DATE: June 9, 1998

TO: Julie Fernandes, DPC

FROM: John Fraser, DOL JF

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 adminisatratively – 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:

<u>A. DOL Administrative Implementation</u>

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.

accomplished

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).

accomplished (sort-of)

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.

accomplished

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.

Could achieve if Congress cuts the $ loose

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.

Could achieve if Congress cuts the $ loose.

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.

pt. of discussion

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."

NPRM

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

NPRM

NPRM

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.

stage 3 rulemaking

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.

stage 3 rulemaking

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.

NPRM

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:

stage 3 rulemaking

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).

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FAX COVER SHEET

Please Deliver to:
Julie Fernandez

Fax #: 456-5581
Company: Domestic Policy Council

From: BRUCE GOLDSTEIN

Pages: 4

Message:

Update on agricultural guestworker amendment in CJS appropriations. This is being sent to people actively working the issue for farmworkers, not for general distribution.

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DON'T ACCEPT A "PILOT" GUESTWORKER PROGRAM *OR* THE SENATE GUESTWORKER PROGRAM – THE HOUSE "PILOT" PROGRAM IS EVEN WORSE FOR FARMWORKERS THAN THE SENATE AMENDMENT

Don't be confused by multiplicity of agricultural guestworker proposals in the appropriations bills negotiations. They're all terrible.

The Republican House leadership has inserted the Senate guestworker amendment into the draft conference report on the appropriations bill for Commerce Justice State & the Judiciary. The Administration is strongly opposed to the Senate amendment.

There is talk that the Republican "fall back" position will be the so-called "pilot" guestworker program in H.R. 3410, which was approved by the House immigration subcommittee in March 1998. But H.R. 3410 was veto-bait before the Senate acted.

The "pilot" H-2C visa program in H.R. 3410 is so bad that Secretary of Labor Alexis Herman in March 1998 announced that she would recommend a veto if it were to pass. In fact, the *Senate's* guestworker amendment was described as a so-called "compromise" in response to the strong opposition to H.R. 3410. It makes no sense to revert back to the "pilot" project, even if it would limit the number of guestworker visas (a limit the growers would seek to lift next session). There is no farm labor shortage.

Here are the major substantive differences between the HR 3410 "pilot" program and the Senate guestworker amendment:

- **The "pilot" H-2C program in H.R. 3410 has even less recruitment of U.S. workers than the Senate amendment.** Both versions would end the 50-year old requirement that employers seeking guestworkers engage in private recruitment efforts to find qualified U.S. workers. Both would eliminate the employers' obligation to circulate job offers through the state-federal Job Service.

  Senate: Employers would be required to ask a new government agency, a "job registry," to (weakly, inefficiently and ineffectively) recruit U.S. farmworkers.

  House pilot: No job registry. The company would submit a specially-limited "job order" at the local office of the state job service. Any information in the job order "shall create no obligations for employers except as provided in this section. The job service (if it took any action at all) could only provide "non-employer-specific information" about such jobs, and only to the local community.

- **There is no Meaningful Job Preference for U.S. Workers in Either Version, but the House Pilot Program Would Be Even Less Protective of American Workers Than the Senate Amendment.** Both versions eliminate the longstanding rule that qualified U.S. workers must be hired if they apply to the employer during the first half of the season (the "50 percent rule," which the Bush Administration studied and reaffirmed).

  Senate: Subject to major exceptions, in some instances a qualified U.S. worker who is referred by a job registry to an employer during the first half of the season would be entitled to a job.

  House: The employer would only need to accept U.S. workers as job applicants during a 25-day period. If the employer filed the job order 30 days before the first day of work, the employer could refuse to hire U.S. job applicants beginning 5 days before the season begins, while continuing to hire foreign workers.

- **The lack of full disclosure to workers at the time of recruitment about wages and working conditions is unconscionable, but the House version is even worse than the Senate.**

  House pilot: Employer would submit a seven-sentence form to a local office of the state job service announcing that it would be hiring temporary foreign workers. This "attestation" form would not contain the terms of employment. The employer would then submit a new type of "job order" but the state agency could not disseminate any employer-specific information.

  Senate: The employer would be required to "describe" (but not specify) its job terms when it first asked the job registry for U.S. workers. The job registry would disclose the job terms to job applicants only after they were (to the limited extent the job registry was given that information by the employer).

- **Both provisions end the 56-year requirement that housing be required to workers. The farmworkers' housing problems under both programs would be critical, but even worse under the House pilot program.**

  Senate: Employers of guestworkers would be required to provide a limited housing "allowance" to U.S. and foreign workers (but not housing).

  House pilot: Employers would only need to provide a housing "allowance" (and never housing itself) in the rare instance when it is the local "prevailing practice" to provide housing or an allowance, a very difficult standard to satisfy under the Department of Labor's special definition under the H-2A guestworker program.

- **Wage provisions in both proposals would allow substandard earnings. Farmworkers under the current H-2A program would take major pay cuts under these new proposals. For example, neither of these proposals (nor a new Senate draft being circulated) guarantees payment of the state or federal minimum or overtime wage. Both bills would specifically permit abusive systems of "group rates," "task rates," and other scams. One key difference is the following:**

  Senate: *Employers would pay the higher of the local "prevailing wage" or an "adverse effect wage rate."* The "adverse effect wage rate" under longstanding law is supposed to compensate for the depression in wages caused by the presence of foreign workers. Under current law it is the regional average wage for field and livestock workers. This bill would *reduce* that wage in most places by redefining the "adverse effect wage rate" as just 5% above the local prevailing wage (e.g., 5% above a piece rate of 50 cents a box that yields less than the minimum wage), but there would be no adverse effect wage rate at all in some instances.

  House pilot: *There would be no "adverse effect wage rate."* Employers could offer the local "prevailing wage" no matter how depressed by the presence of undocumented immigrants and guestworkers.

Conclusion: America does not need a new agricultural guestworker program, permanent, "pilot" or otherwise.

For more information about the Senate guestworker amendment or the H-2C pilot project in HR 3410, please contact Bruce Goldstein, 202-776-1757. 10/8/98

10/9/98
Imokeek

Improve relations btwn growers & workers
more modern and humane.

Organizatn of religious groups in S Florida
to get ~~more~~ better relations btwn growers & workers.

oranges / tomatoes / pumpkins / strawberries / cucum.
$5.15/hr. (minimum wage)

Price of tomato bucket has not gone up in 20 yrs.

bin $7.00 (100 lbs.) — perhaps 6-8 bins per day

1st pick as low as .35 / bin

$8,000 – $9,000

No FLSA (no health insurance; no days off; no sick time)

No NLRA → no right to organize

No conditions on subsidies to growers.

Dialogue should be an important part of how to move forward.

Barriers to unionization

United Farmworkers support them

can fire you if you start to organize

H-2A

10/2/98

L. Smith into a mtg. w/leadership in next few hours.
ME told him that we had a Sec. Labor veto out on Smith.
CJS letter:
- not appropriate way to do this
- bi-partisan process

2 Qs from Lamar
Q — If H2A on CJS wrapped up in a CR, what will you do.
ME — CR should not have this kind of thing on it.
Q — What if only thing on the CR
told him again that this was not the appropriate vehicle.

Lamar wants us to be strong w/veto language. (so that he can get out of getting on this train)
Q — What if Bob Smith w/housing (?)

Talk of modifying Wyden-Smith bill to be phased in over several years.

Hispanic groups communicating their concern to Leadership (Gingrich et al).

ME to call Latino groups.

Bi-partisan group may be the way out for Gingrich.

EK: what else do we need to do on the Hill (?)

PJ: We need the strongest msg. possible to the Hill.
Q: Can we sustain veto of CJS just based on H2A

Gephardt + House & Sen leadership

H2A TPs

Rep. immigration groups (FAIR)
Gallagly Goodlett
Clayton ?

* Hispanic groups (NCLR; MALDEF; LULAC) — Maria E.

* Moderate/Labor Republicans — DOL + unions to put together ~~labor~~ plan.
* Anti-immigrant Republicans — L. Smith; Berman
ME

* Target Dems. w/ growers in their District

DOL Reg. is published today.

* Rogers ? — (he could make this go away)

JF

Religious groups (Catholic Conference)
Maureen Shea
download + make calls

Circle back on Wyden/Graham
Q: Has Larry S. talked to either? NO

Canada's program ?
held up as a model.
Papers written on it.

TUES.

(Recruitment Proposal)

@ next internal mtg.
go over recruitment proposal +
start wage idea discussion.

Set up another mtg. w/them. Put recruitment proposal on table.
1st wage discussion (preliminary).

w/Hill
Wed. / TH.

→ DOL: look again @ possible leg. ideas + pilots

Give DOL authority to set up a pilot
to test ideas
General w/ discretion

DOL ⇒ Leg. language that gives authority to DOL to construct
+ Report back w/in X time
Also for Tuesday.

ME
Hispanic groups to talk to G.
Anti-immigrant grps
Xavier

DOL
unions + Harkin

Julie (Maureen Shea)
Catholic Conf. + other religious groups

USDA
AG Reps

PJ
Daschle (Wyden-Graham)
Rogers

Tuesday

- DOL w/ Leg. approach for end-game (~~cause~~ auth. for pilots in specific areas)
- Debra w/ recruitment proposal
- Wage (beginning discussion) options & ideas
- John w/ Canadian reports.

Hill mtg
Wed. or Thurs.

Julie A. Fernandes
09/29/98 05:03:27 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Sally Katzen/OPD/EOP

cc: Laura Emmett/WHO/EOP, Shannon Mason/OPD/EOP
Subject: H2A meeting this afternoon -- update

Elena/Sally:

B. Smith legislation?
According to DOL, some Republicans (including Lamar Smith) intend to replace the Wyden-Graham H2A amendment with the Bob Smith guestworker pilot bill. When that bill was marked up last march, we send a letter with a Secy of Labor veto threat. USDA had not heard this, but they are going to try to gather some intelligence. DOJ is also going to find out what they can (from their Judiciary committee contacts).

This afternoon's meeting
We agreed that our framework for discussing recruitment should have three parts: (1) the role of the government; (2) the role of the growers; and (3) the role of the private sector intermediaries (farm labor contractors). Al French (from USDA) would still like to see the registry replace the grower's obligation to recruit, but Linda Delgado said that the agency favors a continued requirement of positive recruitment by the growers as well as an enhanced effort by the government to assist in this recruitment.

There continue to be fundamental differences within the group on a basic question that affects recruitment; i.e., whether there exists an adequate legal domestic workforce to meet the needs of growers. USDA does not think that there are adequate legal U.S. workers to meet the needs of growers; DOL asserts that the supply would be adequate if growers would offer fair wages and decent working conditions. Thus, DOL wants growers to have to try harder to recruit domestically, while USDA wants growers to have to meet certain minimum recruitment obligations and then have easy (and cheap) access to the H-2A program.

One thing we all agree on is that there needs to be a way for growers to verify whether a given worker is authorized to work in the U.S. This is the key to the success of any domestic recruitment effort.

The following reform ideas were floated:

- Use of community based organizations to help link migrant workers to employers. This could involve the federal government offering grants to CBOs to perform this task.

joint employment

- More effective regulation of farm labor contractors (FLCs). The idea is to ensure that FLCs operate fairly and effectively to provide legal workers to growers. There are criticisms now that FLCs both provide illegal workers and skim wages/fees from workers.

- Consider what other entities (private or govt.) could assist growers in finding workers and vice versa (grower associations; state employment agencies; CBOs, etc.)

