

IN DEFENSE OF THE ALIENS

Volume XX

*Welfare Entitlements for Legal and Illegal Immigrants –
Impact of the New Legislation on Migrant Farmworkers –
Due Process and Other Constitutional Issues –
Asylum Procedures – New Grounds for Exclusion
and Deportation – Naturalization –
Future Perspectives*

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Agribusiness Lobbies for a New Temporary Foreign Worker Program

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Major agribusiness organizations have been lobbying Congress for radical changes to the H-2A temporary foreign agricultural worker program. Pending proposals in the House (H.R. 2377) and Senate (S. 169) would enable agricultural employers to bring in large numbers of temporary foreign workers with minimal government oversight. Standards for wages, housing, and working conditions that exist in the current law would be substantially lowered or eliminated. No valid justification exists for a new agricultural guestworker program.

The agricultural employer groups variously claim that there is an actual or imminent shortage of citizens and authorized immigrants willing to do farm work. Contending that a majority of farmworkers are unauthorized immigrants and that increased enforcement by the Immigration and Naturalization Service will reduce the farm labor force, the employers claim that they will lose much of their labor force. Agribusiness organizations also claim that the current H-2A agricultural guestworker program is too bureaucratic, slow, and subject to litigation.

Farmworker advocates, supported by numerous government and academic studies, argue that there is no actual or impending shortage of farm

labor in the United States. Rather, there is double-digit unemployment in farm labor supply counties. There would be no labor shortage even in the unlikely event that the INS enforcement on the border and in the interior were to remove many undocumented farmworkers. Moreover, the H-2A guestworker program – which has been manipulated for many years for the benefit of growers – continues to serve as a safety valve if shortages were to develop.

In any event, the issue is not a labor shortage; the issue is the level of wages and working conditions. Other industries that actually are facing a tighter labor market are responding by improving their job offers and their workplaces. Agribusiness, despite its years of predicting labor shortages, has not acted like an industry facing a labor shortage. Farmworkers' wages have not kept pace with inflation. Conditions have not improved. Farmworkers' poverty rates have increased. Agricultural employers have not adopted recommendations by government commissions on ways to stabilize the labor force. Rather, agribusiness has perpetuated a low-wage, high turnover strategy made possible by increasing employment of vulnerable undocumented workers. Now the industry wants legislation that would guarantee a constant flow of nonimmigrant workers at inadequate wages and working conditions.

Agribusiness seeks a legislative exemption from the economic law of supply and demand at the expense of the poorest of the working poor. This article discusses the reasons for rejecting agribusiness demands.

A BRIEF HISTORICAL BACKGROUND

The longstanding "plight" of migrant and seasonal farmworkers is associated with America's history of granting agricultural employers access to foreign workers, including slaves, contract laborers, newly-arrived immigrants, and vulnerable undocumented workers. In California's large-scale agriculture, employers secured access to significant pools of foreign workers beginning in the mid-1800s. Chinese workers were eventually followed by Japanese, Filipino and Mexican citizens, among others. At the turn of this century, Italian contract laborers worked in agriculture in the eastern United States under the *padrone* system (see Daniel, 1981; 1997).

During the Great Depression's internal migration of native-born whites, made famous in John Steinbeck's *Grapes of Wrath* (1939), some observers thought that the farm labor force would stabilize and conditions would improve:

... "Okies" and "Texicans" were not another minority alien racial group (although they were treated as such) but American citizens familiar with the usages of democracy. With the arrival of the dust-bowl refugees a day of reckoning approaches for the California farm industrialists. The jig, in other words, is about up. (McWilliams, 1939:306)

Such optimism proved unfounded.

The guestworker system known as the bracero program began during World War II as a government-to-government agreement between Mexico and the United States. It was extended several times through congressional action until it ended in 1964 amid great controversy. The program was focused on California and States in the southwest and northwest. Between 4 and 5 million Mexican citizens were admitted on temporary visas as seasonal workers during the 22 years the program remained in place; at the peak, about 400,000 workers per year entered the country or had their status adjusted.

A large undocumented migration accompanied the guestworker program, leading to the massive enforcement effort in the mid-1950s known as "Operation Wetback." (CAW, 1992:17-19; Galarza, 1994:Ch. 7.

BACKGROUND ON THE H-2A PROGRAM

The present H-2A temporary foreign agricultural worker program originated in 1943. The United States Sugar Corporation gained government permission to employ Caribbean workers on temporary visas to hand-cut Florida sugar cane. This program later became known as the H-2 program after its subsection in the Immigration and Nationality Act of 1952. The H-2 program remained only a fraction of the size of the bracero program and stayed focused in sugar cane and east coast apples (CAW, 1992:19-20; Wilkinson, 1989).

The Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603, amended the Immigration and Nationality Act to separate the agricultural and nonagricultural temporary foreign worker provisions into the H-2A and H-2B programs; to streamline the program's procedures for the benefit of employers; and to codify labor protections that the Department of Labor had issued as regulations, 8 U.S.C. §§ 1101(a)(15)(H)(ii)(A), 1184, 1188; 20 CFR Part 655 (Dept. of Labor regulations); 8 CFR § 214.2(h) (INS regulations) (see House Judiciary Report No. 99-682(I), July 16, 1986; Yale-Loehr, 1986-87:33).

The H-2A program's legal standards are discussed later in this article. Briefly stated, an employer seeking temporary foreign agricultural workers must apply to the Department of Labor for a labor certification that there is a shortage of labor for the employer's jobs and that the wages and

working conditions offered would not adversely affect similarly employed United States workers.

Since the 1986 amendments, use of the H-2A program has changed. The Florida sugar cane companies, which had employed about 9,000 H-2A workers each year, gradually mechanized the harvest and then stopped using H-2A workers. The program continues to be concentrated in apples in several States on the east coast. It has expanded during the last eight years to hundreds of tobacco growers in Virginia, North Carolina (where many cucumber growers also use the program), Kentucky, Tennessee, and Connecticut, as well as others. About 1,500 sheepherders, mostly in the West, come in under the H-2A program.

The Department of Labor Employment and Training Administration (ETA) estimated that it certified about 19,000 H-2A positions in 1996. It rejects very few H-2A applications filed by employers. However, very few employers, as a percentage of all agricultural employers, have attempted to use the H-2A program.

THE SAW AMNESTY PROGRAM AND THE LEGALIZATION OF THE LABOR SUPPLY

The immigration law of 1986 dramatically affected America's labor-intensive agricultural sector. IRCA offered a legalization, or amnesty, program specifically to ensure agribusiness access to experienced farmworkers who had held undocumented, or unauthorized, immigration status. In return, agribusiness was expected to stabilize the labor force and end its addiction to foreign labor.

Under this "special agricultural worker" or SAW program, applicants had to show that they had worked at least 90 days in fruits, vegetables, or other perishable commodities during the one year ending May 1, 1986 (8 U.S.C. § 1160; 8 CFR Part 210). Most of the SAWs became permanent resident aliens effective December 1990 and eligible for citizenship five years later (see CAW, 1992:59-64; Martin and Taylor, 1995a).

The SAW program granted permanent resident alien status to 1.1 million farmworkers. IRCA's "replenishment agricultural worker" or RAW program would have admitted additional SAWs had the Departments of Labor and Agriculture concluded that there was a shortage of seasonal farm labor. During the four-year RAW program that ended in 1993, those agencies annually determined that there was no labor shortage (see 8 U.S.C. § 1161; CAW, 1992:64-65; Martin and Taylor, 1995:7).

In addition to the H-2A program amendments, the SAW program, and the RAW program, another legacy of the 1986 immigration law was the U.S. Commission on Agricultural Workers (CAW). Although CAW mem-

bership was dominated by employer representatives, its report and data yielded valuable information about farmworkers, an inadequately studied group.

THE ECONOMIC STATUS OF MIGRANT AND SEASONAL FARMWORKERS

Recent studies confirm that migrant and seasonal farmworkers – the people who earn wages by planting, cultivating, and harvesting our fruits, vegetables, nuts, and horticultural varieties – continue to be the poorest of the working poor. Perhaps more surprising, the treatment of farmworkers generally has worsened.

Researchers estimate that there are 1.6 million migrant and seasonal farmworkers (excluding livestock workers) in the United States. Approximately half (800,000 to 900,000) are in California, vying for many fewer jobs (U.S. Department of Labor, 1994:2; Martin, 1996:200).

The California market is highly concentrated: "The largest 1,250 farm employers – just 5 percent – pay about two-thirds of California's farm wages" (Martin, 1996:201). More broadly, there has been a "weakening of family businesses nationwide" and "increasing numbers of highly capitalized, large scale units" (CAW, 1992:28).

DECLINING REAL WAGES AND EARNINGS AND INCREASING POVERTY RATES

Farmworkers' real wages have declined. An ongoing study of migrant and seasonal farmworkers commissioned by the Department of Labor recently found that "median personal incomes have remained between \$5,000 and \$7,500 since 1988, which means that personal incomes, in inflation-adjusted dollars, likely fell during this period" (U.S. Department of Labor, 1997:18).

Steven Greenhouse (1997a) reported economists' assessment that farmworkers' real wages during the last twenty years have decreased by 20 percent or more. *Time Magazine* (Nov. 25, 1996) reported that California's strawberry workers experienced a decline in real earnings from \$9.00 per hour a decade ago to \$6.00 per hour in 1996.

The Department of Agriculture, whose studies include higher-wage agricultural jobs, reported that real U.S. farm hourly wages between 1986 and 1991 decreased by 2 percent, and by 13 percent in California (CAW, 1992:93-94). According to the CAW, real farm wages peaked in 1977, then fell for eight years, increased in 1986, and then sloped gently downward during the post-IRCA period (CAW, 1992:95).

Not surprisingly then, according to the National Agricultural Workers Survey, the portion of farmworkers living below the poverty level has increased during the last few years to well over one-half the population (U.S. Department of Labor, 1997:25; see also Griffith and Kissam, 1995; U.S. Department of Labor, 1995; Commission on Security and Cooperation in Europe, 1993; Edid, 1994; Zabin *et al.*, 1993; Goldfarb, 1981).

UNEMPLOYMENT AND UNDEREMPLOYMENT: THE OVERSUPPLY OF LABOR

Farmworkers continue to experience high unemployment and underemployment. There is no need for a guestworker program. The National Agricultural Workers Survey found that:

The U.S. farm labor system is characterized by an oversupply of workers. At any point in the year, there is a plentiful supply of farmworkers (at least 190,000, or 12% of farmworkers) in the United States who are not working. . . . Furthermore, there are many workers who are out of the country but may be available for work (U.S. Department of Labor, 1994).

The 1992 Report of the U.S. Commission on Agricultural Workers had earlier found a "general oversupply of farm labor nationwide" (CAW, 1992:xx), resulting in declines in real wages, annual earnings, and living and working conditions for farmworkers. In pungent language, the U.S. Commission on Immigration Reform (1995:173) said the same thing:

. . . only 61 percent of farmworkers are employed in farm work. If the supply of illegal farmworkers dried up tomorrow (or if growers chose to stop hiring illegal workers), the supply of work-authorized farmworkers is ample, even in peak harvest months.

Employers for many years have been predicting labor shortages that have not materialized. Even agribusiness representatives admit, despite an alleged "feeling" that there will be labor shortages, in fact there are ample workers (*Capital Press, Agriculture Weekly*, July 18, 1997, 1):

- Washington State Farm Bureau official Julie Murray said this summer, "At \$5 per hour, you're not being competitive. . . . If you raise wages, you get more workers."
- Roy Gabriel, a long-time official with the California Farm Bureau, said, "We're not suffering from labor shortages, and no one's losing crops yet. But there is a great deal of anxiety about this."
- "In Idaho, Farm Bureau officials say they haven't heard of any problems when it comes to labor."
- "For now, there seems to be enough workers to harvest crops in Oregon, Schellenberg said." Don Schellenberg is an official of the Oregon Farm Bureau.

Rural unemployment rates remain stubbornly high in States that supply migrant farmworkers. A glance at rural America's unemployment rates reveals a shocking disparity in the effects of the national recovery that has brought the general unemployment rate down to the relatively low level of about 5 percent.

California

California State government data show high unemployment rates among citizens and legal immigrants in rural counties. Average unemployment rates in eighteen farm labor counties in California during January 1996, June 1996, January 1997, and June 1997, respectively, were 17.6 percent, 13.3 percent, 16.8 percent, and 12.4 percent. A recent study of these statistics concluded:

As in 1995, we have found that the persistent high unemployment rates in these counties have shown little change, despite a broad-based economic recovery throughout the state in recent months, and despite the fact that labor-intensive acreage is up in many of these counties (Schacht and Rice, 1997).

A recent article in the *Los Angeles Times* examined these unemployment rates and their consequences. Experts predicted that the removal of many families from public benefits programs under the new welfare reform law will have serious negative impacts for such communities and could set off a major migration to urban areas in search of jobs. ("To Phase Out Aid, Farm Belt Needs New Crop of Jobs," *Los Angeles Times*, June 2, 1997).

Texas

Texas historically has been a major supplier of migrant labor. The Texas Workforce Commission, in cooperation with the Bureau of Labor Statistics recently issued the following unemployment statistics for Texas counties where many farmworkers live and/or work. The data are shown in Table 1.

TABLE 1
UNEMPLOYMENT STATISTICS IN TEXAS COUNTIES WITH HIGH FARMWORKER POPULATION

Counties	Number Unemployed		Percent Unemployed	
	Jan 1997	July 1997	Jan 1997	July 1997
Cameron	16,266	17,543	12.9%	13.5%
El Paso	34,646	34,900	11.8	11.7
Hidalgo	43,580	33,142	21.7	17.8
Maverick	7,140	3,574	35.3	21.9
Starr	8,634	4,418	35.4	22.7
Val Verde	2,578	1,860	13.9	10.3
Webb	8,626	7,692	12.3	10.7
Willacy	1,974	1,684	23.9	21.6
Zapata	480	404	10.0	8.3

Source: Texas Workforce Commission.

