our kids with us to the fields. My 7-year-old son has to work. We have two younger kids. We have to feed them. If we got more money for our work, our son wouldn't have to go to the fields."

According to a statement that Herman and Glickman jointly released, President Clinton is trying to find \$5 million to hire 36 more agents to investigate and enforce child labor laws and to establish a registry to collect data on child labor and farm work. Although

this is a welcome move, it will produce few benefits if wages remain low.

To their credit, both secretaries will provide money for programs to help improve the lives of farmworkers. For instance, Herman unveiled a \$12-million plan to renovate several buildings at Homestead Air Reserve Base for a Job Corps. And Glickman announced that his agency will allocate \$17.7 million to build 198 housing units in a development constructed after hurricane Andrew.

While praising Herman and Glickman for visiting South Florida, organizers of the Coalition of Immokalee Workers worry that Beltway bureaucrats do not fully understand the seriousness of farmworker problems, especially those of tomato pickers on Florida's west coast. Their income has remained stagnant for the last 20 years, while the cost of living has nearly doubled in that period.

"In any other industry, conditions like these would have brought about some form of concerted action for reform — either by industry leaders themselves shamed into action, or by government officials moved to bring their own weight to bear on the problems," coalition spokesman Lucas Benitez said in a prepared statement at the meeting with the secretaries.

"When reports of similar abuses began to trickle out about the sweatshops of New York last year, where, for example, workers toiled in outrageous conditions to produce a line of clothing endorsed by Kathie Lee Gifford, the response was swift and strong. With only minimum prodding, Kathie Lee joined

with government officials to lend new momentum to a campaign to expose and eliminate such abuses in the garment industry. Florida agriculture, on the other hand, continues to react to reports of abuse with silence."

Benitez and other coalition workers recognize the real problem in Florida agriculture. "Only by making the worker/grower relationship more modern and more human can we make the conditions that we as workers face in the fields more modern and more humane," he said. "That relationship is the root of our problems, and that relationship has to be the root of any possible change."

Benitez hopes that because the White House is showing interest in farmworker problems, Florida's Republican-controlled Legislature will begin to see farm workers in a more positive light.

"At least the secretaries of labor and agriculture said that they must not only be for the growers but for the farmworkers too," Benitez said. "This shows that they are thinking about our problems on a higher level. Clearly, if our voices are reaching the White House, then how can it be that the politicians in Florida won't pay more attention to this very important issue?"

Florida legislators, nearly all of them captives of agricultural lobbyists, have a long history of snubbing farmworkers. As pragmatists who have spent many years in Florida's labor battles, veteran farm worker advocates are taking a wait-and-see posture. Interest from the White House may not faze elected officials here — not a whit.

More workers could leave industry

By Tracy Rosselle
Assistant Eastern Editor

It's one of those perennial issues that flare up from time to time. But in Florida, farm labor may be heating up as an alarmingly permanent problem for growers who already pay hourly rates comparable to the daily rates paid by their chief rivals in Mexico.

Spot shortages of farm workers arose last season, and some predict the problem will worsen this fall. Additionally, advocacy groups have taken up the workers' cause to improve wages and living conditions, forcing growers into a public relations battle.

The most visible sign of trouble: a month-long hunger strike by six Immokalee, Fla., tomato pickers, which ended in January as The Carter Center in Atlanta tried to intervene with a mediation offer. Since then, the Coalition of Immokalee Workers — which represented the strikers and called for a dialogue with tomato growers to boost the current piece rate of 40 cents per 25-pound bucket — has garnered the support of dozens of southwest Florida clergy.

In July, a group calling itself Religious Leaders Concerned took to the streets of Immokalee to highlight what it called the "dehu-

**'You can't blame
(the workers).
They're moving on-
ward and upward
and living the Ameri-
can dream.'**

Jay Taylor
Taylor & Fulton Inc.



manizing wages" and "abject" living conditions of local farm workers. To garner additional support, the group has launched a letter-writing campaign to more than 5,000 religious leaders around the state and likely will increase its public pressure later this fall when harvest nears.