- Require participation in the INS's employment verification pilot program for growers who want to participate in the H-2A program. Are there other (better?) ways to verify eligibility to work?

- Build on America's Job Bank.

- Agreement between the federal government and the growers that if the grower uses the state employment service to verify all of its workers, the growers will not be subject to an INS enforcement action.

We asked USDA and DOL to think of other creative ideas on how to address these three areas (role of the grower, government and intermediaries) and get them to us by the end of the day tomorrow.

julie

Talking Points
H-2A Agricultural Guest Workers -- Wyden-Graham Legislation

Background.

- Farm workers are among the poorest and most vulnerable in our society. Average annual earnings of farm worker families are only about $6,500 and farm workers are employed on average only about 26 weeks per year.

Current Program.

- The H-2A "guest worker" program admits temporary nonimmigrant agricultural workers in order to provide farmers with an adequate supply of laborers during the growing season. There is no cap on the number of H-2A visas granted annually.

- Currently there are 1.6 million farm workers in the U.S. of which approximately 600,000 are illegal (unauthorized to work), 1 million are legal (citizens or authorized foreign labor), and 20,000 are in the H-2A program.

- Under the current program, in order to hire H-2A workers, an employer must demonstrate to the DOL that:

    (a) there are not sufficient U.S. workers able, willing, qualified and available to perform the services; and,

    (b) there will be no adverse effect on the wages and working conditions of similarly-employed U.S. workers.

- Employers also are required to:

    --pay workers an "adverse effect wage rate" (AEWR), determined by the average wage paid to non-managerial agricultural workers in the state;

    --provide free housing to workers coming from outside the commuting area;

    --reimburse workers' inbound transportation if they complete half the contract, outbound also if they complete the contract; and,

    --guarantee 3/4 of the hours of the contract; and,

    --hire any qualified U.S. worker who applies during the first half of the work contract.

State of Play.

- The H-2A program has been heavily criticized by the GAO, DOL's IG, and Congress due to the difficult administrative burdens placed on growers.

- The Administration has acknowledged the problems and is working administratively to reengineer and streamline the H-2A program to ease grower burdens while maintaining strong worker protections.

- In the recent letter to the Commerce, Justice, and State appropriations conferees, the Administration strongly urged deleting the Agricultural Job Opportunity, Benefits, and Security Act of 1998. The bill in its current form is unacceptable. However, the Administration is engaging in a bi-partisan process with the Congress to develop overall reform, including possible legislative reform.

- The Administration shares the goal of assuring an adequate, predictable labor supply of farm workers and will work with the Congress to develop reforms to the current program to ensure that it responds to agricultural needs while protecting U.S. farm workers.

Wyden-Graham Bill.

- As a result of growers' dissatisfaction with the current program, Senator Wyden (D/OR) and Senator Graham (D/FL) attached the Agricultural Job Opportunity Benefits and Security Act of 1998, to the Commerce, Justice, State appropriations bill.

- The Administration's overall concern with the Wyden-Graham bill is that it shifts costs and risks from employers to workers and/or the government.

- Although Wyden-Graham has been changed to remove some objectionable provisions (e.g., restores the requirement that growers reimburse workers for transportation; eliminates the provision that would have required withholding 20% of workers' wages to be refunded upon their return home as a repatriation incentive), the fundamental substantive objections noted below, remain.

Most significant issues with the revised proposal.

- Eliminates the current grower recruitment requirement and creates a government-run job registry.

--Responsibility for the recruitment of domestic farm workers would shift to a new "job registry" for which the government and low-wage workers are entirely responsible.

--Growers would only need to check this registry before employing H-2A workers.

--The fundamental problems with the registry are:

(1) that use of the registry would relieve the growers of any obligation to do positive recruitment beyond searching the registry, making it easier to employ H-2A workers over U.S. workers; and,

(2) that the bill would require wholesale reliance on a method of recruitment that has not been tested or shown to be effective (it will be very difficult to maintain an accurate, up-to-date registry).

--In addition, although this registry would take years to create and implement effectively, employers could begin to hire H-2A workers within 6 months of enactment of the bill.

- Erodes U.S. worker wages.

--Caps the adverse effect wage rate[1] at 105% of the local prevailing wage.

--This cap is not set high enough to compensate for the depression of wages in areas where there is a heavy reliance on foreign workers, and not sufficiently high to attract new U.S. workers into agricultural employment.

- Provides an inadequate mechanism for housing foreign guest workers.

--Allows growers to provide a payment voucher in lieu of housing, unless the State certifies that adequate housing is not available in the area. The State is not required to make this determination nor has an incentive to do so.

--Requires growers to make a "good faith" effort to locate housing for the worker. Growers are not required to locate and secure the housing.

--Eliminates a fundamental grower obligation to assure that workers are adequately housed.

--Overlooks the basic problem of inadequate housing in many areas of the country (particularly in the West).

--It is unrealistic to expect low-wage foreign migrant farm workers to be able to secure housing using a federal voucher. Thus, many workers will likely end up without housing, will overcrowd any available rental housing, or will end up on the street.

- Eliminates the requirement that growers guarantee ¾ of the work offered to recruit U.S. and foreign farm workers.

--May encourage growers to lure workers from hundreds or thousands of miles away with the promise of potentially high earnings without any obligation to fulfill any part of that promise.

--May encourage growers to recruit more workers than they actually need to hedge against uncertainties.

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[1] The adverse effect wage rate (AEWR) is equal to the average statewide wage. The use of the AEWR reflects the fact that foreign workers (both undocumented and H-2A guest workers) can sometimes dominate a local labor market and depress the local prevailing wage.

Qs re: Recruitment

Q. where is the evidence that the H2A program either doesn't work or is too expensive to work.

Do growers utilize SESA even when not seeking H2A workers?) Generally, no. Only those who request H-2A workers (and, thus, have this obligation) do.

SESAs less frequently contacted FLCs and crew leaders to identify workers for H-2A employers than for other employers' labor needs.

SESAs have greater overall success in placing agricultural workers with non-H2A employers than they did w/ employers involved in the H-2A program.

erroneous numbers?

SESAs achieved an overall placement rate of 55% on agricultural job orders. In contrast, SESAs filled only 2% of H-2A employers' job openings.

Certain SESA staff were hesitant to refer workers to certain H-2A employers, b/c it was their perception that the workers referred to certain H-2A employers would not be hired.

Workers may be unwilling to travel b/c transportation advances are frequently not offered by growers and many employers lack facilities for family housing.

Why does "positive recruitment" lead to so few hires?

H2A growers + SESA staff:

→ b/c U.S. workers not available or unwilling to harvest crops.

→ many U.S. workers refuse the jobs or do not show up for work.

→ those that do show up, leave before harvest is completed.

SESA staff; H2A program admin; farmworker advocates:

→ growers prefer H-2A workers b/c more malleable & less likely to voice complaints about wages and working conditions.

→ So SESA does not refer U.S. workers to growers who want to hire H-2A.

→ ag. employers' increasing reliance on growers' associations discourages local workers' interest in available agricultural jobs.

Grower Assoc. = 80% of all H2A hires.

The problems of the "master order"

– include wide geographic areas

diff. crops; widely varying piece rates.

travel restraints; family oblig; crew wants to stay together

(+) emp. obligation to positively recruit is prematurely shortened by the extended harvest season included in the master order.

SLACK administration by ETA

certifications for H2A workers were routinely issued w/o complete info on the results of efforts to recruit U.S. workers.

$25 to obtain counterfeit Social Security cards.

OIG Recomm

(1) Consolidate w/in WHD
(2) Issue final regs.
(3) Control illegal immigration

National Immigration Forum

PRESS RELEASE

FOR IMMEDIATE RELEASE
September 22, 1998

Contact: Debra Dixon
(202) 544-0004, ext. 13

National Immigration Forum Announces Opposition to Agricultural Guestworker Bill

The National Immigration Forum, one of the nation's leading immigration policy organizations, opposes legislation that would streamline the admission of foreign guestworkers sponsored for temporary employment by the nation's agricultural employers. The legislation has been attached to the Senate version of the Commerce, Justice, State appropriations bill.

In general, the National Immigration Forum supports the admission of immigrants – permanent and temporary – on the basis that orderly and generous immigration is good for the United States. However, we cannot endorse legislation that would subject temporary migrant workers to poor living conditions, exploitative working conditions, and little opportunity to convert to permanent status.

For example, the bill authorizes wage rates and working conditions that are lower than employment terms required by current law; it undercuts state and federal minimum wage laws; it ends the obligation to provide housing to workers; and it is so filled with roadblocks and backlogs that the prospect of long-term workers becoming permanent residents is illusory.

Conversely, with respect to another debate regarding temporary workers, the Forum supports a proposed expansion of the H-1B visa program, a category of temporary admissions that enables high-tech and other companies to sponsor highly-skilled international personnel. The reason is that under the H-1B program immigrant workers are guaranteed prevailing wages by law, are generally well-paid and well-treated by their employers, and most are offered the opportunity to adjust to permanent status. None of these is true for the agricultural guestworker bill. As a result, the Forum opposes the bill.

# # # #

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Issues

What is wrong w/the program

9/22/98

H2A

2 lists

H2A reform issues — from J Fraser

Non-H2A proposals that address some industry and non-industry concerns.

- trade
- co-ops
- small farmers competing w/each other
- retail costs (margins?) — profit margin

Keith Collins

Farmwork

how different? — ⓐ seasonal (and short term) and somewhat unpredictable

ⓑ in the middle of nowhere

ⓒ weather? (unlike construction?)

Non

- Tomorrow raise issue of non-H2A proposals — put down a marker

Linda Delgado: go back to USDA think of economics of the industry, and go forward from there.

Presentation to this group $\boxed{\text{and then the Hill (?)}}$

USDA to come back w/ideas and issues by the end of the week (?) — O.K.

Principles went (attached) to Wyden (and Coverdell)

make sure that principles match those we sent to Wyden.

Timeline ? Leg. @ beginning of Next Congress
(process completed by the end of the year
Likely Principals mtg. by early January)

John F.

Talking pts. on what this process is about

An issue (consensus that program needs reform)
We want to balance interests

Legislation (?)
we haven't ruled it out

Responsibility to address problems as best we can.

Q: how do we temporarily legalize an illegal workforce.

What is the cost and who will pay.

PROS/CONS

--------- *REV. DRAFT 8/20/98 REV. DRAFT* ---------

Proposal for Bi-Partisan Working Group on the H-2A Program

Purpose: To examine various policy proposals related to the H-2A foreign agricultural guestworker visa program, and determine whether and where consensus can be reached among a bipartisan working group of Members of Congress and the Administration.

Background: During the current Congress, a number of proposals have been put forward for changing the H-2A foreign agricultural guestworker program. Secretary Herman proposed to Senator Coverdell the establishment of a bipartisan group of Members of Congress and the Administration for the purpose of examining various policy options related to the H-2A program and determining where consensus for change could be achieved. The Senate has passed H-2A reform legislation - principally sponsored by Senators Smith (R-OR), Wyden (D-OR) and Graham (D-FL) – that the Administration has indicated it strongly opposes because it is inconsistent with principles articulated by the Administration to guide H-2A program changes.