Florida

Florida's farmworkers, many of whom migrate to locations in the mid-west and the east coast, also have lacked adequate jobs in and out of Florida. In major agricultural counties, unemployment rates are extraordinarily high, especially during the summer (the off-season for the State's huge citrus harvest), when northern employers from Georgia to Maine need workers (see Table 2).

TABLE 2
SOUTH-CENTRAL FLORIDA UNEMPLOYMENT RATES

Counties	July 1995	July 1996	Jan. 1997	July 1997
Hendry	26.1%	24%	9.2%	23.7%
Hardee	19.0	19.0	10.2	16.6
St. Lucie	17.5	17.7	10.3	13.7
Okeechobee	13.5	13.7	9.0	9.3
Indian River	14.5	13.8	6.9	11.4
Highlands	12.0	13.0	6.9	12.9
Glades	12.6	13.0	8.3	12.9
Martin	8.0	8.0	8.0	6.9
DeSoto	9.7	10.4	5.2	9.8

Source: Florida Department of Labor and Employment Security, Bureau of Labor Market Information, and Florida Legal Services, "Despite a Strong Economy, Unemployment Remains High in Florida's Citrus Belt," 1997.

The welfare reform law is placing pressure on Florida's farm labor market by either forcing welfare recipients to seek farm jobs or causing former farmworkers to return to agricultural work. (see "In Search of Openings: Rural Recipients of Welfare Hunt for Elusive Jobs," *Florida Sun-Sentinel*, Aug. 18, 1997).

A fundamental problem is that the advantages of foreign guestworkers and unauthorized immigrants often cause employers to discriminate against U.S. farmworkers. This summer, a Florida vegetable grower, Pero Family Farms, filed an application seeking 370 H-2A workers, claiming that it did not have sufficient numbers of citizens or legal immigrants applying for jobs. As part of the application process, Pero Farms was obligated to recruit workers in Florida. Sufficient workers applied and Pero Farms withdrew its H-2A application. However, several U.S. workers charged that Pero Farms had discriminated against them during the hiring process due to a preference for foreign workers, and the State of Florida issued a decision to terminate public employment services to the company due to its violations of the law (Florida Department of Labor and Employment Security, 1997). As a *Palm Beach Post* editorial stated after the incident: "A Palm Beach County farm's experience shows that failure to find home-grown employees usually is just a dodge" ("Work to Find Workers," July 6, 1997, 2E; see also June 25, 1997, 4B; June 13, 1997, 4B; Sept. 19, 1997, 6B).

Washington State

A Washington State government report (Washington State Employment Security, 1997) reveals that there are twice as many workers as jobs in agriculture.

While there was an average of 67,100 jobs for hired farm workers in 1995, the CWBH database, which tracks workers by individual social security number, reveals that those jobs were filled by approximately 139,000 workers. (p. 21)

The State concluded that farmworkers' average earnings are low "because many agricultural jobs are relatively unskilled [and] there is normally a plentiful supply of workers at relatively low wage rates" (p.20). The most recent report also noted the high employee turnover in agriculture: "many workers leave farm work because of relatively low wages and uncertain hours of work" (p. 24). The size of the labor supply, however, grew slightly between 1990 and 1995.

One year earlier, the conditions in Washington State were similar. The report then said:

Average earnings of farmworkers are low relative to those of most other workers for a variety of reasons. First, there is a large supply of workers available for much of the farm work which can be learned on the job in a relatively short period of time. Then there is the seasonal nature of many agricultural jobs. Seasonal workers are often not employed full time even during harvest periods. (Washington State Employment Security, 1996:19)

ILLEGAL EMPLOYMENT PRACTICES IN AGRICULTURE

An industry widely known for mistreatment of its employees cannot expect to attract and retain workers. Agriculture's reputation is one of rampant violations of minimum wage and other basic protections.

- In 1995, the U.S. Department of Labor's Wage and Hour Division conducted just 2,376 investigations under the Agricultural Worker Protection Act (about half the number conducted a decade earlier), but found violations in 1,337; or 63 percent, of those cases.
- The Commission on Agricultural Workers, led by the president of the California Farm Bureau, said, "The Commission was made aware of numerous violations of worker protective statutes in both research and hearings. Clearly this must stop."
- The Helsinki Commission recommended major improvements in labor law enforcement in agriculture (Commission on Security and Cooperation in Europe, 1993).

Wages are not paid. Social Security deductions are not sent by employers to the Social Security Administration. Housing is nonexistent, decrepit,

or reminiscent of concentration camps. (The Westover Camp on the eastern shore of Maryland was a World War II prisoner-of-war compound.) Farmworkers are forced to pay exorbitant prices for food and other items provided by contractors and growers. Many farmworkers are killed or injured while being transported in unsafe, uninsured motor vehicles. Toilets are not provided in the fields when required. Sexual harassment occurs on the job. The list goes on.

UNDERUTILIZATION OF PUBLIC BENEFITS

Agricultural employers historically have enjoyed subsidies in the form of public benefits provided to farmworkers due to their low incomes. Yet through all their adversity, farmworkers continue to underutilize government services and public benefits. The Department of Labor (DOL) study found that only 20 percent of farmworkers (citizens and authorized immigrants) reported using the Food Stamp program and only 20 percent used medicaid – but even fewer used cash assistance programs or the WIC program (Special Supplemental Food Program for Women, Infants, and Children) (U.S. Department of Labor, 1997:29).

The 1996 welfare reform law – which restricts access to public benefits generally but especially for legal immigrants – will have a substantial effect on permanent resident alien farmworkers. (See article 5 in this volume, "Farmworkers and Public Benefits in the Era of Welfare Reform," by Bruce Goldstein and Shelley Davis regarding the impact of welfare reform on farmworkers.) One of the impacts will be increased pressure on low-wage labor markets.

EXPANSION OF AGRIBUSINESS PRODUCTION

Farmworkers' conditions may have deteriorated, but the production of labor-intensive fruits and vegetables in the United States has been expanding for 25 years. James Holt – a senior economist who works for the major agribusiness lobbying firm, McGuinness & Williams, conceded:

With rising incomes worldwide, and changes in consumers' tastes and preferences favoring fruits and vegetables, the demand for labor intensive agricultural commodities is growing rapidly. The United States agricultural producers have participated in that growth. The 1992 United States Census of Agriculture reported that fruits, vegetables and horticultural specialties accounted for more than \$23 billion of agricultural sales in 1992, a 32 percent increase from that reported in the previous agricultural census five years earlier. Most economists expect demand for labor intensive agricultural commodities to continue a strong growth pattern. (Hearing before Subcommittee on Immigration and Claims of the Committee on the Judiciary, House of Representatives, "Guest Worker Programs," Dec. 7, 1995, 104th Cong., 1st Sess. at 178)

Despite increased international competition, exports in labor-intensive crops have been growing. For example, between 1970 and 1991, U.S. vegetable exports grew 5 percent per year to reach \$1.8 billion. The real value of fruit and tree nut exports grew 4 percent per year during the same time to reach \$2.1 billion (Hamm *et al.*, 1995:39-40, 47-48).

Rarely does any employer admit that it can afford a wage increase, and agribusiness is no exception. But the industry can afford better treatment of its workers.

THE LABOR CONTRACTOR SYSTEM: DESTABILIZING THE LABOR SUPPLY

Growers' use of farm labor contractors (crewleaders) to recruit, hire, transport, house and supervise farmworkers has been a long-standing problem and has been getting worse. The use of labor contractors spread as agricultural employers sought to evade the 1986 immigration law's "employer sanctions" against hiring vulnerable undocumented workers.

Use of labor contractors has been associated with low wages, poor working conditions, illegal employment practices, high turnover, use of unauthorized immigrants, and even slavery (Martin and Taylor, 1995b:15; U.S. Commission on Agricultural Workers, 1992:119-125, 135; U.S. Department of Labor, 1993:34; Greenhouse, 1997b:A20).

Many growers hope to keep their labor costs low by hiring labor contractors and then disclaiming any responsibility as an "employer" for the inevitable labor law violations. The courts have usually, but not always, rejected such shams and found that growers are indeed employers of their farmworkers. Recent cases holding that a grower and a labor contractor jointly employed the farmworkers and were jointly responsible for complying with the minimum wage include *Antenor v. D&S Farms*, 88 F.3d 925 (11th Cir. 1996) and *Torres-Lopez v. May*, 111 F.3d 633 (9th Cir. 1997). The Department of Labor recently updated its joint employer regulation to clarify court decisions during the last fourteen years and to provide employers with greater certainty (see 20 C.F.R. § 500.20, as amended March 12, 1997). Agribusiness has responded to these developments with a bill offered by Rep. Canady of Florida, H.R. 2038 (June 25, 1997), to substantially weaken existing law regarding labor contractors, transportation safety, and farmworker housing.

The crewleader problem has been getting worse. The "major farm labor story of the 1980s and 1990s is the growing importance of [farm labor contractors] in seasonal labor markets." Fifty percent or more of California's seasonal farm jobs are now filled through farm labor contractors, rather than through direct hiring (Martin and Taylor, 1995:6, 15; U.S. Commission on Agricultural Workers, 1992:135).

INCREASED USE OF UNDOCUMENTED WORKERS

Agricultural employers' use of unauthorized immigrants is increasing. A Department of Labor study concluded that the percentage of undocumented farmworkers had risen from about 7 percent just after IRCA took effect to about 37 percent during 1994. Employers claim that the percentage is much higher.

Hypocrisy is evident in the growers' statements about undocumented workers. The employers claim that they can detect fraudulent proof of immigration status or citizenship for purposes of their self-serving estimates of the percentage of unauthorized workers in the labor force. Yet they claim that they are not violating the law against hiring unauthorized immigrants because they don't know whether the documents are fraudulent. In addition, many growers claim that their farm labor contractors are solely responsible for hiring the unauthorized workers. While we all can agree that the employers are hiring more undocumented workers, there is not much evidence to support their claim that the supply of undocumented workers is about to dry up.

The principal author of the immigration legislation of 1996, Rep. Lamar Smith, has criticized this prediction: "[I]f the immigration reform bill works beyond our wildest dreams," it would only reduce "the number of illegal aliens coming into the country in half," and there would not be a "significant impact" on the farm labor force (Joint Hearing before Subcommittee on Risk Management and Specialty Crops of the Committee on Agriculture and the Subcommittee on Immigration and Claims of the Committee on the Judiciary, House of Representatives, "Agricultural Guest Worker Programs," Dec. 14, 1995, 104th Cong., 1st Sess., at 54). The number of deportations, which indicates the government's ability to remove undocumented workers from the labor force, is expected to remain under 100,000 nationally, and relatively few occur in agriculture.

There is no end in sight to employers' hiring of undocumented workers. Fear of the 1986 law employer sanctions did not prevent such employment and it is highly doubtful that the 1996 law will change that fact. The undocumented workers' vulnerability is an irresistible attraction for agricultural businesses.

UNDOCUMENTED WORKER STATUS VERSUS GUESTWORKER STATUS

One can purposelessly and endlessly debate who is treated worse (or better) – undocumented farmworkers or guestworkers. It is a false choice and one that workers should not have to make. But the growers often con-

tend that guestworkers are better off, and their opinion is not necessarily correct.

Under the *bracero* program, "The Wetback [undocumented worker] himself as he gained experience was constantly shopping in the labor black market, for he generally considered himself a *libre* (free worker) in contrast with the *bracero*, who was restricted to a named employer" and who was paid according to a "uniform wage level . . . set by the associations to keep good neighbors from undercutting one another. . . ." (Galarza, 1994:58).

REMEDIES TO MEET GROWERS' NEEDS AND IMPROVE FARMWORKERS' LIVES

Growers Competition for Labor in the Modern Economy

Agribusiness must stop engaging in a low-wage, high-turnover strategy based on new migrations of foreign labor. Studies of farm labor have been remarkably consistent in their recommendation that agribusiness should be expected to compete in the United States to attract and retain workers. The President's Commission on Migratory Labor in 1951 concluded: "We have used the institutions of government to procure alien labor willing to work under obsolete and backward conditions and thus to perpetuate those very conditions" (pp. 22-23).

Forty-one years later, the U.S. Commission on Agricultural Workers (1992:xxxi, 139) concluded that American agriculture must "modernize" and "improve its labor management practices" to develop "a more structured and stable domestic agricultural labor market with increasingly productive workers." Decent wages and working conditions, provision of housing, and incentives to return the following season would enable growers to attract and retain the labor force.

Labor Unions and Collective Bargaining

Labor organizing has probably served farmworkers better than any other solution to their problems. Collective bargaining agreements, though too few in number, have improved wages and working conditions and increased job security (see Edid, 1994).

Agricultural labor unions, like many others, have suffered serious setbacks but the future may be brightening. Organizing campaigns by the United Farm Workers and the Farm Labor Organizing Committee, both supported by the AFL-CIO and other organizations, offer some modest hope that the targeted employers will come to the bargaining table.

Guestworker programs impede this important method of improving

farmworkers' lives because temporary foreign workers have limited economic and immigration-law rights and work in fear. Indeed, the current guestworker proposals are in part a response to union organizing. One of the signatories to an August 1997 letter to members of Congress requesting support of guestworker legislation is the Mt. Olive Pickle Co. (Mt. Olive, North Carolina), a major processor of cucumbers. Mt. Olive does not employ any farmworkers, but the growers who supply the company with cucumbers are the subject of a union organizing campaign by the Farm Labor Organizing Committee, AFL-CIO (*The News and Observer*, Raleigh, N. Carolina, May 29, 1997).