Only Gargiulo Inc., Naples, Fla., has agreed to raise its piece rate to 50 cents per bucket beginning this November. Company officials said they're simply trying to keep a consistent, available supply of workers to meet harvesting needs at a time when other industries — construction, landscaping, tourism — are siphoning workers from agriculture.

Others said the labor competition from other industries has caught their attention, too.

"Labor is an ongoing issue and something we're going to have to stay on top of," said Jay Taylor, president of Taylor & Fulton Inc., Palmetto, Fla. "As unemployment has gone down in Florida, there's been a tremendous amount of opportunities outside agriculture for the people who've traditionally worked in agriculture. You can't blame them. They're moving onward and upward and living the American dream."

Taylor said the issue has forced him to implement different strategies this fall to attract and keep the quality of workforce his operation requires. He won't discuss his plans.

Elsewhere in Florida, one industry's dwindling legacy is reverberating into other commodities. Tomato and other vegetable acreage in Homestead, Fla., has declined to the point that labor is getting tight for high-volume tropical items like limes, said Craig Wheeling, chief executive officer of Brooks Tropicals Inc., Homestead.

Workers who've traditionally stuck around following the winter vegetable season to harvest the region's tropical fruits are getting scarce, he said.

Florida Farm Workers Fast for Better Wages

5 Enter Day 24 of Hunger Strike to Fight Pay They Say Is Lower Than It Was 20 Years Ago

By Donald P. Baker
Washington Post Staff Writer

IMMOKALEE, Fla.—Blue-and-white buses straggled into the pot-holed parking lot about 5 p.m. and disgorged hundreds of migrant workers from Mexico, Guatemala and Haiti, their hands and clothes stained green from another day of picking tomatoes under the hot Florida sun.

Augustin Soriano, 24, walked to a nearby pickup truck and joined a line of workers waiting for their daily paychecks. Soriano, who came to Southwest Florida from Oaxaca, Mexico, in 1992, shrugged when he looked at his check for \$51.72. It said he had picked 140 buckets of tomatoes, at 40 cents each, in six hours. Including the bus trips to and from a field operated by B & D Farms, plus waits in the field for the plants to dry from rain showers, it had been another 12-hour day.

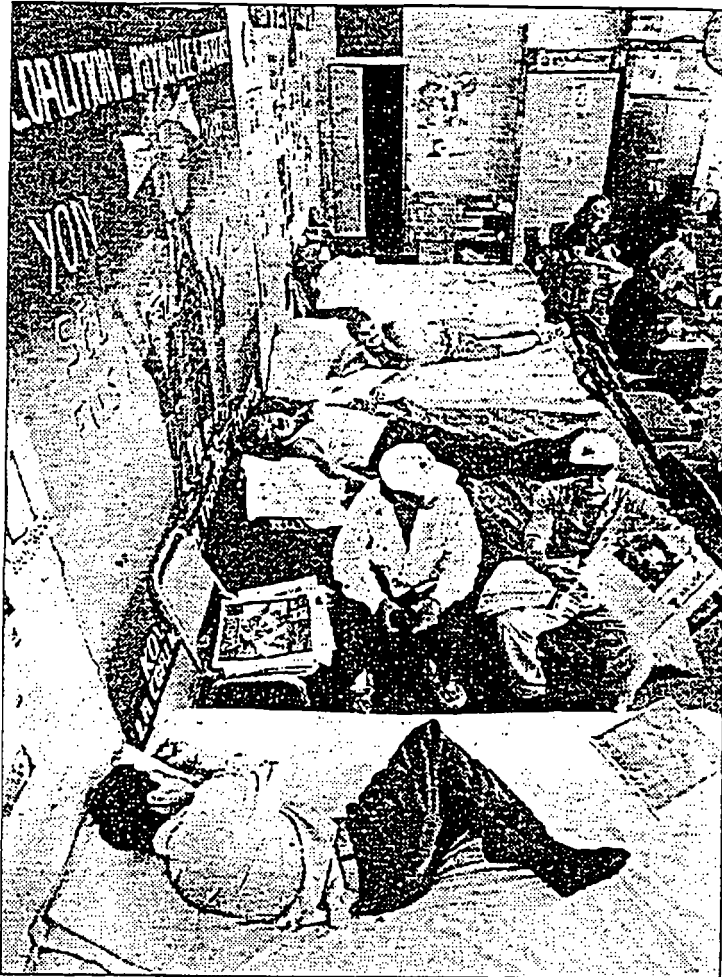
In the view of many migrant workers here—encouraged by the Coalition of Immokalee Workers—that is too long for too little. Five of the farm workers are in the 24th day of a hunger strike, protesting wages they say are lower than they were 20 years ago and demanding talks about a raise from the growers who hire them and their fellow migrants.