Participants:

- For the Administration – Secretaries Herman (Labor) and Glickman (Agriculture), INS Commissioner Meissner (or delegate), and representatives of the Domestic Policy Council, National Economic Council, and OMB;

- From the Congress - Senators Co R verdell, Wyden, Graham, Kennedy, and Feinstein; Representatives Lamar Smith, Bishop, Beccera, and Berman. Chambliss G. Smith R Abraham Watt ~~L. Smith~~

Proposed Process: The Secretaries of Labor and Agriculture will formally invite participation, generally outlining the intended goals and proposed process. Staff of the participating offices would initially be tasked to

(1) develop a set of principles to guide discussion of possible H-2A program revisions, and (2) compile an inventory of H-2A policy proposals to be examined with the objective of determining if it is possible to reach consensus on any of these proposals. The policy options would generally fall into the following categories:

⇒ Administrative Processes
⇒ Worker Recruitment
⇒ Wages and Costs
⇒ Housing
⇒ Enforcement
⇒ Immigration Management/Repatriation

An initial draft of proposed principles and policy proposals has been developed by DOL (copy attached) and can be circulated as a possible starting point to the participating offices for review. Participants' staff would meet to discuss and, if necessary, revise these documents.

The participating Members will meet with the Secretaries of Labor and Agriculture and INS Commissioner to review the draft principles and policy proposals for the purpose of directing the respective staff to initiate a series of meetings/discussions of the various policy proposals in light of the articulated, agreed-upon principles. These meetings – of the participating Members and Administration officials, and at the staff-level – will not include the participation of organizations outside of the Federal government.

The staff will meet weekly to review the policy implications of each of the proposals on the list of policy options accepted by the participants. The objective would be to rigorously examine each of the substantive proposals to consider the likely impact on both growers and domestic and foreign farm workers. The staff will provide periodic reports to the Administration and participating Members, and will outline areas where consensus can be achieved, identify policy proposals or areas where consensus cannot be achieved, and target proposals/areas that may warrant further examination and discussion.

When the staff-level discussions have addressed all the issues that were accepted for review by the Administration and participating Members, a report will be submitted to the participants outlining areas of potential consensus with recommendations for next steps, issues where consensus could not be reached, and issues where consensus was not reached but which may warrant further discussion among the principal participants.

After receiving the staff report, the participants may meet to consider the policy options which staff recommended for further discussion at the principal level. The process would conclude with a letter from the Secretaries of Labor and Agriculture to the participating Congressional Members outlining areas of consensus and the steps necessary/to be taken to effect the agreed-upon program changes.

Possible Timeline:

- Aug 25 — Letter from Labor and Agriculture Secretaries to invite bipartisan participation, forwarding proposed principles and policy option inventory
- Sept 8 (week) — Staff-level meeting to review/revise principles and policy options inventory
- Sept 21 (week) — Principals' Meeting (Secretaries and Members) to bless principles/policy options for examination
- Sept 28 (week) — Begin weekly staff-level policy option review/discussion meetings
- Oct 30 (tent.) — Staff report to principals
- Nov 16 (tent.) — Principals' meeting
- Dec 11 (tent.) — Concluding letter

---- *REV. DRAFT* -- *DRAFT* -- *REV. DRAFT* -----

Framework for H-2A Reform Discussions
August 20, 1998

Guiding Principles

Reforms to the H-2A temporary nonimmigrant agricultural guest worker program must **not**:

- Increase illegal immigration to the United States;
- Reduce job opportunities for legal U.S. farm workers;
- Depress wages and work standards for American farm workers.

The Administration's guiding principles for reform of the H-2A program are intended to assure that our policy achieves greater stability in the agricultural workforce in a way that agricultural producers and farm workers both benefit. Growers must have a more predictable and reliable legal labor supply, while adequate workplace protections are afforded domestic and foreign farm workers – who are among the poorest and most vulnerable in our society.

The Administration's guiding principles in reforming the H-2A program are designed to create a system:

1. Where the procedures for using the program are simple and the least burdensome for growers;
2. Which assures an adequate legal labor supply for growers in a predictable and timely manner;
3. That provides a clear and meaningful first preference for employment of U.S. farm workers, and a means for mitigating against the development of a structural dependency on foreign workers in a crop or area;
4. Which avoids the transfer of costs and risks from businesses to low-wage workers;
5. That encourages longer periods of employment – and, thus, higher annual earnings – for legal U.S. farm workers; and,
6. Which assures decent wages and working conditions for domestic and foreign farm workers, and that normal market forces work to improve wages, benefits and working conditions.

Framework for Reform Discussions

- Administrative Processes
- Worker Recruitment
- Wages and Costs
- Housing
- Enforcement
- Immigration Management/Repatriation

Framework – Idea Inventory

1. Administrative Processes

Issues: From the growers' perspective, the principal issues involve the long lead time for application (currently 60 days before the "date of need") – which they contend is too long a period to make accurate predictions about timing and labor needs—and the paperwork burden involved in the application process. From workers' perspective, the primary issue is assuring adequate time for bona fide efforts to recruit U.S. fram workers so that they get a legitimate first crack at the agricultural jobs that will otherwise go to foreign workers.

Responsibilities

slow INS

a. Consolidate DOL Certification and INS petition approval (eventually including for replacement H-2A workers) into one process administered by DOL (GAO rec.; DOL/INS regulatory initiative)

In the (?) process

b. Consolidate responsibility within DOL in Wage and Hour for post-application examination and enforcement of employer compliance with H-2A program requirements, with resources shifted from ETA/USES (OIG rec.; DOL concurred) — H

c. Government – not employer – responsible for reimbursing transportation costs of eligible workers (S.2260)

Process Time Frames

d. Require employers' H-2A labor certification applications to be submitted 45 (rather than 60) days before the employer' "date of need" (GAO rec.; DOL reg. initiative) OK

e. Reduce lead-time for employer applications to 30 (rather than 60) days before "date of need" (Georgia growers) OK

f. Consistently meet 7 day deadline – after initial receipt of employer's labor certification application – to give written notification to the employer of deficiencies precluding adjudication of the application. (DOL request for reprogramming of resources to establish support/tracking system was denied) OK

g. Consistently meet existing 20 day deadline - prior to employer's "date of need" – to issue approved certifications. (DOL request for reprogramming of resources to establish support/tracking system was denied) OK

h. After consolidation of certification and petition adjudication processes in DOL, change the law to set deadline for DOL approval of employers' application/petiition to 7 (rather than 20) days before the "date of need" (GAO rec.; DOL concurs) OK

i. Reduce the deadline for employer-provided housing to be available for inspection to 15 (rather than 30) days before the "date of need" (DOL reg. initiative) OK

j. Change the current labor certification process to one based on employers' attestations to comply with program requirements (S.2260)

What does that get you?

Same enforcement mechanism?

k. Allow certification of additional H-2A workers to replace farm workers with invalid SSN who are hired and subsequently abandon employment (Current emergency certification/redetermination procedures already accommodate) OK
l. Regularly collect data on DOL performance in meeting program deadlines, using data to monitor and improve performance (GAO rec; DOL concurred; request for reprogramming of resources to establish support/tracking system was denied) OK
m. Eliminate the requirement that certified H-2A employers provide notice of H-2A workers' departure for the place of employment (DOL reg. initiative) OK
n. Simplify H-2A application and related documentation (DOL/INS administrative/ regulatory initiative dependent on implementing application/petition consolidation) OK
o. Update and revise the H-2A Handbook to include procedures for all agencies involved and key contact points (GAO rec.; DOL concurred) OK

2. Worker Recruitment

***Issues:** From the growers' perspective, the principal issues are avoiding bureaucratic, unproductive recruitment efforts and substantially reducing their vulnerability deriving from employing a partially illegal workforce. From the workers' side, the issue is effectively assuring bona fide efforts to fulfill the policy objective of first preference for hiring U.S. workers, including requiring H-2A employers to use whatever means to recruit U.S. workers their competitors – who do not use foreign workers – employ.*

a. Require "positive recruitment" of U.S. farm workers by growers 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 (DOL administrative change implemented) What is "positive recruitment?"
b. Count as "available" for employment – and thereby certify fewer H-2A workers than requested by an employer – only those U.S. workers who are identified by name, address, and SSN (DOL administrative change implemented) OK
c. Post employers' H-2A job orders on America's Job Bank (DOL proposal; requires job order simplification) OK but what other recruitment required?

Farm Labor Contractors (Crewleaders)

? difference btw these two?

d. Strengthen the [MSPA] program of registering farm labor contractors to require bonding; at least allow H-2A employers to require bonding as a condition of employing a farm labor contractor (Georgia growers)
e. Allow H-2A grower to include a bonding requirement for FLCs they employ so as to protect against risk such as the FLC employing illegal workers or failing to perform (DOL future reg. initiative) OK
f. Eliminate the requirement that farm labor contractors must be used by H-2A growers if the use of contractors is the prevailing practice of growers in the area (Georgia growers) NO

g. Provide an exception from current program requirement - that growers use registered farm labor contractors 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 workers or other serious labor abuses (DOL reg. Initiative; variant on Georgia growers' proposal)

how different from GA growers proposal

h. Require use of farm labor contractors as recruitment mechanism wherever use is "common" or "normal" (not prevailing) in an area, and require payment of competitive rates for farm labor contractors' services (FJF)

how is it now (?)

Employment Eligibility Verification

Y

i. Secretary of Labor work with Congress and other affected agencies to develop a reliable means of verifying individual's authorization to work as they are hired (OIG rec.; DOL concurred)

how different (?)

how would this function (?) privacy concerns (?) fairness (?)

j. Create a national employment eligibility verification system so that employers can check on the legal status of domestic workers who are hired during the H-2A process (Georgia growers)

k. Require growers using the H-2A program to use INS pilot employment eligibility verification system

Y

NO

Cons: not workable or enough time

l. Growers only responsible for recruiting and hiring farm workers in the U.S. through the DOL-administered Registries (and contacting former employees); Registries are responsible - and have only 14 (or 7?) days, or 3 days in the case of "emergency" applications - to locate, contact, verify employment eligibility, and refer U.S. workers to growers seeking foreign farm workers; failure to refer timely or to refer sufficient workers allows direct application for workers to Secy. of State. (S.2260)

Growers should continue w/ burden of finding workers

what is the standard for determining

m. Secy of State authorizes additional H-2A workers if Registry-referred workers fail to report; are "not ready, willing, able, or qualified" to do the work; or, abandon or are terminated from employment. (S.2260)

Y

n. Pilot test new Registry of available U.S. farm workers; growers share responsibility for positive recruitment of U.S. farm workers

o. Require employers' "positive recruitment" to include: providing an 800 contact telephone number and accepting "collect" calls from worker job applicants; contacting other potential employers to link a series of job opportunities; and developing a long-term recruitment plan to reduce dependence on foreign guestworkers (FJF)

where (?)

p. H-2A workers covered by the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), but disclosure only required at time of visa issuance. (S. 2260)

What does that change (?)

q. DOL rulemaking regarding possible consolidation of agricultural job orders in the Interstate Clearance System. (OIG rec.; DOL concurred)

K

what is the assurance, under H2A program, that workers are qualified.

any now? how determined (?)

Productivity Standards

r. H-2A employers allowed to set minimum production standards after a "3-day break-in period." (S.2260) (?)

Y

s. Employer-established productivity standards and quality requirements should be permitted only if they are the prevailing practice among non-H-2A employers, are *bona fide*, objective, justifiable, fully disclosed and implemented on a fair and equitable basis (FJF)

Experience (and related) Requirements

and H-2A workers (?)

t. H-2A employers should be allowed to specify "agricultural experience" as a condition for hiring U.S. farm workers (Georgia growers)

Y

u. Disallow job qualifications, experience and reference requirements unless they are the prevailing practice among non-H-2A employers and are otherwise job-related and *bona fide* (FJF)

Y

v. Allow H-2A workers to move from one certified H-2A employer to another, with the final employer responsible for return transportation costs [Current law] (Georgia growers)

w. Prohibit H-2A job orders that consolidate seasons and different crops (FJF)

x. Prohibit use of the H-2A program in designated labor surplus areas

how determined (?)