Enforcement of Labor Laws

More vigorous enforcement of the minimum wage requirement and other employment laws would reduce employers' incentive to hire undocumented workers and therefore help limit illegal immigration (see, e.g., Papademetriou, 1997). Congress apparently accepted this concept and, after years of declining resources, the Wage and Hour Division received a modest increase in funding for labor law enforcement in high-immigration states. With only 950 investigators nationwide, however, the Labor Department's impact will be very limited.

Law-abiding employers benefit by more effective labor law enforcement. When Congress passed the minimum wage law in 1938 it declared that substandard labor conditions constitute "an unfair method of competition in commerce" (29 U.S.C. § 202(a)(3); *United States v. Darby*, 312 U.S. 100, 115, 1941). Growers who comply with the law should not have to compete against law-breakers.

The Department of Labor's unwillingness to enforce the protections for U.S. and foreign workers under the H-2A program led the Helsinki Commission to recommend its abolishment. Absent that, the Helsinki Commission said, "If the program is to continue, the Department of Labor must be required to improve enforcement of existing protections and revise policies to prevent future abuses" (Commission on Security and Cooperation in Europe, (1993). Neither recommendation has been followed.

RECOMMENDATIONS ABOUT GUESTWORKER PROGRAMS

Just as there is no shortage of workers willing to perform low-wage farm work, there is no dearth of timely recommendations against a new guestworker program.

First, the November 1992 *Report of the U.S. Commission on Agricultural Workers* specifically recommended against any new guestworker or sup-

plemental labor program. Its conclusions were bolstered by a thick volume of academic studies that it funded and an equally thick book containing the transcripts of hearings held around the country. The Commission, although dominated by agribusiness representatives, recommended that growers modernize and improve employment policies to attract and retain U.S. farmworkers. The Commission concluded that stabilization of the workforce would be repaid with increased productivity that would improve employers' international competitiveness (See U.S. Department of Labor, 1992:xxxi, 133, 135, 139).

Second, the U.S. Commission on Immigration Reform in 1995 (then chaired by Barbara Jordan) considered the agricultural guestworker issue and "unanimously and strongly agree[d] that such a program would be a grievous mistake," due to the oversupply of authorized U.S. farm labor, high unemployment and underemployment among farmworkers, inadequate wages and working conditions, and the fact that guestworker programs increase unlawful immigration. That Commission also said:

If the supply of illegal farmworkers dried up tomorrow (or if growers chose to stop hiring illegal workers), the supply of work-authorized farmworkers is ample, even in peak harvest months. (U.S. Commission on Immigration Reform, 1995).

Confirming that guestworker programs produce illegal immigration, the Commission said, "'temporary' guestworkers tend to become permanent residents, de facto or even de jure." The following year the U.S. Commission on Immigration Reform (1996) published a series of papers, several of which supported the Commission conclusions.

On September 30, 1997, the Commission on Immigration Reform issued its final report in which it more strenuously rejected requests for new temporary foreign worker programs for low-skilled and unskilled jobs. For such job categories, including both the H-2A and H-2B program, the Commission concluded that the current labor market tests must remain in force and that enforcement should be improved.

Third, in September 1997, the Bi-National Study on Migration issued its report, *Migration Between Mexico and the United States*, in which it recommended against a new guestworker initiative. It specifically noted that illegal immigration tends to supplement, not be replaced by, guestworker programs.

Another major report ordered by Congress is forthcoming. By December 31, 1997, the General Accounting Office (GAO) of Congress will report the results of a study of the H-2A guestworker program. In 1996 Congress ordered the GAO to analyze the ability of the H-2A program to meet the needs of employers and protect the rights of workers in the event

of a significant labor shortage. The introduction of legislation for a new guestworker program prior to the GAO report is, among other things, premature.

THE H-2A PROGRAM: CURRENT PROCEDURES AND REQUIREMENTS

The agribusiness proposals seek "radical reform" in the H-2A program or an entirely new program. The demand for "radical reform" was made by John Young, then President of the National Council of Agricultural Employers (NCAE). He testified that the H-2A program was "unworkable in meeting the need for temporary and seasonal agricultural labor. . . ." (Committee on the Judiciary Subcommittee on Immigration Claims, "Guest Worker Programs," Hearing, December 7, 1995, 104th Cong., 1st Sess. at 85-87). Yet, Young is an east coast apple grower who consistently has received H-2A workers for 30 years, even during times when virtually all agreed there was no farm labor shortage; for this reason alone, NCAE's complaints should be rejected.

The present H-2A program is based on the 1986 immigration act but many of the provisions existed under the earlier H-2 and bracero programs. The H-2A law and regulations recognize problems inherent in guestworker programs, especially those concerning low-wage, low-skill jobs. Guestworkers hold temporary "nonimmigrant" status. They are tied to their employer and ordinarily must leave the country when their jobs end. They usually come from poorer countries and view almost any American wage as advantageous. Such temporary foreign workers generally do what they are told without complaint. Consequently, guestworkers are an easily controllable, highly productive labor force. With these and other advantages, employers often prefer guestworkers over U.S. workers.

To deter employers from exploiting the advantages of hiring guestworkers, the H-2A law requires employers to apply to the Department of Labor for a labor certification stating that there is a shortage of labor and that the wages and working conditions offered by the employer will not "adversely affect" the wages and working conditions of similarly employed U.S. workers (8 U.S.C. § 1188(a)(1)).

The H-2A application must be filed at least 60 days before the first date of work. The Labor Department examines the employer's job offer and, within seven days, determines whether it meets the law's standards. During the next 33 days or so, the employer is obligated to recruit workers. Twenty days before the date of need, the Labor Department must determine the extent of any labor shortage and, if one exists, issue the

labor certification to fill the job vacancies. The employer then arranges for the INS visas and delivery of them by the American consulate in the appropriate country (usually Mexico or Jamaica) to the waiting workers.

Several specific measures exist to prevent employers from creating artificial labor shortages, discriminating against U.S. workers, or exploiting the foreign workers. One of the most basic protections is the employer's obligation to disclose all material terms of the employment during recruitment and to comply with those terms. Workers have an employment contract. This is probably why guestworkers historically have been called "contract workers." The workers currently have the right to go to state court or the Department of Labor to enforce their work contracts (see 8 U.S.C. § 1188(f)(2); 29 C.F.R. Part 501).

In addition, employers who claim a labor shortage are supposed to recruit workers using private-market methods as well as the interstate job service (8 U.S.C. § 1188(b)(4)). The regulations contain a job preference which requires employers to hire qualified U.S. workers who apply by the season's midpoint (even if it would require displacement of the foreign worker). This so-called 50 percent rule was the subject of a congressionally mandated study which concluded that the rule provided U.S. workers with important job protections at minimal costs to employers (8 U.S.C. § 1188(c)(3)(B); 20 C.F.R. § 655.103(e)).

Employers must provide free housing, reimburse the in-bound transportation costs of workers who complete half the season, and pay for the return trip home upon completion of the season. The three-fourths guarantee requires that workers be offered work for at least three-fourths of the stated season (absent an act of God). It assures workers of a reasonable minimum amount of work opportunities for their long-distance travel, and dissuades employers from recruiting too many workers to drive down wages (see 20 CFR § 655.102(b)). Workers may not be discharged in the absence of a job-related reason (20 CFR § 655.103(b)-(c)). Although domestic farmworkers are covered by the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. § 1801 *et seq.*), which is the principal employment law for farmworkers, that law excludes H-2A workers from coverage (20 U.S.C. § 1803(10)(B)(iii)).

The wage must be the higher of the State or federal minimum wage, the local prevailing wage rate for that work, or the adverse effect wage rate (the average agricultural/livestock worker wage as determined in regional surveys by the Department of Agriculture). (29 U.S.C. § 655.102(b)(9)).

THE H-2A PROGRAM IN REALITY: A HISTORY OF ABUSES

Employer criticisms of the H-2A program largely are baseless. The Department of Labor routinely approves illegal job offers and ignores mistreatment of U.S. workers by employers who blatantly prefer guestwork-

ers. We recognize the growers' valid concern over the lack of certainty on a few policy issues, but the employers have successfully taken advantage of almost every ambiguity. Highly-paid lawyers and consultants for the growers have devised clever techniques to circumvent the law and the Labor Department generally has let them get away with it.

Abuses by employers and the government under the H-2A program have been documented in official reports (see GAO, 1992). The H-2A program has been the subject of litigation by employers as well as farmworkers, who have won millions of dollars in backpay from H-2A employers. (See, e.g., *Frederick County Fruit Growers Association v. Martin*, 968 F.2d 1265, D.C. Cir. 1992; in suit brought by H-2A growers, court awarded farmworkers backpay on counterclaim.) The public has learned about the H-2A program through numerous media reports, documentary films such as Stephanie Black's *H-2 Worker* (which won a Sundance Film Festival Award), and even a novel by Carl Hiassen, *Striptease*, which became a movie featuring actress Demi Moore.

More detailed information about the H-2A program was supplied in several hearings in 1995 before the House Subcommittee on Immigration and Claims (December 7, 1995), the House Subcommittee on Immigration and Claims and the Subcommittee on Risk Management and Specialty Crops (December 14, 1995), and the Senate Subcommittee on Immigration (September 28, 1995), especially in testimony by Dolores Huerta, Robert A. Williams, Mark S. Schacht, and Bruce Goldstein.

There are many examples of recent abuses, including the case of the Pero Family Farms mentioned above. Of special concern is the spread of the practices of the North Carolina Growers Association, whose executive has set up additional corporations to secure foreign workers in other States as well, using tactics that should have been stopped a long time ago.

The Farmworker Justice Fund, in January 1994, submitted extensive recommendations to the Department of Labor to reform the H-2A program to protect U.S. workers and temporary foreign workers. None of those recommendations has been adopted. Instead, the Department has weakened protections based on growers' demands to reduce "red tape."

THE GROWERS' LEGISLATIVE PROPOSALS

Guestworker Proposals Defeated in 1995-96

In the 104th Congress, agribusiness unsuccessfully sought a new guestworker program. At the request of the National Council of Agricultural Employers, the California Farm Bureau, the Florida Fruit and Vegetable Association and others, hearings were held in both houses of Congress in late 1995. In 1996, congressional supporters of the employers proposed

legislation that would have been included in the 1996 immigration act. Senator Larry Craig of Idaho introduced a bill to "reform" the H-2A program in drastic ways but made no progress last year (see S. 2174, 142 Cong. Rec. S11973-02). Rep. Richard Pombo of California and Rep. Saxby Chambliss of Georgia, among others, led the fight in the House for a new "pilot program." In early 1996, the Agriculture Committee voted in favor of that proposal but imposed a limit of 250,000 temporary foreign farmworkers. The proposal was treated by the Rules Committee as a proposed amendment to the immigration legislation.

The Clinton Administration threatened to veto the entire immigration bill if the Pombo/Chambliss guestworker proposal was included, but promised to consider ways to "streamline" the H-2A program to aid the growers. The Administration believed that there was an adequate supply of farm labor, that the proposal would weaken wage and other protections for U.S. farmworkers, and that it would actually increase illegal migration. Guestworker programs enable foreign workers to establish networks inside the United States that can facilitate illegal migration. In addition, some guestworkers overstay their visas. When guestworker programs become concentrated in geographic areas (as has the H-2A program), they tend to restrain wage increases and the employment terms therefore attract mostly guestworkers and unauthorized immigrants.

On March 21, 1996, the House debated the amendment and defeated it by a margin of 242-180 (Cong. Rec. H2605-2621). Rep. Lamar Smith, the Republican who chairs the immigration subcommittee and is a strong immigration restrictionist, opposed the amendment and 75 Republicans joined him. He and Rep. Robert Goodlatte of Virginia supported an alternative guestworker proposal. That amendment would have altered the H-2A program and placed a 100,000 worker annual cap. It was unacceptable to both agribusiness and farmworker supporters, and that amendment was defeated by an even larger margin (H2621-2626).

Current Legislative Proposals in the 105th Congress

Nothing that occurred between 1996 and 1997 would justify a reconsideration by Congress of guestworker issues except intense lobbying by agribusiness. Such lobbying, however, has been sufficient; two proposals have been made, one in the House and one in the Senate. On September 24, 1997, the House Immigration Subcommittee held a hearing on H.R. 2377 at the request of Rep. Bob Smith, Chair of the House Agriculture Committee. We understand that Rep. Saxby Chambliss (a cosponsor of the House bill) intends to offer yet another guestworker proposal, called the Farmers' Temporary Employee Assistance Act.

Senator Craig's Bill, S. 169

In the 105th Congress, Sen. Craig introduced S.169, named The Agricultural Work Force Stability and Protection Act (January 21, 1997). It would amend the H-2A program for the benefit of employers by, among other things:

- eliminating safeguards against false claims of labor shortages;
- lowering wage rates for both U.S. farmworkers and guestworkers;
- exempting employers from state minimum wage laws;
- ending the housing requirement;
- overriding state and local housing codes;
- ending the 50 percent rule job preference for U.S. workers;
- in effect ending the minimum work guarantee;
- granting employers, but not affected workers, expedited appeals of decisions;
- prohibiting effective judicial and agency oversight.

This completely one-sided bill would further destabilize the U.S. farm labor force and permit exploitation of hundreds of thousands of vulnerable guestworkers, as there would be no numerical limitation. Senator Spencer Abraham, chair of the immigration subcommittee, has not revealed a public opinion about that legislation. No hearings have been held on the bill.