The strikers got a boost Friday, when Cardinal William H. Keeler, the Roman Catholic archbishop of Baltimore, stopped by to pray with the striking workers. "It was a chance to pray and to bless," said Keeler, who was accompanied by Bishop John Nevin of nearby Venice, Fla., also a supporter of the fasters.

One of the fasters, Domingo Jacinto, 32, said the cardinal "made me feel we should continue on with the struggle." But Jacinto, who had just been released after a two-day stay in a Fort Myers hospital, was so weak that he gave up his fast Saturday. He vowed to stay with the remaining five, whose ages range from 24 to 47. "I want to be with my companions," he said softly.

With the cardinal and accompanying reporters gone, the strikers stretched out on the cots where they have been living for 3½ weeks and discussed their struggle. They began drinking only water and juices Dec. 20, a couple of weeks after more than 1,900 of their co-workers signed documents demanding a meeting with the region's 10 leading growers. The workers' goal is 60 cents for each 32-pound bucket they pick.

According to the nonprofit coalition, workers in these sprawling tomato fields at the edge of the Everglades made about 50 cents a bucket



Tomato pickers fast at Coalition of Immokalee Workers headquarters in Florida. Among supporters are Gov. Lawton Chiles and religious leaders.

20 years ago. That rate was cut to 45 cents 10 years ago and now is 40 cents.

Growers say the lower rates are offset by improved working conditions, such as staked plants, that allow the workers to pick more tomatoes in a day.

"Tomato workers make a lot more than other farm laborers," said Larry Lipman of Fort Myers, an owner of Six L's, one of the biggest growers in a region whose abundant fields have led 2,500 migrants to make their home base in Immokalee, the most of any town in Florida.

In the early days of their protest, the fasters went to Tallahassee, the state capital, and won a meeting with Gov. Lawton Chiles (D), who subsequently urged that "growers begin a meaningful dialogue with representatives of these workers."

In a letter to Chiles, Michael J. Stuart, president of the Orlando-based Florida Fruit and Vegetable Association, said, "FFVA sincerely

regrets that these individuals have chosen to endanger themselves." He said "tomato growers, as a matter of course, communicate with their employees each working day" in the fields "to stay informed about worker issues and concerns."

Stuart said "southwest Florida tomato harvesters compare very favorably with farm workers in other states, earning from \$6 to \$12 an hour, or more."

Yet, Stuart said, because of "increased competition from foreign producers . . . more than half of Florida's tomato growers have folded in just the past five years and thousands of farm jobs have been lost."

Greg Asbed, an activist who grew up in Bethesda and who helped organize the nonprofit workers group five years ago, conceded that while a picker can make \$80 a day at the height of the season, on many days, particularly rainy ones, the workers get nothing. The important figure,

Asbed said, is that the workers average only \$9,000 a year.

The coalition also wants to eliminate a pay system used by some growers called "a day and a dime," which it contends punishes the best workers. Under that plan, workers are paid the federal minimum wage of \$41 for an eight-hour day—they get no overtime, regardless of how long they are in the fields—plus 10 cents a bucket.