3. Wages/Costs

***Issues:** From the growers' perspective, the principal issue involves managing costs so that they remain competitive in the international market. From the workers' side, the cost factor in the H-2A program should be the primary incentive to use U.S. farm workers (and disincentive to use foreign guest workers). The program should not operate to undercut wages, benefits and working conditions, but rather allow normal labor market forces improve these conditions.*

All Agree YES

a. Revise H-2A regulations to require employers to guarantee H-2A workers' wages for the first week following "date of need," with payment no later than 7 days after the "date of need" (GAO rec.; DOL concurred)

Three-quarter Guarantee

good

b. [Revise H-2A regulations regarding the existing three-quarter guarantee to remove incentives to growers to overestimate the contract period] including considering applying the three-quarter guarantee incrementally during the contract period. (GAO rec.; DOL evaluation)

H

but 3/4 is strictly enforced

c. Eliminate the existing three-quarter guarantee (S.2260)

is this only w/in H2A program (?)

USDA and Labor agree that this is a bad idea

but 3/4 may not be a magic #. more flexible than under MSPA how different from (c)

d. Modify (effectively eliminate) the existing three-quarter guarantee to allow H-2A growers to limit the contract period to "duration of crop activity" and terminate the contract period offered due to changes in market conditions (Georgia growers)

Adverse Effect Wage Rate

e. Eliminate Adverse Effect Wage Rate (AEWR); require payment of 105% of prevailing wage for crop/area where AEWR is higher than prevailing wage (S.2260)

NO. want H2A to cost more than U.S. worker

f. Eliminate Adverse Effect Wage Rate (AEWR); require payment of prevailing wage for crop/area (Georgia growers)

g. Only require payment of Federal minimum wage (not AEWR) as "training wage" for inexperienced workers during training period stipulated in the grower's contract offer (Georgia growers)

If they are inexper. H2A why not hire inexper. U.S. (?)

Y

h. Require increases in piece rates to reflect increases in AEWR (FJF)

Y

i. Prohibit H-2A employers from increasing productivity requirements to offset increases in AEWR (FJF)

Y

j. Change AEWR methodology to set at 90th percentile of local market wage, or 80th percentile of regional market wage, or 30% above average wage; AEWR should apply to sheepherders (FJF) ?

Y

k. Disallow any wage deductions by H-2A employers which reduce earnings below the highest required wage (FJF)

l. Prohibit H-2A employers from fixing uniform wage rates across large areas – States or regions (FJF) ?

Fifty Percent Rule

what ?

m. DOL rulemaking regarding possible changes in the existing "50 percent rule" – which requires hiring of any U.S. farm workers who become available ~~for~~ during the first one-half of the work contract period (OIG rec.; DOL concurred)

blocks out of state U.S. crews from work.

Y

n. Modify the existing "50 percent rule" to only require hiring of local workers (who reside within commuting distance), but extend this obligation to the entire (100 percent of) contract period (Georgia growers)

?

o. Eliminate existing "50 percent rule" ~~except for workers referred through the Registries~~ unless there are other substantially similar job opportunities in the area. (S.2260) ?

?

p. Workers covered under State Unemployment Insurance system (if covered under State law?) [Current law?] (S.2260)

How about: strengthen enforcement of wage paid by W&H division.

H2A Fee paid into a fund to support task force on farmworker wages.

Payment Methods

(?)

why (?) now different (?)

q. H-2A employers expressly authorized to pay ~~hourly wage~~, piece rate, task rate, or "other incentive payment method, including a group rate," irrespective of prevailing payment method (S.2260)

N

r. H-2A employers are in compliance with wage requirements if "the average of the hourly earnings of the workers, taken as a group," equals the required hourly wage. (S.2260)

s. Prohibit payment by "task rate" or other variable piece rate method of pay (FJF)

Y

t. For employers converting from piece rate to hourly rate, protect earnings level; for employers converting from hourly to piece rate payment method, set piece rate to assure earnings at least 30% above AEWR (FJF)

Y — says that floor = 30% above AEWR

invites abuse(?)

Transportation Reimbursement

what about domestic worker(?)

u. H-2A workers apply for transportation reimbursement to the government, not the employer (S.2260 intended)

v. H-2A workers may apply to the employer for transportation reimbursement, but employer not obligated to provide such reimbursement (S.2260, as passed)

Y

w. H-2A workers not eligible for transportation reimbursement if distance traveled is less than 100 miles (S.2260)

Y

x. Pilot program for transportation advances for U.S. farm workers (S.2260)

Y

y. Require H-2A employers to provide travel advances to U.S. farm workers (FJF)

User Fees

Y

aa. Employers' cost incentive to employ foreign guestworkers (no payment of FICA/FUTA taxes) offset by charging equivalent user fee to finance certain program activities – *e.g.*, administrative expenses for worker registries, transportation reimbursement and advance pilot program, increase farm worker housing stock (S.2260)

Y

bb. Impose user fees which reflect the true cost of the H-2A program and end subsidy and incentive to use H-2A workers (FJF)

Y

cc. Allow H-2A workers to opt out of employer-provided meal plans (FJF)

Y

dd. Require first-time H-2A employers to maintain at least wages/working conditions previously offered (instead of H-2A minimum requirements) (FJF)

4. **Housing**

Issues: Growers do not want to be required to provide – and throughout the Western U.S. that would mean incurring the capital expense of building – housing as a condition for access to foreign guestworkers. From the workers' perspective (and *from the perspective of community impact), it is unfair to recruit workers from hundreds and thousands of miles away for short-term, low-wage jobs and expect them to be able to find and arrange for affordable housing, especially in rural areas where there is little rental housing stock.*

What does that mean in practice (?)

a. Federal housing standards no longer apply to any "rental or public accommodation housing or other substantially similar class of habitation"; rather, local or, if none, State standards apply (S.2260)

N

b. H-2A employers can charge workers up to fair market value for the cost of maintenance and utilities of housing provided (S.2260) - *also a wages/cost issue*

maybe

c. H-2A employers can charge workers reasonable amounts (perhaps up to $25 per week) for the cost of maintenance, utilities, repair and clean-up of housing provided (Georgia growers) – *also a wages/cost issue*

maybe

d. H-2A employers may charge workers a security deposit – up to $50 – to protect against "gross negligence or willful destruction of property" (S.2260) - *also a recruitment issue*

e. H-2A employers may require reimbursement (wage deduction) from responsible worker of reasonable cost of repairing damage to housing provided that is "not the result of normal wear and tear" [Current Law] (S.2260)

f. Reduced user fee to H-2A growers providing housing as an incentive to build/provide housing (S.2260)

No. They all must provide housing.

g. H-2A employers may provide a minimum "housing allowance" in lieu of housing, unless – no earlier than 8 years after enactment – a State Governor certifies that there is inadequate farm worker housing available (S.2260)

problematic

h. H-2A employers may provide a minimum "housing allowance" in lieu of housing, but must also arrange for decent housing at the allowance level

OK

i. Require free housing for all U.S. farm workers, including "local" workers (FJF)

j. Require H-2A growers to make their housing available for U.S. workers who arrive early (FJF)

Y

Y (related to i)

5. **Enforcement**

Issues: From the growers' perspective, they want to clearly understand their compliance obligations and not be subject to compliance investigation – which they often regard as harassment – at their busiest time. Workers want rigorous enforcement.

a. Extend to Wage and Hour the authority to debar violating employers which commit serious labor standards or H-2A program violations from future use of the H-2A program. (GAO and OIG rec.; DOL concurred, future reg. initiative)

b. Issue final (to replace "interim final") H-2A regulations. (OIG rec.; DOL concurred)

c. Secretary of Labor's enforcement authority narrowed - complaint-based (??); 12 month statute of limitations on complaints; "reasonable cause" threshold; penalties limited to certain kinds of violations (S.2260)
d. Three-year and permanent debarment for repeated violations (S.2260)
e. Associations not responsible for members' violations; members not responsible for association's violations (S.2260)
f. Require hiring of former H-2A workers (where allowed) to offset disincentives to complain about labor violations (FJF)
g. Require disclosure of terms/conditions of employment to be given to workers in their native language in plain language (FJF)
h. More timely initiation and completion of DOL enforcement actions (FJF)

6. <u>Immigration Management/Repatriation</u>

***Issues:** Growers want a legal workforce to reduce their vulnerability to workforce disruption at critical times in the crop production cycle, and want no responsibility for assuring that foreign guest workers who they are allowed to import into the U.S. actually depart from the country after their employment ends. No one knows how much "leakage" there is from the current H-2A program into the ranks of the illegal resident population; a greatly expanded foreign guest worker program would certainly increase illegal immigration and the resident illegal population. At the same time, there is no effective system for collecting information to manage departures from the U.S.*

a. H-2A worker ineligible for continued participation in the program if, during the prior 5 years, the worker violates the terms of admission to the U.S. (S.2260)
b. H-2A workers admitted to U.S. have 14 days after termination of employment contract to search for other legal work in the U.S. (S.2260)
c. H-2A workers admitted must be issued fraud-resistant identification/work authorization documents (S.2260)
d. An employer may file for extension of stay to employ an H-2A worker already in the country and may legally employ such worker from the date application is made (S.2260)
e. Attorney General study whether H-2A workers timely depart the U.S. after period of authorized employment (S.2260)
f. Legalization for H-2A workers who complete at least 6 months employment in the U.S. under the H-2A program for 4 consecutive years in compliance with program requirements (S.2260)
g. Require withholding of percentage of H-2A workers wages, deposited in accounts reclaimable within limited time period in home country, as incentive to repatriate
h. User fee offsetting FICA/FUTA advantage used as repatriation incentive
i. Require entry-exit control system for all H-2A workers

<u>Other issues</u>:

- Expand the scope of the H-2A program to include agricultural - meat/poultry - processing employment (S.2260)

- Secretary authorized to establish cap on number of H-2A visas issued pursuant to applications from "independent contractors, agricultural associations and such similar entities" (Feinstein amend. to S.2260)

- Comprehensive report by Attorney General and Secretaries of Labor and Agriculture (S.2260)

- All H-2A employers non-wage practices and benefits should be subject to prevailing practice standards (FJF)

- Prevailing practice determination should not be based on "double majority" standard and should exclude all H-2A employers

- Assure that U.S. and H-2A workers are truly allowed to choose their employer (FJF)

- Cap the number of visas available under the H-2A program

Smuggling

pay raise (?)

New Wyden-Graham bill

Wage + housing + transportati[on]

List of 19/20 changes to their bill

(1) H2A workers (ag workers) covered by MSPA

(2) clarified that state/fed wage laws ~~supercede~~ apply if > 105% of prevailing

(3) growers to make a good faith effort to assist workers to find housing (w/a voucher).
(possibly help with negotiate)

extent farmers would go — good faith req.
No legal requirement that they will get housing
(F) — thinks that it doesn't go far enough.

(4) Enforcement

flagrant violation section of the bill.
Require Expedited investigation of flagrant violations (w/in 10 days) child labor statute / housing / wages

Berman: if you want children not to work in the fields, increase the wage.

Complaints from anyone.
Want authority they have now + a small enhancement

(5) Grower must reimburse transportation inbound and outbound from grower to work (for all ~~domestic workers~~) (from the Registry

(6) 50% Rule
— only for workers referred by the Registry

Barbara mentions emp. verif. pilot — notakers

(7) H2A mobility
worker (or advocate) can petition
to change jobs.