Representative Bob Smith's Bill, H.R. 2377 – An H-2C Program

Representative Robert Smith of Oregon, on August 1, 1997, introduced H.R. 2377 to create an H-2C program. The bill is very similar to the proposed "pilot program" in the 1996 Pombo/Chambliss amendment that was defeated on the House floor by 62 votes on March 21, 1996, during the immigration law debate.

The major difference between the defeated 1996 bill and this year's proposal is that the new bill nominally would be a 24-month pilot program limited to 25,000 visas per fiscal year. Due to the availability of visa extensions, in the third fiscal year there could be 75,000 guestworkers in U.S. agriculture, in addition to the guestworkers under the H-2A program. The H-2A program currently approves about 19,000 guestworker jobs. Because many employers would immediately secure H-2C workers, the number of agricultural guestworkers would soon quintuple.

The proposed H-2C pilot program is a long, highly-detailed bill. Its most striking characteristic is its methodical effort to exempt employers from capitalism's basic law of supply and demand. Employers would be set free to impose labor standards that only foreign workers in developing nations could afford to accept. Generally, here is how the H-2C program would work:

- An 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. There is no deadline for doing this. The submission, a "labor condition attestation," would contain neither the terms nor conditions of employment.
- The employer would then submit a brief form to the INS district office asking for as many H-2C visas as it wanted; the INS must approve those visas within "three working days." Still, no terms and conditions of employment are disclosed. No labor shortage need exist.
- Then the potential employer would submit a specially-limited "job order" to 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." These job orders could not be circulated through either the intrastate or interstate job service system. The job service (if it took any action at all) could only provide "non-employer-specific information" about such job orders, and only to the local community.
- There would be no requirement that the employer engage in private recruitment efforts to find U.S. workers (other than to post a notice at the place of employment where foreign workers were being recruited); employers could recruit solely in foreign countries.
- While recruiting foreign workers, the H-2C bill provides, employers need not disclose information to job applicants about terms and conditions of employment.
- The employer would only need to accept U.S. workers as job applicants during a period of 25 days. 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 5 days before the season begins, while continuing to hire foreign workers.
- The law would theoretically require employers to pay the "prevailing wage." The "prevailing wage" is an inadequate wage rate. By definition, it is usually the median wage rate paid

in the area for that kind of work, meaning that about half the workers performing that same work in the local area are being paid more than that wage rate; employers who claim that they cannot find U.S. workers should compete for workers with the top half of employers. To overcome the depression in wage rates caused by the presence of foreign workers, the H-2A and bracero programs augment the prevailing wage requirement with an Adverse Effect Wage Rate (AEWR). This bill eliminates the AEWR and contains exceptions to the prevailing wage requirement.

- The law would prohibit employers from using foreign workers to cause adverse effects to U.S. workers' "working conditions," but the bill contains a peculiarly narrow definition of the phrase "working conditions." As a practical matter, employers would be obligated to provide U.S. workers with workers' compensation coverage but would not be obligated to compete for workers by providing a minimal set of benefits that are required under current H-2A law or by matching the working conditions of employers who successfully recruit U.S. workers. Under the H-2C program, employers could deter U.S. workers from applying for jobs by refusing to offer such benefits as housing, minimum work guarantees, reimbursement of transportation costs, and reasonable hours.
- The H-2C worker would be tied to a single employer or an association that could switch the worker among employers. If the job ended, the worker would have to return home unless another employer decided to seek an extension of the visa for that worker. However, an employer could not seek an extension of a visa while the worker is employed at another company.
- The bill severely limits the Secretary of Labor's enforcement powers.

CONCLUSION

The current legislative proposals by the agricultural industry perpetuate more than 100 years of demands for exemptions from the laws of the marketplace and the laws of government. The time for government policies that feed the agribusiness addiction to exploitable foreign labor has ended. There is no valid justification for a new guestworker program.

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Executive Summary

This is the latest in a series of periodic reports regarding rural unemployment in the major regions where most of California's labor intensive crop production occurs: the San Joaquin, Imperial, Salinas, Sacramento and Coachella Valleys.¹

This report surveys official unemployment rates in the 18 key agricultural counties that make up these regions, covering the time period from January 1987 through January 1998.

The publication of this updated report is particularly timely in light of the General Accounting Office's recently released findings related to farm labor issues (GAO/HEHS-98-20 "H-2A Guestworker Program").

To reach its conclusion that a "farm labor shortage does not appear to exist now and is unlikely in the near future," GAO looked not only at unemployment rates in key agricultural counties nationwide, but also at counties designated as "labor surplus areas" in 1997.² Readers of this report will find that many of the counties reviewed here are among those listed as labor surplus areas in the GAO study.

The major findings of this report are as follows:

- ***Finding No. 1: A Labor Surplus Exists At Peak of Harvest and Off-Peak Periods***

The 18 agricultural counties involved in this report have had a large and persistent oversupply of labor for over a decade, and this oversupply is a constant: it occurs both at the peak of harvest as well as during the off-peak harvest months. (See Graphs 1 and 2, pp. 5-6.)

Despite a dramatic upturn in the US economy in recent years, the economic recovery in California has lagged behind the nation as a whole. In the key 18 agricultural counties, significantly improved employment prospects have also lagged behind the rest of California.

- ***Finding No. 2: The 18 County Jobless Rate Is Roughly Twice the State Average***

As Graph 3 on page 7 demonstrates, not only are unemployment rates in off-peak months generally more than twice the state average, but even during peak employment periods, unemployment in the 18 rural counties is almost twice the state average.

¹ Previous reports were published in May 1995 and September 1997.

² See Section IV, pp. 26-27, below, which reprints relevant excerpts from the GAO report (i.e., pp. 94-95, Appendix III, Table III.2: Food Stamp Waiver and Labor Surplus Area Designations).

- ***Finding No. 3: Some Jobless Rates Approach Three Times the State Average***

This report reveals that four counties' unemployment rates approach or exceed three times the statewide average rate; that one county's rate is nearly four times the state rate; and that another county approaches five times the state rate. (See, for example, individual county graphs on pages 8, 11 and 16, for Colusa (part of the Sacramento Valley), Imperial (Imperial Valley), and Monterey (Salinas Valley), respectively.)

- ***Finding No. 4: There is No Current Or Impending Shortage of Legal US Workers***

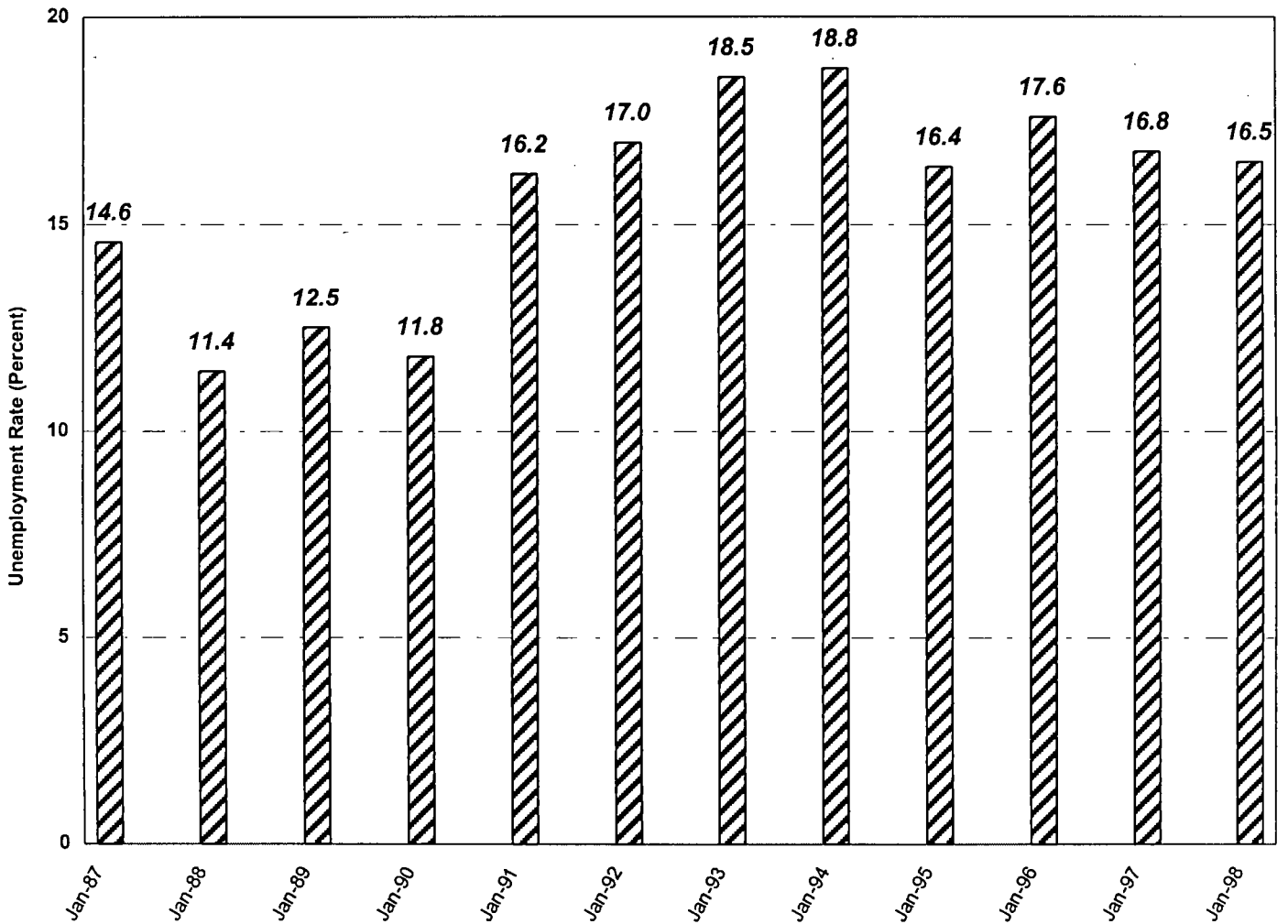
Because only individuals who are U.S. citizens or lawful permanent residents are eligible for unemployment benefits, the 18 rural county unemployment rates indicate that there is a huge surplus of legal US workers available for agricultural employment.

In fact, in the 18 rural counties studied in this report there are literally hundreds of thousands of legal US workers actively looking for employment, many of whom have prior work experience in agriculture. Indeed, this labor pool is believed to include thousands of unemployed or underemployed SAWs legalized by the 1986 Immigration Reform and Control Act. These SAWs have been displaced in increasing numbers over the last decade by generally cheaper, more vulnerable undocumented workers whose presence has tended to depress wages and working conditions.

Implementation of welfare reform in rural California will only exacerbate these conditions, as thousands more impoverished legal US workers are forced into an agricultural labor market where a labor surplus has persisted for over a decade.

Graph 1

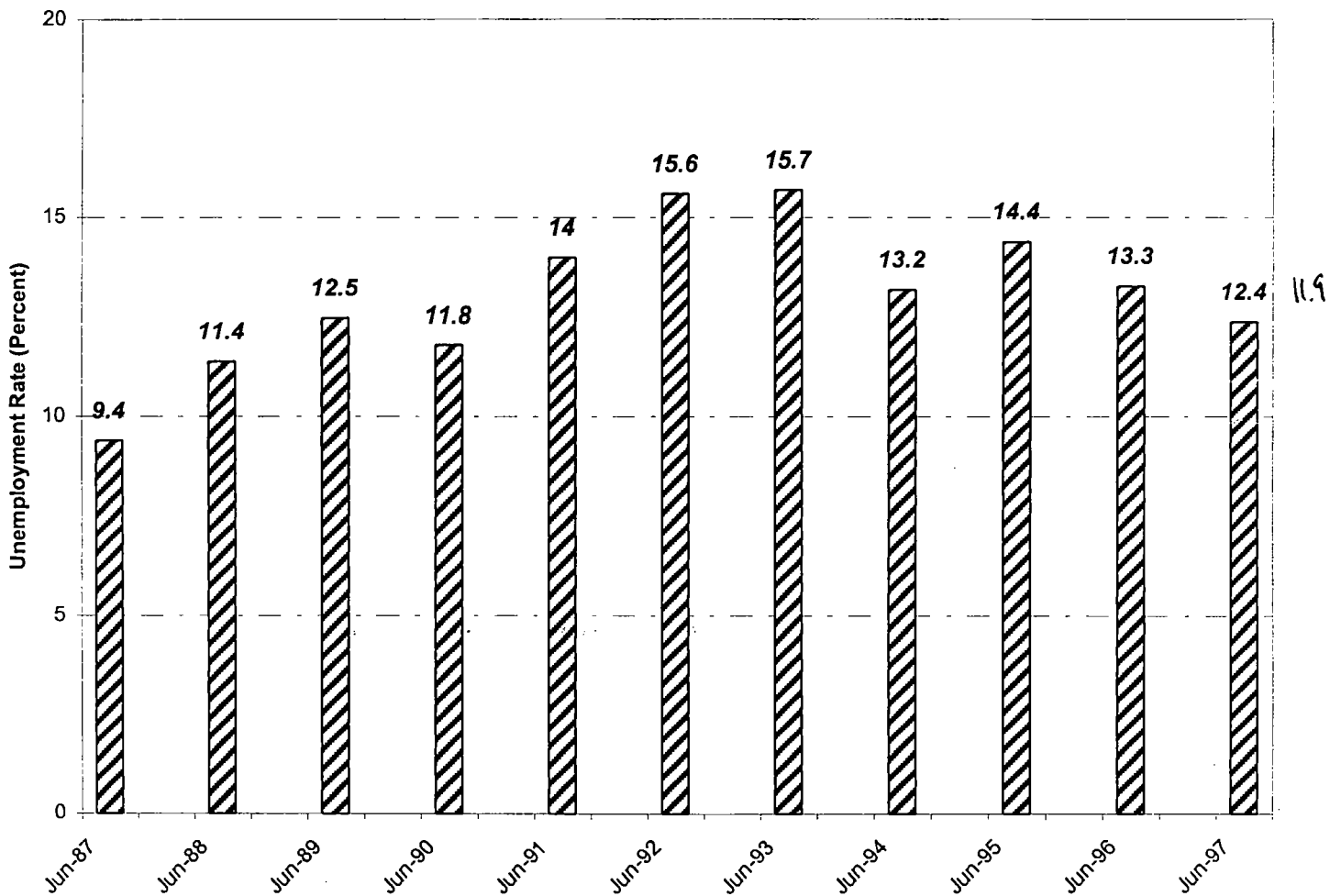
**AVERAGE UNEMPLOYMENT RATES FOR
18 AGRICULTURAL COUNTIES DURING
HARVEST 'OFF-PEAK' MONTHS,
JAN. 1987 - JAN. 1998**