A chart on the wall, titled "No More Day and a Dime," illustrates what the workers describe as the scheme's shortcoming: A worker who picks 140 buckets in a day, as did Soriano, earns \$1 less than if he had been paid the straight piece rate of 40 cents a bucket; at 160 buckets, the loss is \$7; at 200 buckets, \$19.

One of the major growers, Garguilo Co., of Naples, Fla., accepted the coalition's invitation to meet with the workers. Following the meeting, it agreed to a 10-cents-an-hour raise for the current season and is considering another 10-cent raise next November. The other growers have refused to meet with the coalition.

"We did what we thought was the fair thing for our workers," said Gerry Odell, head of Eastern operations for Garguilo.

Picking tomatoes is "hard work, and no one wants to do it," he added. "The only labor force available for harvesting fruits and vegetables are migrant laborers."

And the best of the workers find better jobs, in fast-food restaurants or in tourism, or head north for other fields after the peak picking season here, Odell said, leaving growers with less-experienced workers for the equally important jobs of planting, staking and tying the tomatoes.

Those who stay here year-round go three months without work, crowding into overpriced shanties or trailers that rent for \$1,000 or more a month.

Augustin Soriano, who lives with his wife, a couple of brothers-in-law and several other men in a rickety triplex for which they pay \$154 a week for two bedrooms and a tiny kitchen, said he is counting on the fasters to win concessions from the growers.

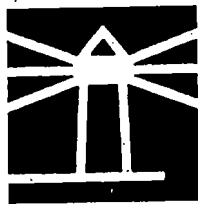
"You have to kill yourself" in the fields, he said, "and some days, it's not enough to make your day."

FOR MORE INFORMATION  For statistics and recent articles on new immigration laws, click on the above symbol on the front page of The Post's Web site at www.washingtonpost.com

EDITORIAL & OPINION

Sunday, September 13, 1998

'Give light and the people will find their own way.'



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Immokalee farm workers

Bush's visit was first step on long road to solutions

Good for Jeb Bush.

He came to Immokalee last weekend to listen first-hand to the concerns of hard-working migrant workers about dismal wages and housing.

Then he emerged from a nearly two-hour private meeting and did something even smarter: He made no promises on what, if anything, he would do if elected governor of Florida on Nov. 3.

Smart because he chose not to curry public favor — though the ranks of the migrants' sympathizers are expanding — at the expense of the poorest of the poor.

Smart, on another score, for fear of alienating agribusiness interests who he will need to enlist in a quest for a better way, if elected.

With big growers refusing workers' repeated calls to meet face-to-face, Bush's very appearance was bold in itself.

The only part of the encounter between Republican Bush and the Coalition of Immokalee Workers that fell short was its closed doors. The general public and the media — except for St. Petersburg Times commentator Bill Maxwell — were barred from watching and listening. Maxwell, whose columns are featured regularly in this newspaper, was allowed in because he wrote months ago that Bush — among one of America's most elite and powerful families — was out of touch with such dirty-hands issues.

Bush rose to the challenge and, by Maxwell's account, acquitted himself admirably by asking probing questions and conversing in fluent Spanish.

The visit by Bush was a landmark victory for the Coalition, which last Christmastime staged a six-man hunger strike to rivet public attention on languishing pay rates. Coalition allies, Religious Leaders Concerned, led by Catholics and reaching out to all regional and statewide churches, seeks to keep up the heat by sponsoring public tours of where many migrants live.

Immokalee's slums, with rents rivaling the finest apartments in Naples, comprise the second part of Immokalee's economy based on poverty — manipulated to work migrants to the bone, then squeeze them dry.

How any politician can choose to be a part of the problem — either by condoning housing code violations or immigration policies that exacerbate abuses of human dignity — insults the public's sensibilities.

Bush has laid the groundwork to become part of the solution.

It remains to be seen whether Bush's gubernatorial opponent, Democrat Buddy MacKay, will match this Republican show of interest — even more striking in the shadow of a GOP-controlled county commission that could not care less.