(8) State Dpt. cannot issue visa unless DOL says O.K.
(clarified)
Grower has to make promises that look right,
and after X days, visas can be issued
(regardless of whether anyone has
checked

(9) Caps ~~B~~.
60K each year, up to 600K in 10 yrs.

(10) Grower/Worker Advisory Board
Guide GAO to develop issues

(11) Reports to Congress in YR3/YR5

(12) Effective date of registry — one year instead of 6 mo.
(F) — wants registry to work before we
make it the sole source of U.S. workers.
(thought they "we'll move that back to 6 mo."

(13) Lifting 3yr./10 yr. ban — window
illegals can exit and return to be H2A workers
(window) ~~[illegible]~~ same type of work
same farm (?)

Lifts 3/10 for H2A workers
→ If deported(?) could return as an H2A worker.

incentive to be a temporary worker forever

Intermediaries
FLC's
and grower
~~incentives~~
sanctions

Legalization program? They say yes.

(14) Legalization provisions?
Are in new version, but probably won't stay in the bill.

(15) Entry-Exit visa system
w/ consular @ home country

(16) Modify 3/4 guarantee

Wyden's proposal. ~~Not~~ ~~all~~ others don't agree

Employer on hook for until an alternative work situation can be arranged for that e
Employer would have to arrange for other job.
DOL

(17) AG study of visa overstaying & determine options to ensure repatriation

higher wage (?)

Want a system that growers pay for that will replace positive recruitment w/ the Registry.

DOL bypass — if system not up & running and DOL can't find workers, growers can go right to H2A.

~~No guarantee that~~ If worker is referred through registry, grower must hire unless don't meet "qualifications" under current law.

Process

Want the revised bill to present @ the CJS Conference.

H2A 9/16/98

- Repatriation clause — taken out
- Transportation — OK

2 sets of changes being made

(1) trying to satisfy Labor/Hispanics

(2) trying to satisfy anti-immigrant Republicans.

EK Q: are we still sure that this will m

Intelligence ? (on the Hill)

[illegible]

Smith trying to work w/ Berman & Hyde to weigh in w/ Rogers to kick this thing.

Dave Carlin

~~Doc~~ to contact George Fishman

(1) Peter J. to contact George Fishman to figure out how to mount bi-partisan

(2) Geri to call Dave: list of Qs that we would like answers to.
(like, what are the growers doing)

Geri: afraid that there is a little movement brewing from the Republicans.

INS to check w/their
leg. people.

(3) OMB to check on the appropriations process
or on the appropriators.

Rogers is softening (?) Growers are hitting him up.

DOL/USDA → have our views changed on the substance.

DOL: it is better than it was, but still
really bad.

Registry — same

Didn't touch

- Essential features of registry (1)
- wage provisions (2)
- housing (a bit) (3)
- transport — ok
- got rid of repatriation — ok
- 3/4 guarantee (uncertain) (4)

Q: is the user fee still there (?)

We need to respond to them quickly and in a
forthright manner.
We must tell them why their bill is unacceptable.

BUT → we do not enter into discussions w/you
(w/the highlights).

Thanks for leading us through this

Part, bill still bad and we would veto it

Let's work together next year

(*) Veto-able material

(1) no good on approp
~~no good on approp~~ bill

(3) committed to working with as
broad a group as we can to
fix the program.

(2) Here's what we think is wrong w/it
You have not addressed our concerns.

1) Dave, Geri, Peter — conversations

to get together on a call to discuss where we are

Set up a mtg. w/Wyden and Graham's people in the next couple of days. ~~(whole group as last time)~~ whole group

Fri. afternoon

2) Draft a list of our fundamental objections

get it around by tomorrow afternoon

(add fee for list of objections)

Call Wyden's guy to ask him.

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FAX COVER SHEET

TO: Julie Fernandez, Domestic Policy Council

FROM: Bruce Goldstein

DATE: September 16, 1998

RE: **IMPORTANT DEVELOPMENT ON GUESTWORKER ISSUE**

No. Pages: 5 including this page

==

Regarding the agricultural guestworker amendment in Title XI of the appropriations bill for Commerce, Justice, State:

As you know, some Fresno growers are claiming a labor shortage for raisin grapes despite 52,700 unemployed people in Fresno County in June 1998 (an 11% unemployment rate), and numerous welfare-to-work people who need jobs.

One reason growers can't find and hold onto worker is the rampant violations of labor laws.

See the attached articles (so far from the web) from today's Fresno Bee and AP wire.

A scientific study conducted earlier this year but released this week found that 77% of California grape growers/contractors have violated workers' rights and "Fresno county is home to most of the survey's serious violations. . . ."

If they want workers, the growers should compete for workers and stop using abusive labor contractors as a shield to lower labor costs below those required by minimum wage laws.

Today or tomorrow there will be a press conference to demonstrate that the growers' claims of a labor shortage are mere propaganda for their guestworker lobbying.

Report says 77% of grape industry violate laws
Growers, contractors cited in Labor Department's survey

By George Hostetter
The Fresno Bee
(Published September 16, 1998)

The U.S. Labor Department's first in-depth investigation into working conditions faced by the state grape industry's field workers reveals that 77% of growers and labor contractors have violated farmworker protection laws.

Fresno County is home to most of the survey's serious violators, a Labor Department spokeswoman said.

Most violations occurred in two key areas - administrative laws such as the posting of safety information, and payment of wages and benefits. The Bee reported the survey's preliminary findings in August.

In a survey of 66 growers and 23 farm-labor contractors, the Labor Department found that 369 people tying and pruning vines in January and February received hourly pay of less than the $5.15 federal minimum. The Labor Department levied $43,200 in civil penalties against growers or labor contractors and awarded $39,654 in back pay to workers.

Eleven Fresno County growers or labor contractors were penalized for serious violations of the Fair Labor Standards Act or the Migrant and Seasonal Agricultural Worker Protection Act, a Labor Department spokeswoman said. Another 22 Fresno County growers or labor contractors had minor or no violations.

There were two serious violators and eight with minor or no violations in Tulare County; one serious violator and nine with minor or no violations in Madera County; two in Merced County with minor or no violations.

No grower or labor contractor in Kings County was part of the randomly selected survey, which included all California counties with 1,000 or more acres of grapes.

The survey's numbers were stark, but their interpretation depended on the speaker's point of view.

Ruben Rosalez, San Francisco-based assistant district director in the Labor Department's Wage and Hour Division, said the statistically valid survey will be a foundation for more surveys. The Labor Department can compare surveys to see whether the grape industry is making progress in its compliance with labor laws.

"We've met with the industry since the survey, and they have offered some solutions for the future that are innovative," Rosalez said.

Rosalez noted that 88% of the surveyed growers and contractors were in compliance in health and safety laws, 47% in administrative laws and 46% in benefit and wage laws.

Rosalez said the grower sample was taken from a pool of 8,000 California grape growers.

The survey dealt only with the winter's vine-tying and pruning season for table, wine and raisin grapes, Rosalez said. It is impossible to use the survey to draw conclusions about worker conditions during the current grape harvest because the two periods are "apples and oranges," Rosalez said.

Marcos Camacho, general counsel for the United Farm Workers, which represents 34,000 farmworkers, called the results of the investigation "shocking" but not entirely unexpected.

"It's always shocking to hear things like this, not that it's new, but that this continues to occur," he said. "It bolsters more our argument for union representation."

Camacho said it's especially shameful for employers in the agriculturally rich San Joaquin Valley to "continue to violate workers rights."

He also said if violations are tied to contractors, that growers need to be held responsible. "Our position is that ultimately the grower is always responsible, no matter who supplies the workers," he said.

California Farm Bureau Federation spokesman Dave Kranz said the report points out the need to better inform growers and contractors, especially on piece-rate issues. Grape growers said part of the problem stems from difficulty in pegging piece-rate wages to the state's changing minimum wage.

"There is a need for more education. We're working with employers all the time to make sure they comply with the relevant laws and regulations. Obviously, we haven't reached everybody," Kranz said.

Kranz said the report sampled a fairly small number of the state's growers.

"It is hard to say just how indicative this is of what goes on in the industry," he said. "It is like public opinion polling. It is scientific up to a point, but it also is educated guesswork to a certain point."

Mendota labor contractor Earl Hall was surprised at the results of the investigation, especially the wage-and-hour violations.

"Legitimate contractors will almost always have correct payroll records because they know they have to," Hall said. "This has become a very specialized field."

Hall said that while contractors can make mistakes, growers also are obligated to ensure workers are being treated fairly.

Growers should insist on seeing not only the contractor's invoice of what the workers earned, but also the backup paperwork, including the time cards.

"If a grower doesn't receive that, he should refuse to pay," Hall said.

Among the survey's results:

Fourteen of the 66 growers and 12 of the 23 labor contractors violated minimum-wage laws. The violations occurred most often when workers were paid piece-rate rather than hourly wages. In some cases, employers recorded the work of several people on one employee's time sheet, then paid only the person named on the time sheet.

One grower employed a 12-year-old and a 13-year-old to tie vines without parental consent or parental presence.

One migrant housing facility had two serious safety violations: a cardboard fire wall for the stove and no fire extinguishers.

One grower did not have insurance to transport agricultural workers; one grower's employee transported farmworkers without a valid license.

The Labor Department also has launched a nationwide educational campaign aimed at farmworkers called "Fair Harvest, Safe Harvest."

This bilingual program is designed to give information about legal rights.

For details, call the program's bilingual hot line at (800) 959-3652.

Staff writers Sanford Nax, Tracy Correa and Robert Rodriguez contributed to this report.y

SEPTEMBER 16, 03:01 EDT

Probe Finds Violations at Vineyards

By CHRISTINE HANLEY **Associated Press** Writer

FRESNO, Calif. (AP) — A sweeping federal investigation of California's grape vineyards shows that nearly 80 percent of the industry violates farm worker protections.

The study released by the U.S. Labor Department Wednesday also found that many labor contractors used by grape growers fail to meet minimum wage and other workplace guidelines.

The problems run the gamut, from not posting worker protections and shoddy record-keeping to underage and underpaid workers to unsafe housing and transportation.

On a positive note, investigators found a relatively high compliance rate with rules on child labor, health and safety, with the number of those violations paling in comparison to cases of unfair wages.

``Nothing like this has ever been done to focus on the industry," said George Friday Jr., acting regional administrator of the department's Wage and Hour Division in San Francisco.

The Labor Department has levied $43,200 in civil penalties and awarded $39,654 in back pay to 369 workers as a result of its first in-depth inspection of the nation's wine-producing business.

Because this was the first investigation and most of the violations were not too egregious, the cases are not being considered for criminal prosecution. But the government hopes the crackdown will send a message.

``They've been put on notice," Friday said. ``At this point, if they've never been checked, you have to give them the benefit of the doubt. ... If it happens again, we might consider some type of action against them."

The Labor Department zeroed in on California because it provides the best snapshot of the grape-growing industry, leading all states with 8,012 vineyards and $2.1 billion in annual receipts.

Computer software was used to simulate a statistically valid sampling allowing the conclusions to be projected industrywide with a 90 percent confidence rate, researchers said.

Between January and April, inspection teams fanned out to 66 grape vineyards in 14 counties and also investigated 23 labor contractors used by these growers. Vineyard employers were held responsible for any transgressions by labor contractors that took place on their property.

Inspectors cited 51 of the vineyards, or 77 percent, for violating at least one provision of the Migrant and Seasonal Agricultural Worker Protection Act or the Fair Labor Standards Act.