Source: State of California, Employment Development Department, Report 400C, 1987-1998

Graph 2

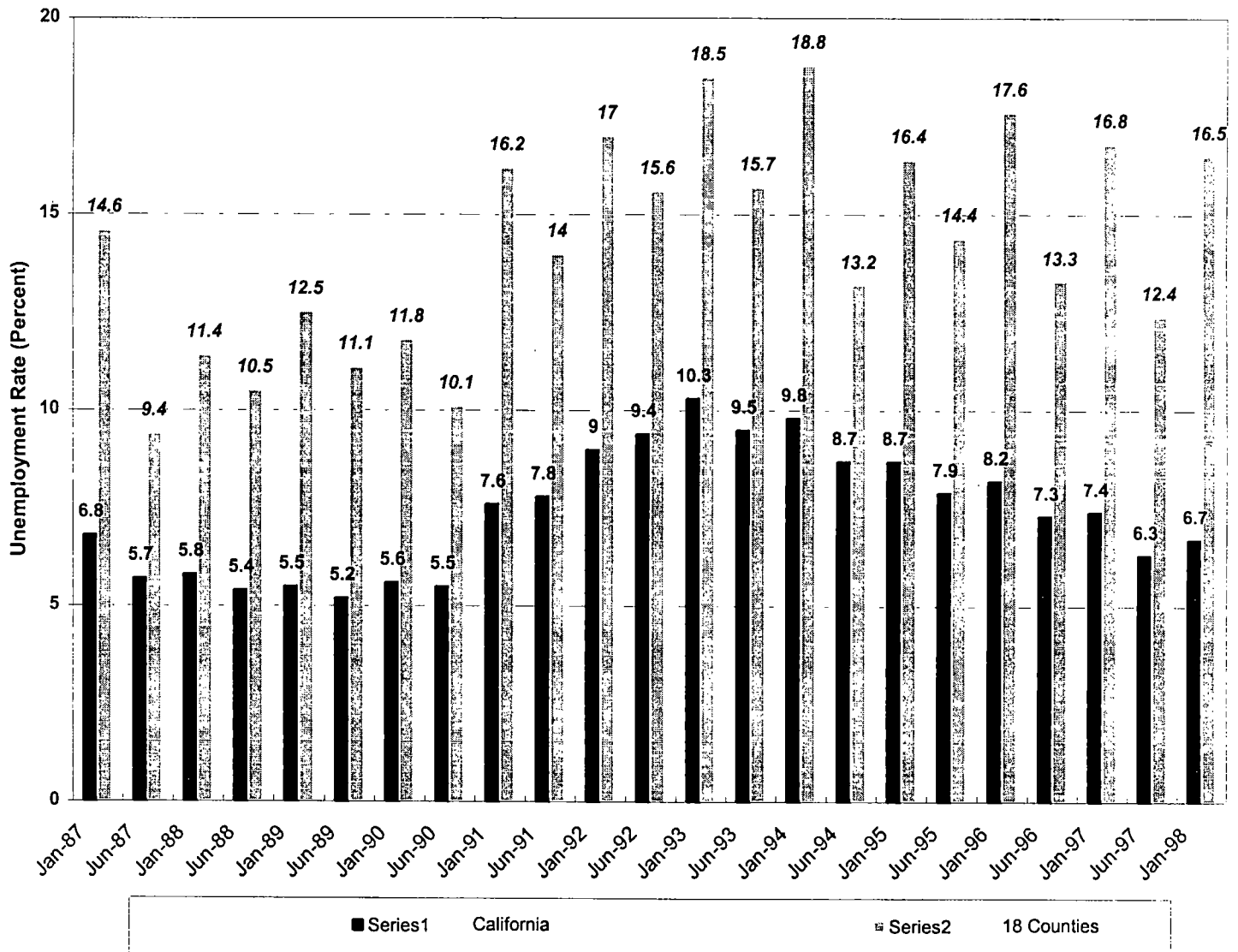
**AVERAGE UNEMPLOYMENT RATES FOR
18 AGRICULTURAL COUNTIES DURING
HARVEST 'PEAK' MONTHS,
JUNE 1987 - JUNE 1997**



Source: State of California, Employment Development Department, Report 400C, 1987-1997

Graph 3

AVERAGE UNEMPLOYMENT RATES 1987 - 1998: COMPARISON OF CALIFORNIA AND 18 AGRICULTURAL COUNTIES, PEAK AND OFF-PEAK HARVEST MONTHS*



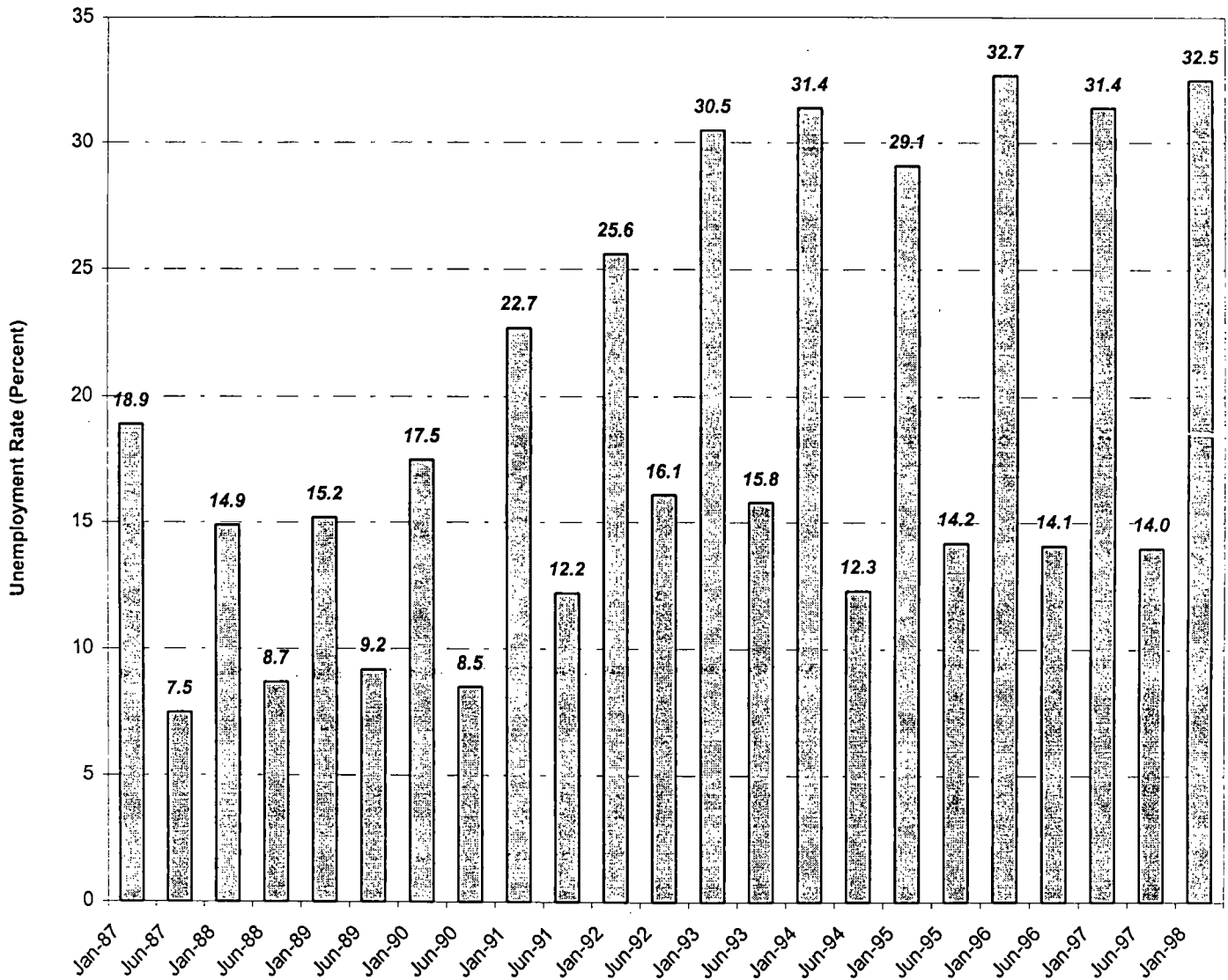
Source: State of California, Employment Development Department, Report 400C, 1987 to 1998

***NOTE:** Because California's agricultural off-peak and peak employment periods vary considerably, both by region and by crop (more than 200 crops are produced in the state), we have chosen January and June, respectively, to serve as the off-peak and peak months for the 18 counties studied in this report. (E.g., see EDD's Report 882-A, which states that California's peak agricultural employment months are: for the North Coast; September; for the Sacramento Valley, October; for the San Joaquin Valley, September; for the Central Coast, July; for the South Coast, May; and for the Desert, June.)

Graph 4

UNEMPLOYMENT IN COLUSA COUNTY

Average Rates During Labor Peak & Off-Peak Months, Jan. 1987 - Jan. 1998

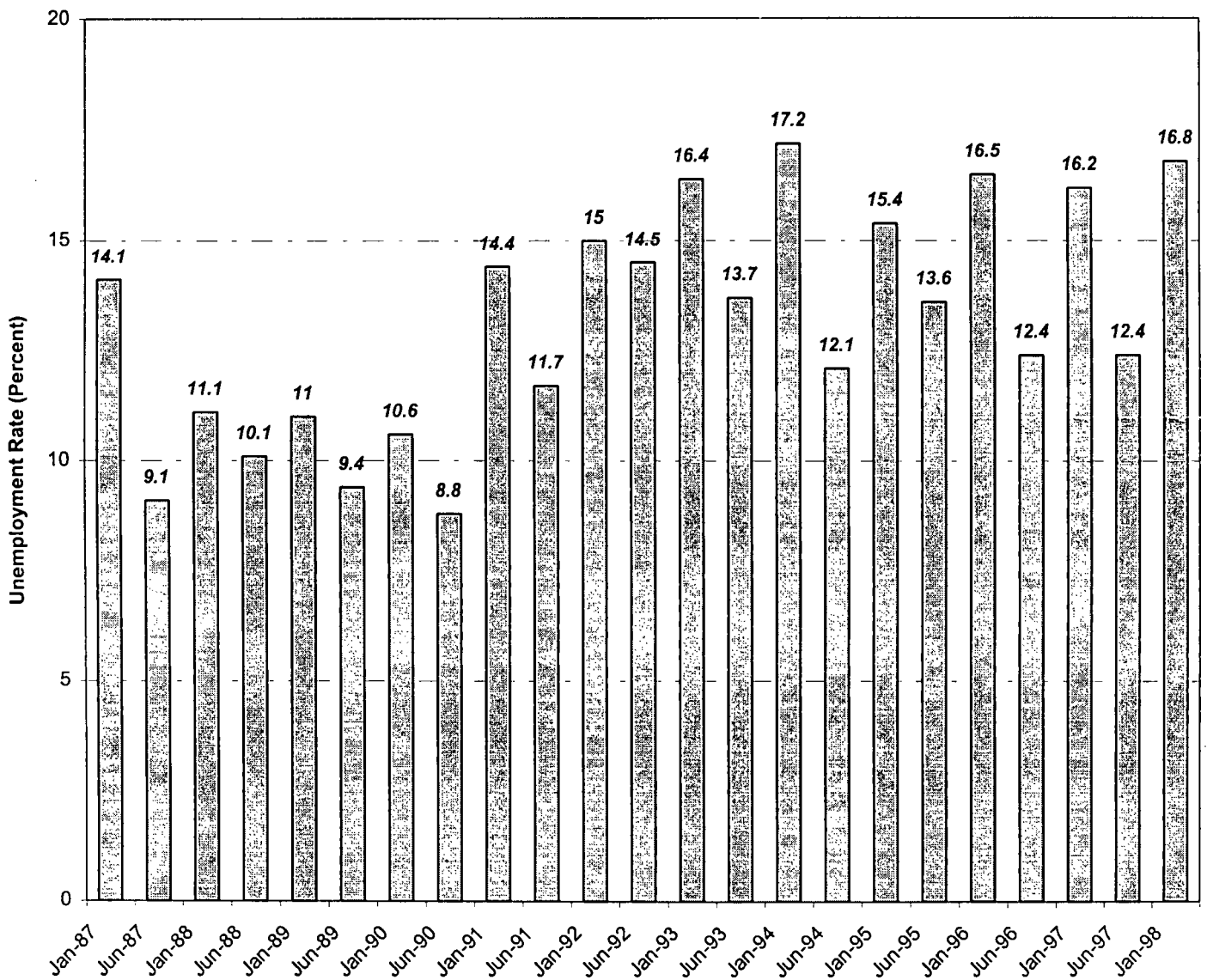


Source: State of California, Employment Development Department, Report 400C, 1987-1998