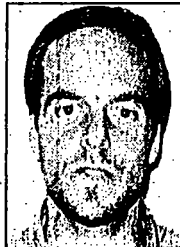
COMMENTARY

Bill would strip farmworkers of their freedom

By **GREG ASBED**/Labelle
Staff member, Coalition
of Immokalee Workers

Economics 101: Mr. I. M. Aboss, the owner of a large clothing factory, is finding it increasingly difficult to attract and retain enough qualified workers to staff his factory.

Mr. Aboss pays his workers by the piece and has not changed the piece rate in more than 20 years. What must Mr. Aboss do in order to attract more workers and reduce his turnover?



Asbed

If you answered "raise the piece rate," then you can move to the head of the class. You have mastered the basic dynamics of the free labor market: when the demand for labor is greater than its supply, employers must

raise wages or improve working conditions to attract workers to their employ. Otherwise, workers are free to find better work elsewhere.

But if you answered "ask the federal government for a bill that would establish a national registry of workers, set up a special federal trust fund to transport those workers to and from Mr. Aboss' factory, establish a special visa category to import workers from any country Mr. Aboss chooses if the national registry cannot supply enough willing domestic workers at a moment's notice, and deny those foreign workers, by law, the right to negotiate with Mr. Aboss, complain about conditions at the factory, or even change jobs," then you are probably a grower.

Indeed, just such a bill is on track to become law by Oct. 1, if agricultural interests and their backers in Congress get their way. And it will do so without a single public hearing, without a hint of the kind of public scrutiny that a law of such magnitude usually receives.

That is because those humble, salt-of-the-earth growers pulled an inside-the-Beltway fast one, attaching their law as an amendment to the Senate appropriations bill, the unsinkable legislation that authorizes the entire federal budget.

There is still time to head off this nightmare, however, if those who care about workers' rights and basic human dignity can convince Congress to remove the Senate amendment before the appropriations bill goes to a vote.

Though government studies on the agricultural labor market uniformly report that there is no shortage of workers in the fields, growers insist they are feeling the pinch. But rather than raise wages, the growers have fashioned a bill that will, among other things:

- Make it legal to pay individual workers less than the minimum wage;
- Shift the cost of recruiting U.S.-based workers to the taxpayer;
- Replace U.S.-based workers with foreign workers toiling in virtual indentured servitude, faced with immediate deportation if they strike, complain or even try to simply change employers.

By now, most Americans know that farmworkers already suffer some of the lowest wages and most difficult working conditions in the country. Some people might even think that, since most farmworkers are immigrants anyway, a bill that would make it easier for growers to contract foreign laborers won't change things much.

But that's just wrong.

It is true that farmworkers today are mostly foreign born and they are the worst paid and least protected class of workers in the country. But ultimately they are free, and that freedom is the one thing farmworkers have going for them — the one thing that makes change possible.

And change is in the air. From strawberry workers in California to tomato pickers here in Southwest Florida, farmworkers are joining together to demand a fair day's wage for a hard day's work.

Today, tomato pickers in Immokalee are free to walk out of the fields, negotiate with their employers or abandon the industry all together if the wages and conditions in the fields finally become more than they can bear.

And despite stifling poverty, more and more farmworkers are exercising that freedom to press for better wages, wages that have actually fallen over the past 20 years.

Indeed, for the first time in a long time, there is a sense of hope in the farmworker community, a sense that things might just get better around the corner, if we keep fighting for what's right.

This law would shatter that hope. This law would shackle farmworkers.

This law would replace free workers with what Mark Krikorian, writing in the Sept. 14 issue of the conservative weekly *National Review*, calls "captive" workers — workers who "can't strike, can't switch jobs, can't even complain."

This law is aimed directly at the last shred of farmworkers dignity — their freedom — and if nothing is done before the first of October, we will all feel the shame of abandoning the country's worst paid, worst treated workers in their moment of greatest need.

Call the Coalition (657-8311) for a copy of the growers' amendment. Then call your congressperson and express your opposition to the agricultural "guest worker" amendment to Senate bill S. 2260. Tell Mr. Aboss that this time he can't just change the workers, this time he'll have to change their wages.