The two federal laws, among other things, set minimum health and safety standards for housing and transportation, guarantee a basic minimum hourly wage and restrict the hours and type of work by minors.

While most growers were found in compliance with health and safety codes, the Labor Department determined 21 percent of the growers and 52 percent of the labor contractors underpaid their workers.

The majority of minimum wage violations occurred when piece rates were paid, and in some of these cases, employers tried to mask the low wages by recording the work of several workers on one worker's time sheet.

The investigation shows that labor contractors were more likely than growers to violate wage regulations. For instance, 52 percent of the time, they did not pay their workers at least semi-monthly, as required by law.

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Statement? on our position - (we need to be in the story)

FAX COVER SHEET

Please Deliver to:
Julie Fernandez

Fax #: 456-5581
Company: Domestic Policy C.

From: BRUCE GOLDSTEIN

Pages: 7

Message:

Attached is an analysis of the Senate's agricultural guestworker legislation.

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The Senate's Proposal for a New Temporary Foreign Agricultural Worker Program Would Reduce Wages and Displace U.S. Workers

On July 23, 1998, the U.S. Senate slipped into an appropriations bill a major new temporary foreign agricultural worker program (amendment 3258, as modified, to S. 2260). It would supply guestworkers to farms, greenhouses, meatpacking operations, and poultry processing plants . It would eventually replace the current "H-2A" agricultural guestworker program. The House has not yet taken action, but the issue could be resolved soon in a House-Senate conference committee on the Commerce, State, Justice appropriations. The Senate program is designed to achieve three basic goals:

(1) permit employers to avoid recruiting United States workers, including tens of thousands of unemployed U.S. farmworkers and many others who need jobs, recruitment

(2) authorize wage rates and working conditions that are lower than what competition among law-abiding employers in the private marketplace would set, including wages lower than those required by state and federal minimum wage laws, wage

(3) legalize a series of abusive employment practices, such as "group wage rates," and unfair productivity standards designed to eliminate U.S. workers from the market and exploit the guestworkers' economic desperation and "nonimmigrant" status.

There is no need for a new temporary foreign worker program for agriculture. The U.S. Commission on Immigration Reform (September 1997) concluded that a new guestworker program would be **a "grievous mistake**." The U.S. General Accounting Office (December 1997) issued a report that contradicts all the factual arguments made by the fruit and vegetable employers who are promoting this bill.

- There is a **surplus of agricultural labor**. The GAO analyzed unemployment data in the 20 major agricultural-production counties in the United States and found that most have double-digit unemployment rates. Nor is there an impending shortage.

- Farmworkers' **wages have declined** in real terms during the last decade, and **poverty rates have increased** during the last few years, according to the Department of Labor. If there were a labor shortage, we would have seen employers increasing wage rates and offering other inducements.

- **Backward labor practices** continue to cause high turnover, low productivity, high injury rates, and poverty, despite the U.S. Commission on Agricultural Workers (1992) recommendation to modernize employment practices to stabilize the work force. Yet, many growers have modernized non-labor-related business practices: sophisticated computers, controlled-atmosphere storage units, high-tech pesticides, and international trade.

- Agribusiness can afford to pay a living wage. **The value of production of fruits, vegetables and horticulture -- labor-intensive crops -- grew by 52% to $15.1 billion between 1986 and 1995. Fruit and vegetable exports doubled in value between 1989 and 1997, reaching $9 billion.** USDA and other economists expect the value of exports of these products to grow.

- **The GAO found that INS enforcement resources have not been and will not be spent on agricultural work sites.** Employers are not going to lose the 37% or more of the labor force that lacks authorized immigration status and depresses wage levels. Indeed, members of Congress successfully pressured INS to suspend a major agricultural enforcement effort in 1998 in Georgia's Vidalia onions.

- The GAO found **that the H-2A guestworker program approves 99% of employers' applications**, despite a labor surplus. The program has allowed mistreatment of workers, partly due to weak DOL enforcement of the existing law's modest protections.

- **It's bad policy.** "Guestworker" programs don't stop unlawful migration; they *cause* it. And American society does not benefit by importing workers who lack a meaningful opportunity to acquire the democratic rights or economic opportunities of citizens. If we need laborers, offer them temporary, and then permanent, resident alien status.

The Senate program would authorize employers to impose employment standards lower than those under the H-2A program, and even worse than the old *Bracero* program. The complex program's main provisions are summarized here:

- **Avoiding Employment of U.S. Workers:** Under the H-2A program's "50% rule job preference," employers must hire qualified U.S. workers who apply by the time one-half the season has elapsed. The Bush Administration conducted a Congressionally-required cost-benefit evaluation and decided to continue it. Under the H-2A program employers must affirmatively recruit in the private marketplace (this is known as "positive recruitment") and use the federal-state Job Service to circulate job offers to areas where migrant workers may be located. *No such recruitment would be required under the Senate program. The system is designed to fail U.S. workers.* See §§ 3, 4, 5, 6.

    - Employers could reject qualified U.S. workers who applied for a job directly to the employer, or through the Job Service, a union hiring hall, or a labor contractor. Yet, employers could use labor contractors to hire foreign workers.

    - Employers need only consider a job application submitted through a "job registry," a new government agency to be established in each state. The job registries would take years to generate job applicants, but guestworkers could be hired in 6 months.

- U.S. workers would need to apply to multiple state registries. Their names would be purged from the registry automatically for various reasons, including turning down 3 job referrals in 3 months due to alternative job opportunities.

- The job registry could have as little as 7 days to recruit U.S. workers. The employer need only apply 21 days before the first date of work. The job registry could take 7 days to review the application, after which the registry begins searching for workers. But the Government must issue permission to hire guestworkers no more than 7 days before the first day of work. Yet, guestworkers could be recruited for months.

- The employers could reject qualified U.S. workers who are referred by the job registry if (a) the Attorney General did not certify first that the worker is a citizen or lawful resident alien; (b) the employer decided not to hire guestworkers; (c) the employer has "committed" to hiring a guestworker and the job registry has not yet made "all reasonable efforts" to find a different job for the worker, even a job not listed on the registry, and (d) the latter government processes last more than half the season.

- **The Definition of "Employer":** The bill (§ 2(4)) narrowly defines "employer," allowing growers or plant owners to claim that an asset-less association or labor contractor is the sole (not joint) employer of the workers, escaping liability for illegal wages and conditions.

- **The Definition of "Temporary"** includes employment that the employer "intends" to last 10 months or less, potentially allowing employers to use this termporary foreign worker program for many year-round jobs (e.g., in plants with high employee turnover). § 4(c).

- **Delayed Disclosures**: The H-2A program requires employers' applications to include all material terms of employment. No such requirement exists in the Senate program. The U.S. worker would not receive a disclosure of work terms until after s/he "commits to work for the employer." Even then, the disclosure would come from the job registry, which would only have a description of the terms. Foreign workers would not have to receive disclosures at the time of recruitment, but rather when they receive their visas after travelling to a U.S. consulate (which, in Mexico, is on the border). §§ 4,5.

- **No Housing Required:** The H-2A program requires employers to offer housing, and to provide it at no cost to the worker. The Senate bill authorizes employers to provide housing allowances. Due to a severe housing shortage for farmworkers, and the inadequacy of their wages and the allowance, farmworkers will not be able to find housing or to finance its development. The resulting homelessness will harm farmworkers and local communities that must cope with the consequences. See § 7(b)(1), (5) and (6).

- **No Minimum Work Guarantee:** Under the H-2A and *Bracero* programs, employers have been required to offer the opportunity to work at least ¾ of the work-days in the stated period of employment, except when there is an Act of God. This "three-fourths guarantee" gives migrant workers some indication of their potential earnings and discourages employers from over-recruiting to secure a labor surplus and drive down wages. The Senate bill lacks any minimum work guarantee.

- **No transportation cost reimbursement:** H-2A workers and *Braceros* have been reimbursed by employers for in-bound transportation costs upon completion of half the season, and paid their cost of travelling home upon completion of the season. The H-2A program requires employers to *advance* workers the cost of transportation if that is a local prevailing practice or if foreign workers are advanced their costs. The Senate bill states that workers may apply for travel reimbursement but does not obligate anyone to pay it (an earlier version would have had the government, not the employer, reimburse such costs). Low-income U.S. farmworkers will lose job opportunities and some foreign workers will lack the money to get home.

- **Wage Provisions Would Legalize Traditional, Outlawed Abuses, Supersede State and Federal Minimum Wage Laws, and Authorize Employers to Offer Substandard Wages and Working Conditions**

Under the H-2A program, employers must pay the highest of three minimum wages: the federal or state minimum wage; the local "prevailing wage," as determined by the Department of Labor using state agency wage surveys; and, the H-2A "adverse effect wage rate or "AEWR." 20 C.F.R. § 655.102(b)(9) and (7). The AEWR is supposed to compensate for the depression in wages caused by the presence of foreign workers. The Reagan administration changed the AEWR methodology, lowering the rates by an average of 20%. The H-2A AEWR is now defined as the regional average wage for field and livestock workers, as found in Department of Agriculture annual surveys. Under the Senate bill:

- The guestworker program would supersede state and federal minimum wage laws. The bill would require the higher of the local prevailing wage or a re-defined adverse effect wage rate (if applicable), but not the federal minimum wage or state minimum wage laws § 7(a)(1). State and federal labor laws would be applicable "except as otherwise provided" and the Act does "otherwise provide." Employers would "not be required" to offer better wages and working conditions than those provided for in this law. § 3(c)(5)(A), (4(a)(1)(E), 4(c)(3). The bill would undercut the Federal minimum rate of $5.15 per hour, and higher rates in California ($5.75) and Oregon ($6.00, soon $6.50 per hour).

- Employers themselves could determine the "prevailing wage" or rely on state agencies' determinations, rather than the U.S. DOL. The "prevailing wage" would be the median wage rate, meaning that about half the workers earn more than that rate. § 7(a)(2)-(3).

- The bill redefines the term "adverse effect wage rate" (or "AEWR") to install an arbitrary methodology -- 5% above the local prevailing wage up to a maximum of the regional average wage for field and livestock workers – that does not protect against the adverse effects of the presence of foreign workers. § 2(1).

- Employers could pay a prevailing piece-rate wage (plus 5% under the AEWR definition) even if the piece rate yields less than the legal minimum hourly wage rate.

- Employers could pay by a "task rate" (one of the abuses suffered by H-2A sugar cane cutters). But DOL has said a "task rate" is too variable to be susceptible to a prevailing wage determination. Employers could simply claim that they pay by "the task" and would avoid a prevailing wage or AEWR. § 7(a)(4)(B)-(C).

- Employers could pay by a method (e.g., a piece rate of 50 cents per bag of onions) different from the prevailing method of pay (e.g., $5.15 per hour). Such employers need only show that their method "is designed" to yield the average earnings paid under the prevailing method of pay. The employer need not "design" the system to earn the adverse effect wage rate. More importantly, the employer's obligation is to "design," not to actually pay. § 7(a)(4)(A).

- **No individual worker would be guaranteed any minimum rate of pay per hour.** Under the limited circumstances in which there is a minimum hourly wage rate, the bill allows employers to prove compliance with that rate by offering an incentive wage system (piece rate, group rate, task rate) under which the employer's workforce, "taken as a group," on average earns that minimum. Some workers could be paid $2.00 per hour for an entire season as long as the group averages the minimum hourly rate required by this law. § 7(a)(4)(B). This is an astonishing departure from longstanding law.