Graph 5

UNEMPLOYMENT IN FRESNO COUNTY

Average Rates During Labor Peak and Off-Peak Months, Jan. 1987 - Jan. 1998

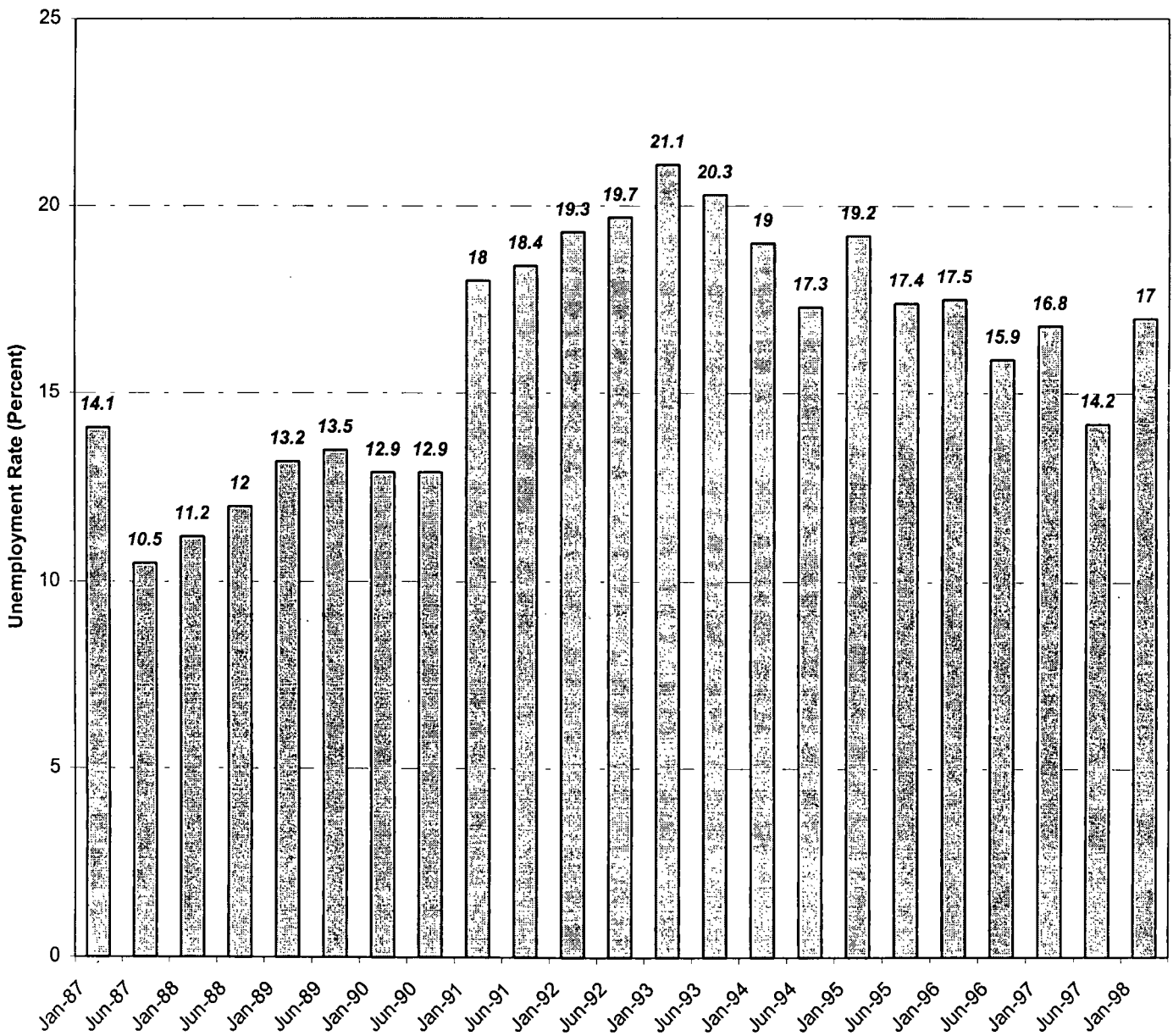


Source: State of California, Employment Development Department, Report 400C, 1987-1998

Graph 6

UNEMPLOYMENT IN GLENN COUNTY

Average Rates During Labor Peak and Off-Peak Months, Jan. 1987 - Jan. 1998

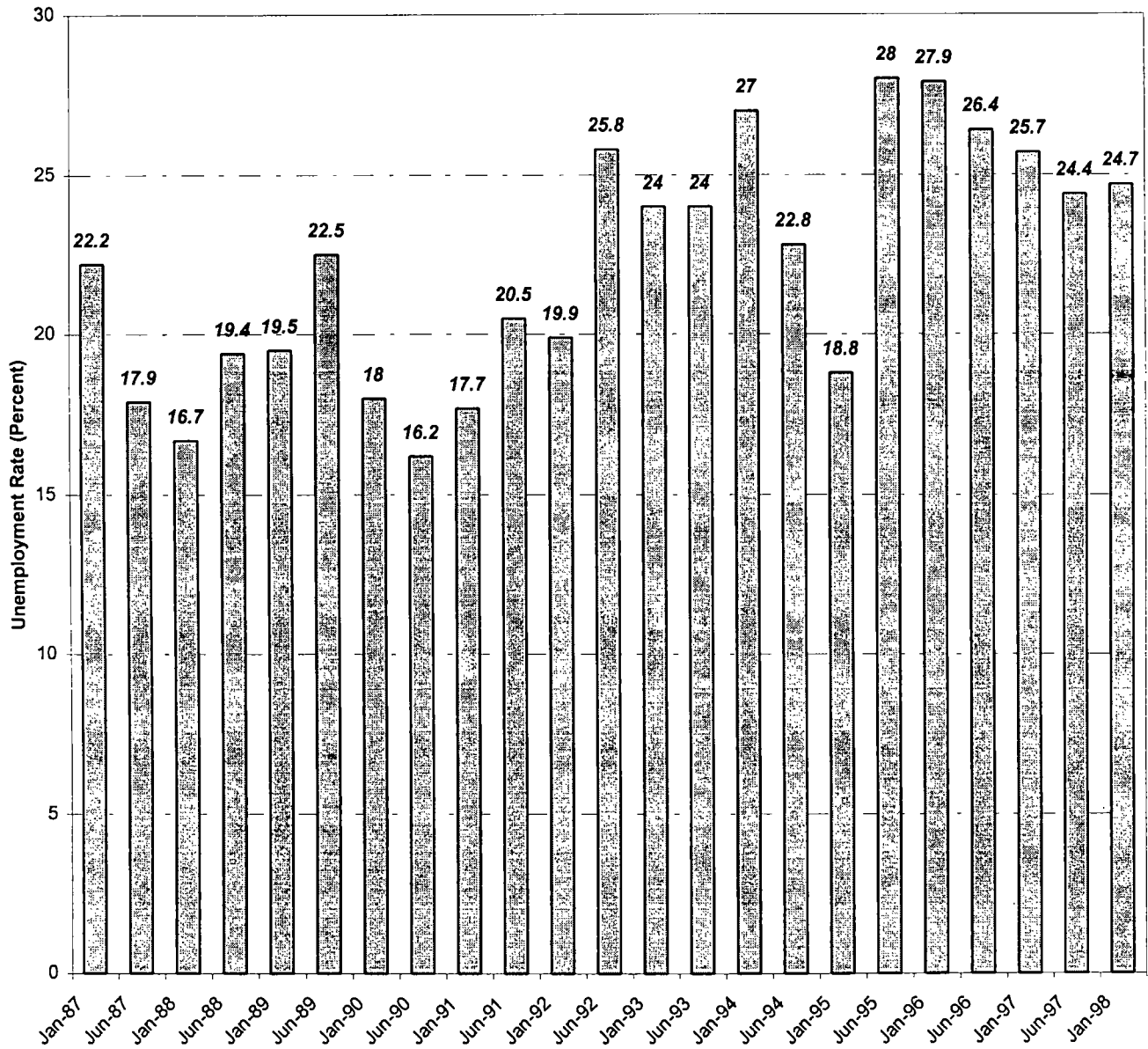


Source: State of California, Employment Development Department, Report 400C, Jan. 1987-Jan. 1998

Graph 7

UNEMPLOYMENT IN IMPERIAL COUNTY

Average Rates During Labor Peak and Off-Peak Months, Jan. 1987 - Jan. 1998

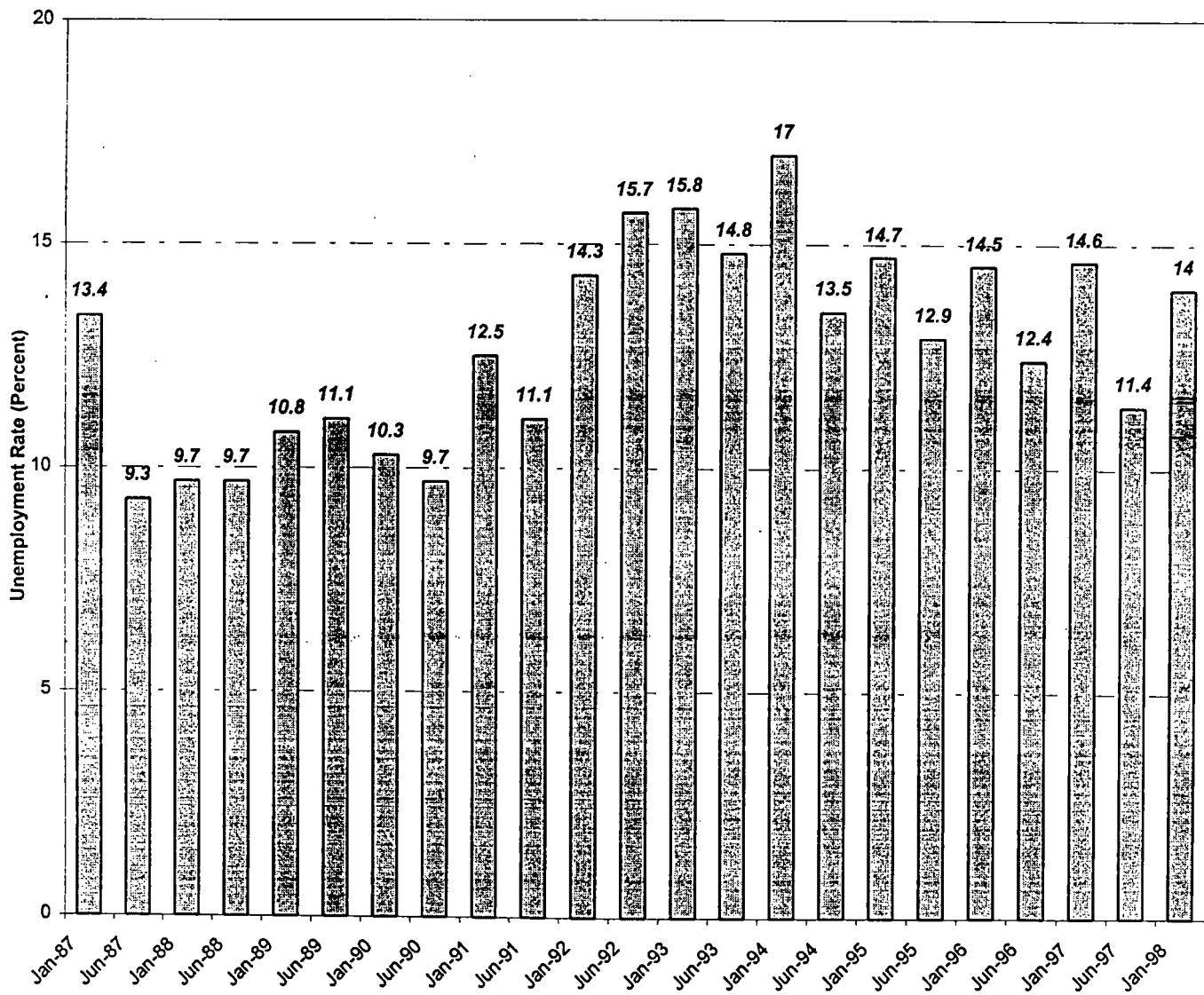


Source: State of California, Employment Development Department, Report 400C, Jan. 1987-Jan. 1998