Policy Questions and Issues for Discussion

- Should AgNet be presented as a ^{5 yrs.} ~~three year~~ pilot or a permanent service?

YES

DOL
USDA

Should growers that apply for H-2A workers be required to participate in AgNet? We could use either the carrot or the stick approach -- either reward H-2A applicants that use the system or make it a requirement for H-2A applicants to use the system.

make this part of their recruitment obligation (?)

~~What additional recruitment steps, if any, should these growers be required to take?~~

- Should the State Employment Service verify whether the worker is authorized to work?

Note: AgNet could be implemented with existing resources from the Employment and Training Administration within DOL. USDA could also provide some resources for this effort.

① Conferenced version of H-2A (on CTS)

TH on the Hill

→ Constitutionally problematic

Fall back strategy — authorizing

(John F.) to fax final

How different from registry (?)

- ① does not satisfy whole recruitment requirement
- ② two-way (not just getting workers and referring)
- ③ verification

include
in
summary
to EK/SK

Need partners to be out recruiting workers and growers for participation.

* SES should verify workers that it refers.

PROS

- ① verification is the value of this system to employers
- ② increase competitiveness of those who get yes
- ③ stops referring illegals to growers.

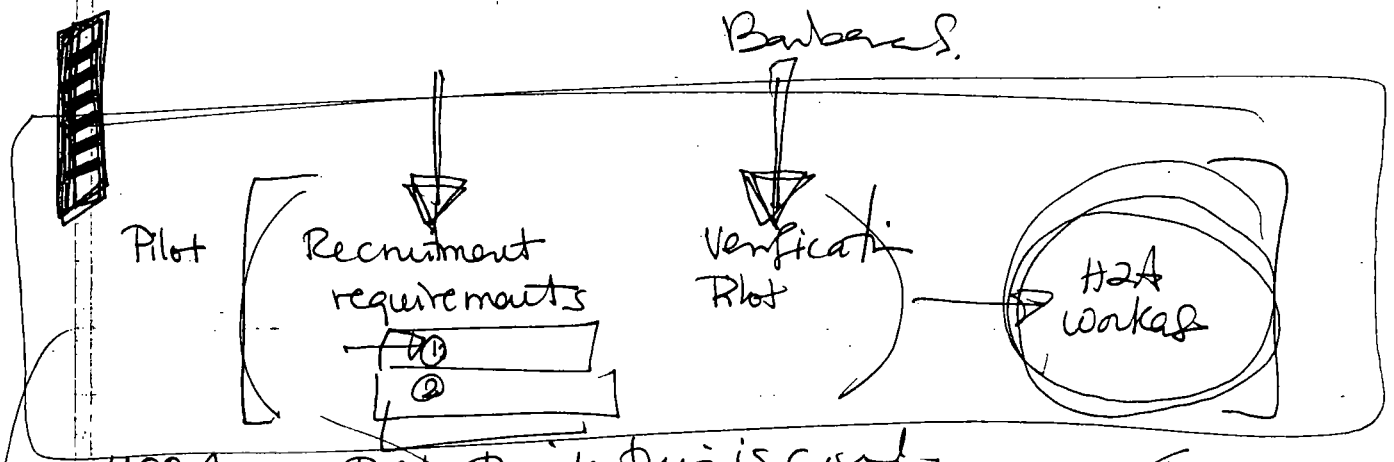
CONS

- ④ Only check farmworker discrimination (?)

Rem: would not relieve growers of I-9 responsibility

Should employers have to p

→ ^{If} timely done, would prefer to have to H2A growers have to participate in emp. verf. pilot.



USDA and DOL think this is good -

Benefits, even though doesn't address the real problem.

Keep current standards

- AEWK (wage)
- Housing
- Transport

more stable
labor supply
access to more people
⊕
help w/ assurances
on en
(stability)

Debra

Gingrich told Berman that Wyden-lite was going to be in CR, but not sure how hard they will fight for it.
Perhaps, haven't decided what to do.