- **U.S. workers' taxes would pay the entire cost of the program, while these employers would get a tax break because Social Security and Unemployment taxes are not applicable to guestworkers' wages.** An earlier version of the bill would have imposed a fee on employers for using this program, but it was eliminated.

- **The immigration provisions are illusory**. Guestworkers have no right to remain in the United States once their job ends. This bill does not change that. But it would permit some guestworkers to apply for permanent visas upon completing 4 consecutive years of working in the program at least 6 months per year. During that time their desire for continued employment would render them vulnerable to employers' unreasonable demands. In any event, few farmworkers would satisfy that requirement due to the short duration of their jobs. Many would not meet other eligibility requirements (e.g., due to an earlier unlawful presence in the U.S.). Those who did qualify would be placed in a low-priority visa category and at the end of a years-long waiting list.

- **Maximum Government Assistance to Employers But Limited Government Enforcement.** The bill avoided authorizing the Secretary of Labor to exercise discretion or even issue regulations to prevent wages and working conditions from adversely affecting U.S. workers, require employers to recruit inside the United States, stop employers from discharging U.S. workers discriminatorily, or go to court to enforce workers' employment contracts. The Kennedy amendment, though lacking in specific implementation procedures, requires the President to operate the program in a manner to achieve these ends.

The Senate's proposed program is incapable of being fixed because it is fundamentally flawed. More importantly, it is unnecessary.

The existing H-2A law should be enforced more strenuously by the Department of Labor to prevent adverse effects to U.S. farmworkers' wages and working conditions caused by employers' hiring of unauthorized immigrants and guestworkers. The Department should enforce other labor laws in agriculture more vigorously against employers who exploit the vulnerable status of undocumented workers and guestworkers by imposing substandard wages and conditions. Such enforcement would reduce the hiring of unauthorized immigrants, ameliorate the suffering of farmworkers, enable workers to organize unions, and minimize the competitive disadvantage suffered by law-abiding employers who compete fairly in the marketplace.

For further information, contact Bruce Goldstein, Co-Executive Director, Farmworker Justice Fund, Inc., 1111 19th Street, N.W., Suite 1000, Washington, D.C. 20036, (202) 776-1757.

August 18, 1998

state average agricultural workers for all agricultural workers (includes illegal workers)

AEWR

crop/area

e. Eliminate AEWR; replace w/ 105% prevailing wage

CON

1. would lower farmworker wages for some workers.
2. If you use 105%, still a 3% ~~cost~~ wage advantage to use foreign workers.

almost no ag. workers are hourly.

3. Workload and cost to doing this (burden on govt.)
   - State Emp. Service
   (DOL ~~don't~~ do wage survey for every crop for every area)
4. to the extent that p.w. for a crop is influenced by illegal workers, wage already depressed.
   (sectors heavily influenced by illegals would have wages more depressed
   (AEWR also affected by illegals)

PRO

1. AEWR is hard to defend — broad average wage construct w/ lots of people in it.
2. makes wage closer to market-driven rate (but market is heavily influenced by presence of illegals)

current system:
higher of AEWR & prevailing rate OR state or fed. minimum.

Wyden has or 105% of prevailing if more than AEWR

30-40% H2A employment, AEWR controls

Wages – Housing – transportation – fees

USDA: presence of illegals ~~xxx~~ depresses wages.

Do we want the H2A program to be attractive to growers or an acceptable alternative to hiring illegal workers.

(*) What is the ~~xx~~ total cost of H2A worker

Wyden = 100% U.S. worker cost + housing

vacant/available
not in the west

prevailing wage (+ X%) + X% (= what?) + housing

not depressed wages but not too high as to drive growers out of business

~~Nature of agribusiness is not compatible~~

Attractive jobs but crack down on illegal workers.

Stabilize agric. workforce

Jobs better for U.S. workers + emp. verification (get rid of illegals)

policy goal(?) (DOL)
— [meet U.S. agricultural needs w/U.S. workers.]
includes link-ups
better wages & conditions

USDA — to ~~have~~ be supplemented by foreign workers in H2A ~~workers~~ program.

Only people who use program now have costs
= H2A costs, ⊕ housing.

Closer to pure market forces = 100% ⊕ housing
but, DOL says: has to be more to this
- pilot verification
- higher enf. of terms & conditions of employment

in a world w/out illegals.
Keeping farmers in business ———————— living wage
Ideal

but we need to do this calculation for a world with illegals.

way to structure a program that changes over time (attractive H2A — more fees —)

current program costs : 100% + housing) — ~~[illegible]~~

Growers want this + transfer some costs to govt (transportation & recruitment)

same as current program

What is the % cost (premium) that farmers would pay to get the reliable labor supply.

~~[illegible]~~

50% rule (does not apply to growers w/ fewer than 4)

USDA : ~~$~~ apply 50% rule where equivalent jobs not available in the area.

this is currently where the rule where association is the employer.

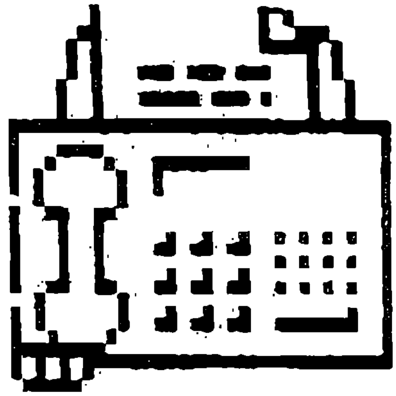
~~[illegible]~~

ok by DOL
Political con:

50% rule is good for U.S. workers (desirable)

Con to 50% rule — X farmer

100% ok.



Fax

From

Coalition of Immokalee Workers
215 F West Main St.
P.O. Box 603
Immokalee, FL 34142

To

Attention: Leslie
Maria Echaveste's office
Deputy Chief of Staff
The White House

Fax Number

(941) 657-8311

Fax Number

202 456-6703

Voice Number

(941) 657-8311

Voice Number

Subject

Meeting with farmworkers

Date

9-30-98

Number of Pages

9

Note Enclosed is a translation of our letter sent in Spanish on Sep. 21st to Ms. Echaveste, as well as newspaper articles covering Jeb Bush's visit, the visits by Secretary of Labor Alexis Herman and Secretary of Agriculture Dan Glickman, and the roles that Gov. Chiles and Cardinal Keeler of Baltimore played during the hunger strike. Gubernatorial candidate Buddy McKay also called this week and requested a meeting with us, and we'll be meeting with Sen. Graham's office in Miami later on.

We would like to be of help to the administration in many ways, including opposing the guestworker bill, supporting a minimum wage increase, and in labor and human rights issues in general.

We would very much like a meeting with Ms. Echaveste and, of course, we would be thrilled to meet with President Clinton.

We will be in the DC area around Oct. 9-12 but could also meet later on, either in DC or in Florida, if that time is inconvenient.

C I W

Coalition of Immokalee Workers
Coalicion de Trabajadores de Immokalee
Kowalisyon Travaye nan Immokalee

September 21, 1998

Ms. Maria Echaveste
Assistant to the President
Deputy Chief of Staff

Dear Ms. Echaveste:

We are writing to you from the Coalition of Immokalee Workers. You may have heard about the hunger strike that six of our organization's members undertook last December 1997 through January 1998, fasting for simply the chance to have a dialogue with our employers about the low wages in agriculture. The hunger strike ended after 30 days with the intervention of President Jimmy Carter.

We are writing to you today about the problem posed by the guestworker bill that the nation's growers are trying to pass in Congress. We believe that if this bill becomes law, it will affect adversely both the lives of thousands of workers who would be brought here under contract and the lives of us workers who are already based here in this country.

We do not believe that this bill is a solution to the problem that the growers say that they are supposedly facing. On the contrary, the agricultural industry needs to modernize its labor relations and offer better wages and working conditions in order to attract the labor force which already exists here in this country. We have been working towards this solution for a year and a half, through our Campaign for Dialogue and a Living Wage. Our campaign has been growing stronger and stronger as time passes.

We would like to talk with you about the immediate issue of the guestworker bill as well as our broader campaign and hope that you will be so kind as to call our office in Immokalee, Florida at (941)657-8311. We will also continue on our end to contact your office to try and arrange a meeting with you.

Thank you very much for your consideration of this matter.

Sincerely,

Lucas Benitez

Lucas Benitez
CIW

CIW, P.O. Box 603, Immokalee, FL, 34143/215F West Main St./tel. & fax (941) 657-8311

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

St. Petersburg Times
Florida's Best Newspaper
WEDNESDAY, AUGUST 19, 1998

OPINION

Farm workers need a governor's help

BILL MAXWELL
COLUMNIST

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. 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 Rorapaugh as his campaign manager. Rorapaugh, 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 forgive 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) 657-831 .

Naples Daily News

EDITORIAL & OPINION

Sunday, September 13, 1998

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

Philip P. Lewis, Editor

William H. Blanton, Managing Editor

Jeffrey F. Lytle, Editorial Page Editor

SCRIPPS HOWARD

Naples Daily News

Corbin A. Wyant, President and Publisher

1075 Central Avenue, Naples, Florida 34102 941-262-3161

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 firsthand 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.

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 [illegible] association that their wages compare favorably with those 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.

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

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 1996, 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."

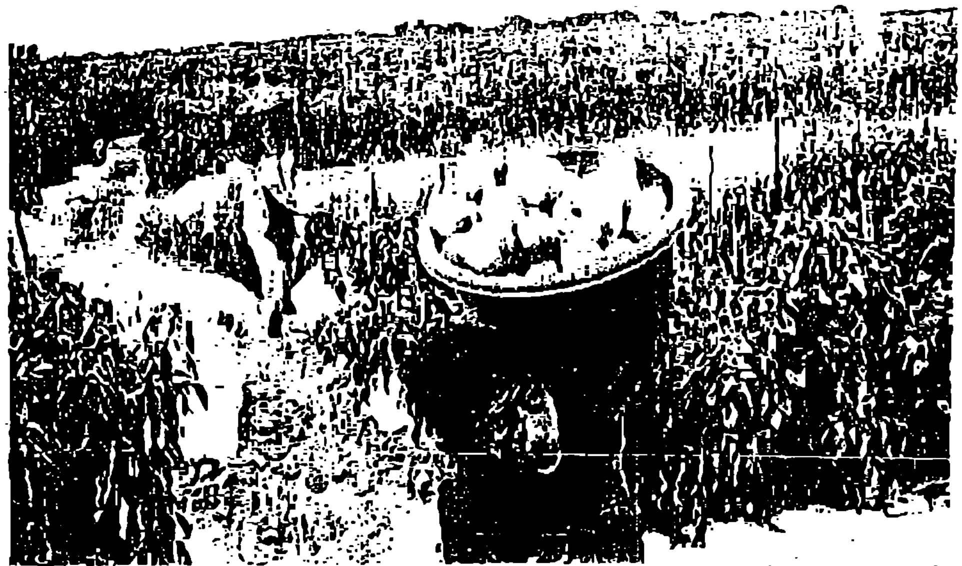
But good times and bad times in farming have made no difference to those at the lowest rung. Agricultural economists and some surveys have found that over the last two decades the wages of the nation's more than two million farm workers have declined, some by 20 percent or more, after accounting for 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 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."



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

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. Gargiolo 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 $11 an hour, with the average worker making $8 to $9 — higher than the national average for farm workers of $7.24. 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.

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

Greg Asbed, 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 done is to make it a viable occupati[on] by increasing the wage for when th[ey] do work."