Graph 8

UNEMPLOYMENT IN KERN COUNTY

Average Rates During Labor Peak and Off-Peak Months, Jan. 1987 - Jan. 1998

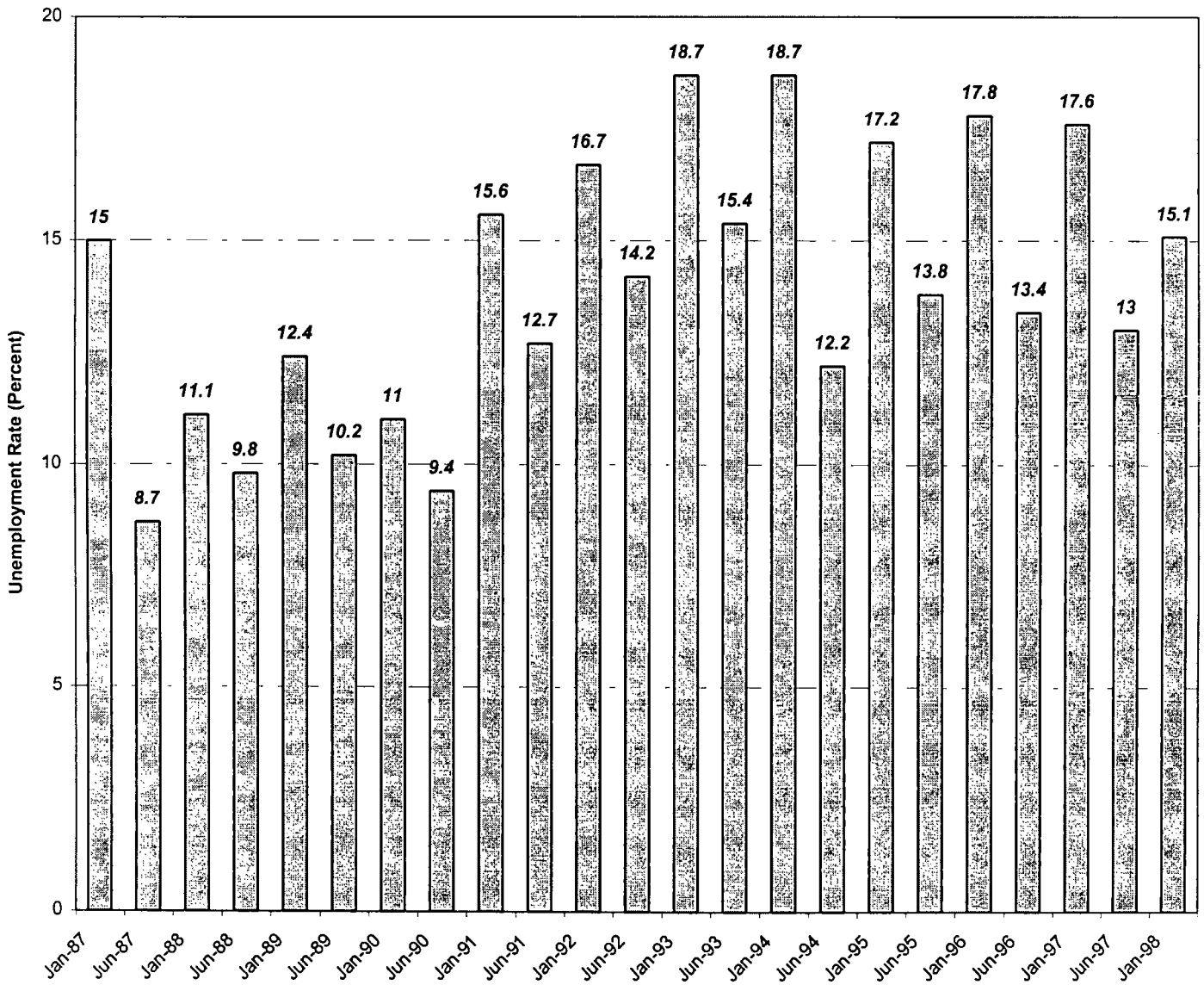


Source: State of California, Employment Development Department, Report 400C, Jan. 1987-Jan. 1998

Graph 9

UNEMPLOYMENT IN KINGS COUNTY

Average Rates During Labor Peak & Off-Peak Months, Jan. 1987 - Jan. 1998

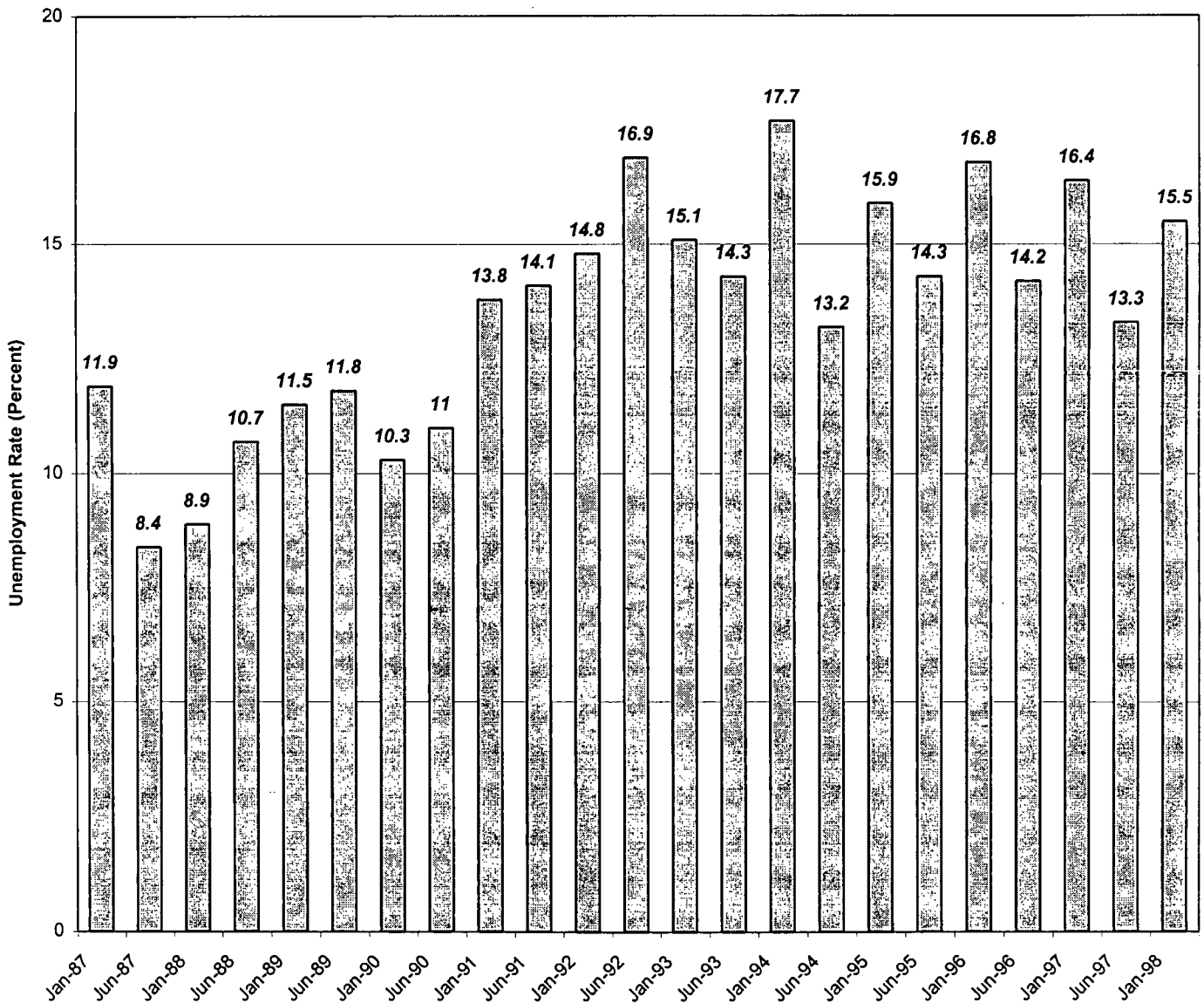


Source: State of California, Employment Development Department, Report 400C, Jan. 1987-Jan. 1998

Graph 10

UNEMPLOYMENT IN MADERA COUNTY

Average Rates During Labor Peak & Off-Peak Months, Jan. 1987 - Jan. 1998

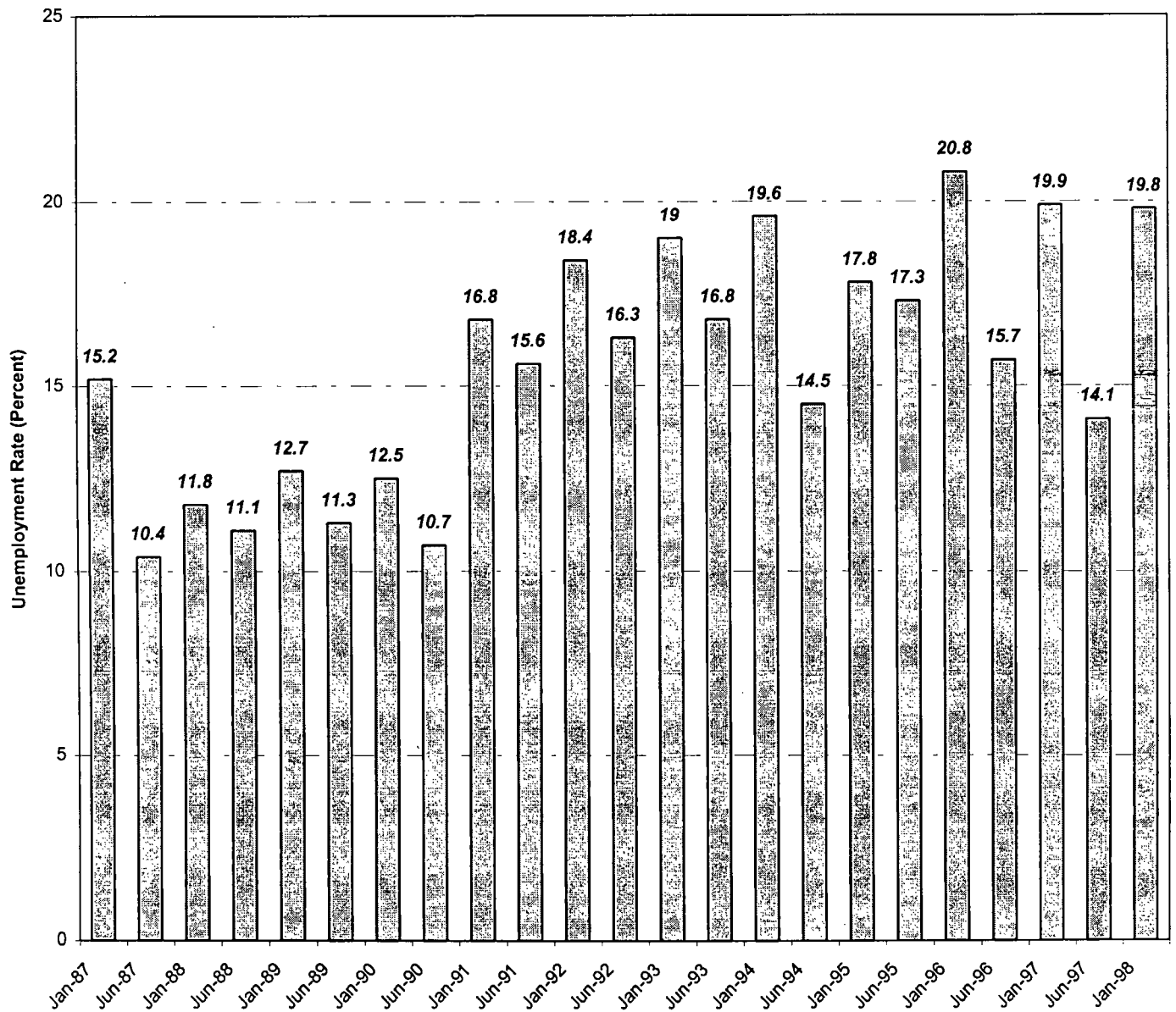


Source: State of California, Employment Development Department, Report 400C, Jan. 1987-Jan. 1998

Graph 11

UNEMPLOYMENT IN MERCED COUNTY

Average Rates During Labor Peak & Off-Peak Months, Jan. 1987 - Jan. 1998

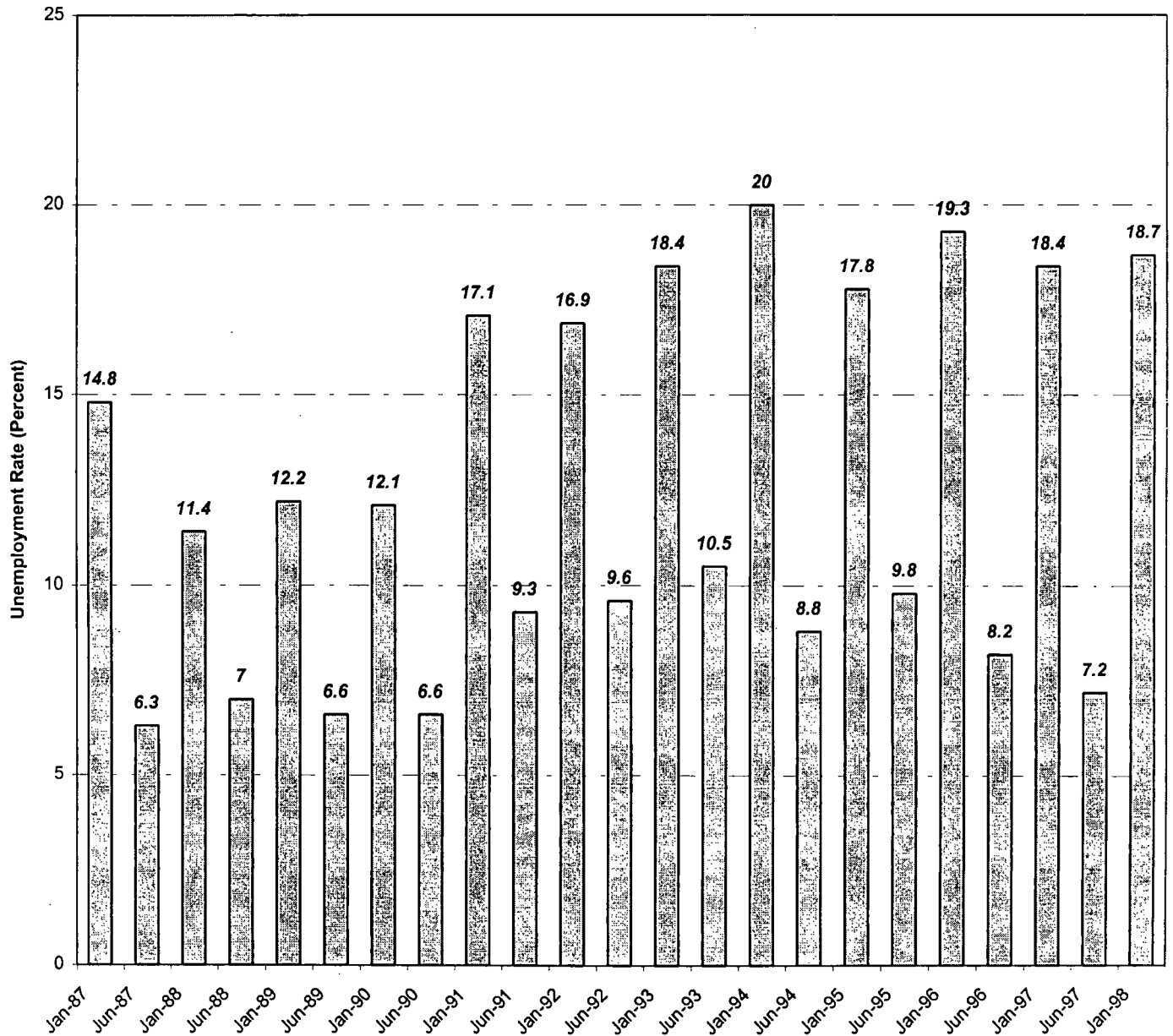


Source: State of California, Employment Development Department, Report 400C, Jan. 1987-Jan. 1998