The coalition, which has some v[ic]tories to its credit, including exp[os]ing harsh working conditions and c[on]vincing a company [not to] lower wages by staging a five-day strike [in] 1995, plans to step up actions w[ith] more hunger strikes, boycotts [and] even union organizing if the grow[ers] continue to ignore them. The pick[ers] are also planning to send a dele[ga]tion to Washington to meet w[ith] members of Congress and the [De]partment of Labor.

Workers like Mr. Rocillo supp[ort] the coalition's work — he particip[at]ed in two of the work stoppages — but harbor no hope of a better life "to end," he said. "The ones that [win] are the companies."

After losing his luck in the Car[oli]nas picking cucumbers and earn[ing] even less because of rains and [the] small size of the crop, Mr. Rocill[o is] staying put and plans to work [as] long as the body takes it."

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 struggled into the potholed 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.

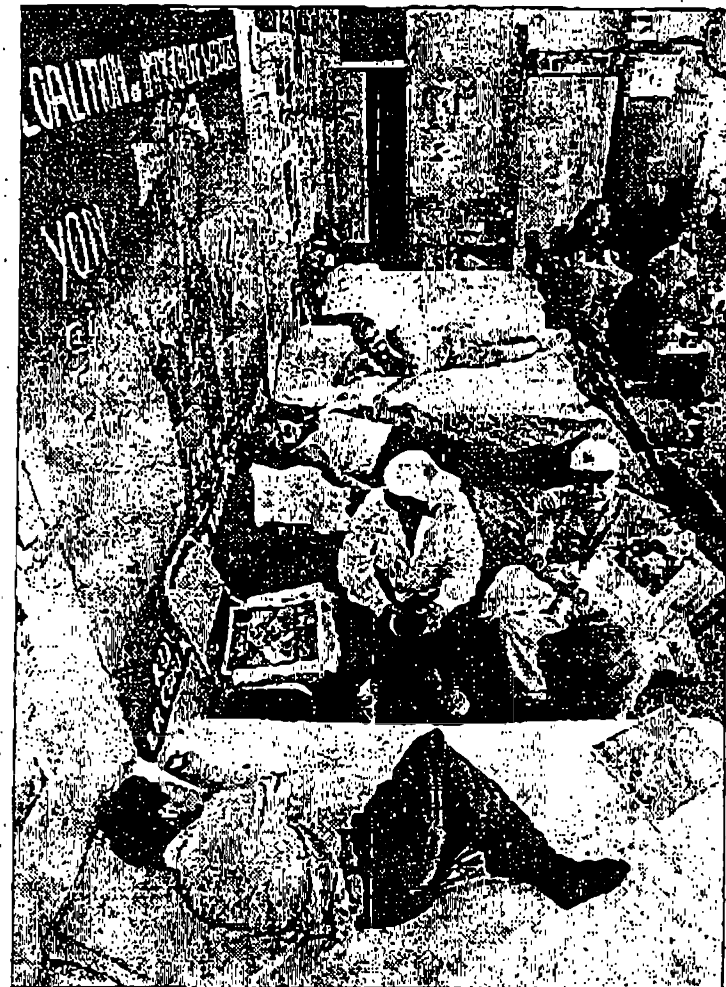
In the view of many migrant workers here—encouraged by the Coalition of Immokalee Workers—that is too long for too little. Five of the farm workers are in the 24th day of a hunger strike, protesting wages they say are lower than they were 20 years ago and demanding talks about a raise from the growers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



BY LUIS M. ALVAREZ—ASSOCIATED PRESS

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-

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,

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, Gargullo 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 Gargullo.

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 alition, 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.

Naples Daily News Sunday, May 3, 1998 1

COMMENTARY

The feds 'see' plight of Florida farmworkers

Bill Maxwell

FLORIDA CITY — U.S. abor Secretary Alexis erman and Agriculture ecretary Dan Glickman me here, 30 miles south Miami where most of e nation's winter vegetbles and exotic fruit are own, to investigate reorts of poor conditions der which Florida rmworkers struggle.

Here to save face, Herin and Glickman seem out of place walking rough rows of zucchini and yellow uash. They appeared apprehensive uring migrant housing, buffoonish aying with toddlers in a day care cen-

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

Why were a boycott and the ectronic images of starving men eded to remind Herman and Glickn that, in addition to looking after welfare of growers, they are legally and ethically — obligated to protect mworkers?

The two Cabinet members are the hest-ranking federal officials to visit Sunshine State in the interest of m workers since then-Labor Secrey Elizabeth Dole did so in 1990 nt years after Dole's visit, Herman l Glickman saw many of the same ditions during their 24-hour tour. ne conditions, each secretary ac wledged, have worsened.

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.

St. Petersburg Times

L. Matlack

1998
22
76

10/5/98

Farm labor
Dir. of farm labor for FL. farm bureau

Quarterly AG labor survey (survey of employers)

Real wages:
down a bit in the 1980s
flat since 1985 (approx.)

1:30pm

NAWS →

1997/1998 farmers did very well
This year — crises

Census of Agriculture — 1992

net cash return

→ Are H2A workers evenly distributed among kinds of employers.

Farmers never complain to KC about wage rate. (Want workers on time)
But now farmers have fear to have to
engage in the program b/c of
labor shortages.

Sufficient ~~workers who~~
walk off the job.

→ USDA housing program can only be used for LPR/Citizens

Imports (large increases)
competitive pressure to keep prices down

Net cash income for fruit & vegetable farmers (per farm)

Hearing records

from DOL : CPS v. NAWS
Methodology of prevailing wage survey (matched to AEWR)

Appendix table ~~1~~ 7—Farm income for selected types of farms, 1993-98 1/

Item	Cash Grain 2/	Cotton	Fruit/Veg. Greenhouse & nursery	Total crops	Cattle	Hogs	Dairy	Total Livestock
				Billion dollars				
Gross cash income (includes govt. subsidies)								
1993	39.7	5.9	34.5	96.5	41.8	10.8	24.0	103.7
1994	43.2	8.2	34.3	104.1	32.5	9.3	24.6	94.3
1995	47.5	6.6	37.6	107.4	36.1	10.1	23.3	98.1
1996	55.0	7.1	38.5	120.9	27.7	11.4	26.1	96.9
1997	58.7	6.1	40.4	125.9	34.5	11.8	23.8	102.1
1998F	50.8	6.0	39.7	117.4	33.9	9.4	25.9	101.4
Crop receipts								
1993	29.3	4.3	33.3	79.0	4.6	1.9	1.2	8.6
1994	33.6	7.2	33.2	86.8	2.9	1.0	1.2	6.3
1995	39.2	6.0	36.5	93.3	3.3	1.5	1.3	7.8
1996	43.4	6.2	37.5	101.1	2.5	0.9	1.0	5.4
1997	46.5	5.2	39.3	106.8	2.3	1.0	0.9	5.3
1998F	39.5	5.1	38.6	98.9	2.5	1.1	1.0	5.8
Livestock receipts								
1993	2.5	0.0	0.1	3.7	33.3	7.9	21.4	86.4
1994	4.7	0.1	0.1	6.7	27.0	7.5	22.4	81.5
1995	3.2	0.1	0.2	4.7	28.6	8.1	21.2	82.4
1996	5.2	0.1	0.3	8.6	22.7	10.1	24.0	84.4
1997	6.0	0.1	0.2	7.8	28.1	10.3	22.1	88.7
1998F	4.7	0.1	0.2	6.9	27.6	7.8	23.9	87.4
Direct Government payments								
1993	6.3	1.1	0.3	9.9	2.0	0.6	0.7	3.5
1994	3.5	0.6	0.2	6.1	0.9	0.2	0.3	1.8
1995	3.7	0.2	0.1	5.6	0.8	0.2	0.3	1.6
1996	4.0	0.4	0.1	6.0	0.8	0.1	0.3	1.3
1997	4.2	0.4	0.2	6.1	0.8	0.1	0.3	1.4
1998F	4.5	0.4	0.2	6.6	0.9	0.2	0.3	1.6
Cash expenses								
1993	29.8	4.2	20.0	68.4	31.1	8.1	19.5	72.9
1994	32.6	4.9	23.2	76.1	23.2	8.6	21.6	71.5
1995	33.6	4.6	25.8	78.2	29.0	7.5	20.9	75.4
1996	44.9	5.4	24.3	92.0	24.0	6.4	21.5	69.4
1997	42.7	5.2	32.8	96.3	26.3	6.6	21.2	70.9
1998F	41.5	5.3	29.2	92.3	27.1	7.0	21.7	73.5
Net cash income								
1993	9.9	1.7	14.5	28.1	10.7	2.7	4.5	30.9
1994	10.6	3.3	11.1	27.9	9.2	0.7	3.0	22.8
1995	13.9	2.0	11.8	29.2	7.1	2.6	2.4	22.7
1996	10.1	1.7	14.2	28.9	3.7	5.1	4.7	27.5
1997	16.0	0.9	7.5	29.6	8.2	5.2	2.6	31.2
1998F	9.2	0.7	10.4	25.1	6.7	2.5	4.3	27.9

F = forecast. Numbers are rounded.

1/ Farm types are defined as those with 50 percent of more of the value of production accounted for by a specifc commodity or commodity group.

2/ Includes farms earning at least half of their receipts from wheat, rice, corn, oats, barley, sorghum, soybeans, beans, and flax.

Table 1- Annual average hourly wages paid to hired farmworkers compared with annual average hourly wages paid to nonsupervisory wage and salary workers, 1978 to 1997[1]

Year	Hourly wages			Real hourly wages[2]		
	Hired farmworkers		Nonsupervisory wage and salary workers	Hired farmworkers		Nonsupervisory wage and salary workers
	All hired workers	Field workers		All hired workers	Field workers	
	Dollars			Dollars		
1978	3.09	2.93	5.69	7.61	7.21	14.00
1979	3.39	3.26	6.16	7.50	7.21	13.62
1980	3.65	3.55	6.66	7.11	6.92	12.98
1981	NA[3]	NA	7.25	NA	NA	12.80
1982	NA	NA	7.69	NA	NA	12.79
1983	NA	NA	8.02	NA	NA	12.93
1984	NA	NA	8.32	NA	NA	12.85
1985	4.42	4.30	8.57	6.59	6.42	12.78
1986	4.70	4.51	8.76	6.88	6.60	12.83
1987	4.87	4.69	8.98	6.88	6.63	12.68
1988	5.02	4.78	9.29	6.81	6.49	12.60
1989	5.36	5.12	9.66	6.94	6.63	12.50
1990	5.52	5.23	10.02	6.78	6.42	12.30
1991	5.79	5.49	10.32	6.82	6.47	12.16
1992	6.06	5.69	10.57	6.93	6.51	12.09
1993	6.25	5.90	10.83	6.94	6.55	12.03
1994	6.39	6.02	11.12	6.92	6.52	12.04
1995	6.54	6.13	11.44	6.87	6.45	12.05
1996	6.78	6.34	11.82	6.94	6.49	12.09
1997	7.36	6.66	12.26	7.36	6.66	12.26

[1] Excludes agricultural services workers.
[2] Based on CPI in 1997 dollars (CPI 1982-1984=100).
[3] Data not available.
Source: Calculated by ERS using data from NASS's *Farm Labor* and U.S. DOL's *Employment and Earnings*.

The changes in real hourly wages shown in Table 1, above, are as follows:

- All hired farmworkers, 1978-1997=(3.3 percent); 1990-1997=8.6 percent.
- Field hired farmworkers, 1978-1997=(7.6 percent); 1990-1997=3.7 percent.
- Nonsupervisory wage and salary workers, 1978-1997=(12.4 percent); 1990-1997=(0.3 percent)