Graph 12

UNEMPLOYMENT IN MONTEREY COUNTY

Average Rates During Labor Peak & Off-Peak Months, Jan. 1987 - Jan. 1998

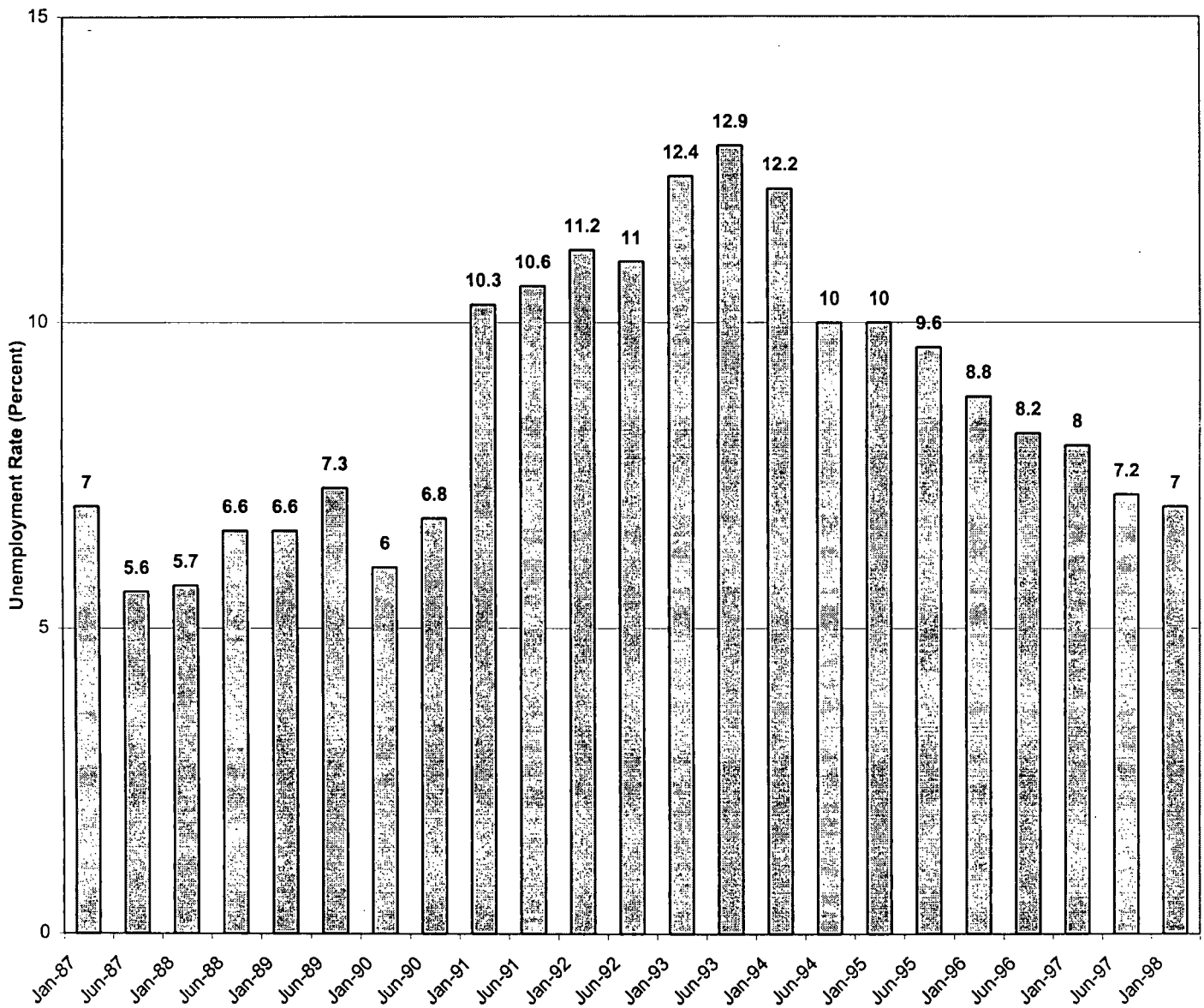


Source: State of California, Employment Development Department, Report 400C, Jan. 1987-Jan. 1998

Graph 13

UNEMPLOYMENT IN RIVERSIDE COUNTY

Average Rates During Farm Labor Peak & Off-Peak Months, Jan. 1987 - Jan. 1998

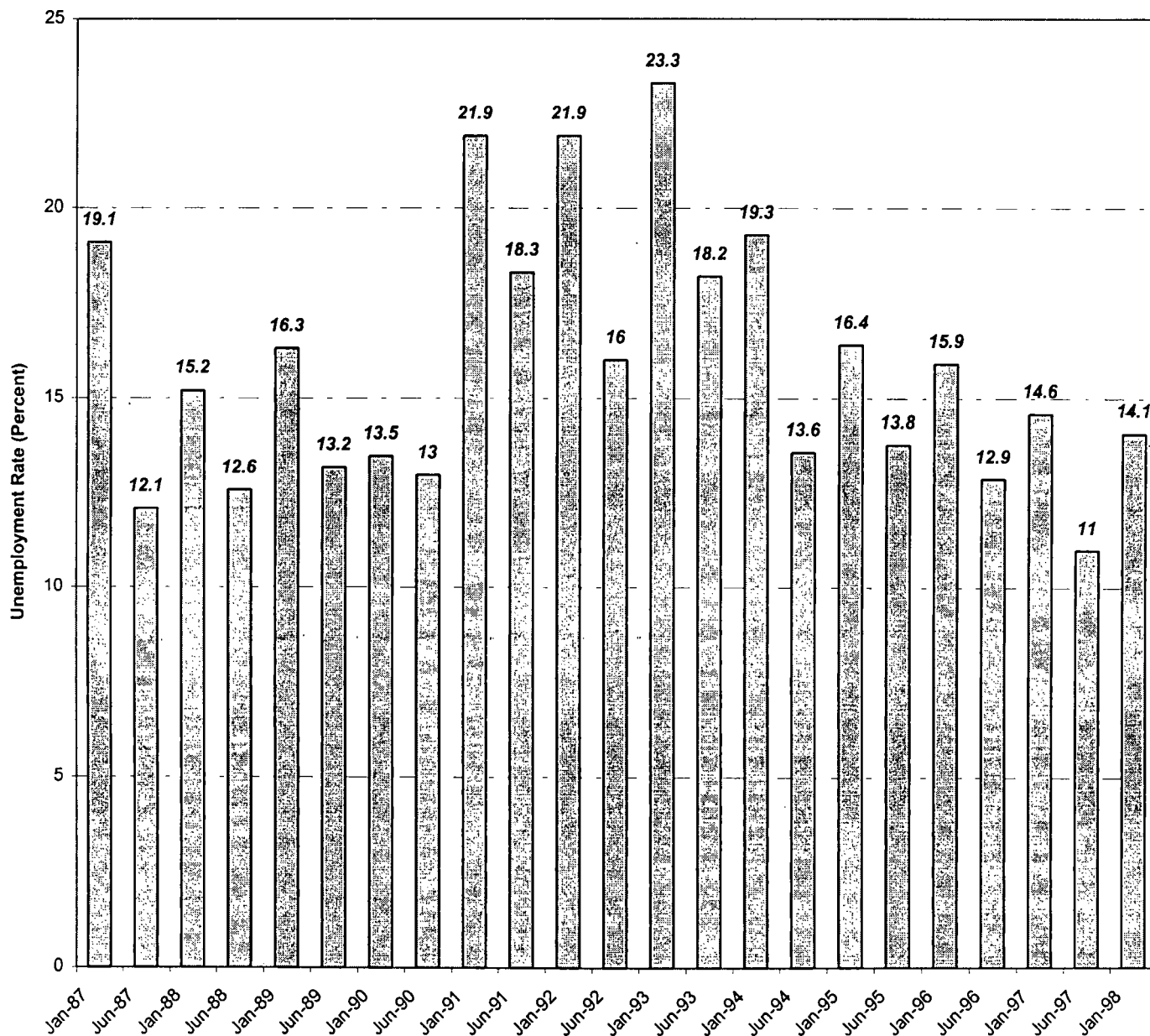


Source: State of California, Employment Development Department, Report 400C, Jan. 1987-Jan. 1998

Graph 14

UNEMPLOYMENT IN SAN BENITO COUNTY

Average Rates During Labor Peak & Off-Peak Months, Jan. 1987 - Jan. 1998

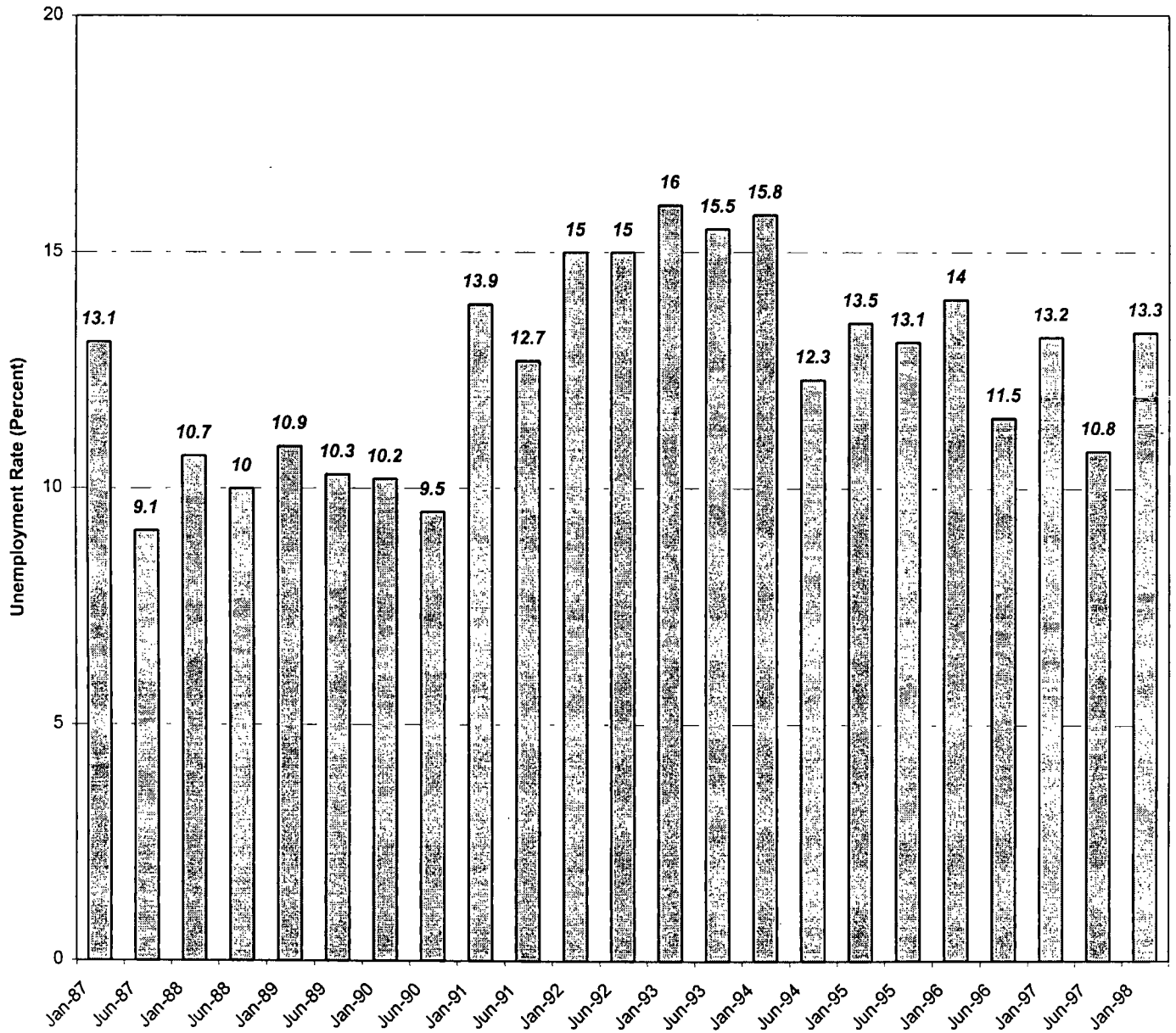


Source: State of California, Employment Development Department, Report 400C, Jan. 1987-Jan. 1998

Graph 15

UNEMPLOYMENT IN SAN JOAQUIN COUNTY

Average Rates During Labor Peak & Off-Peak Months, Jan. 1987 - Jan. 1998

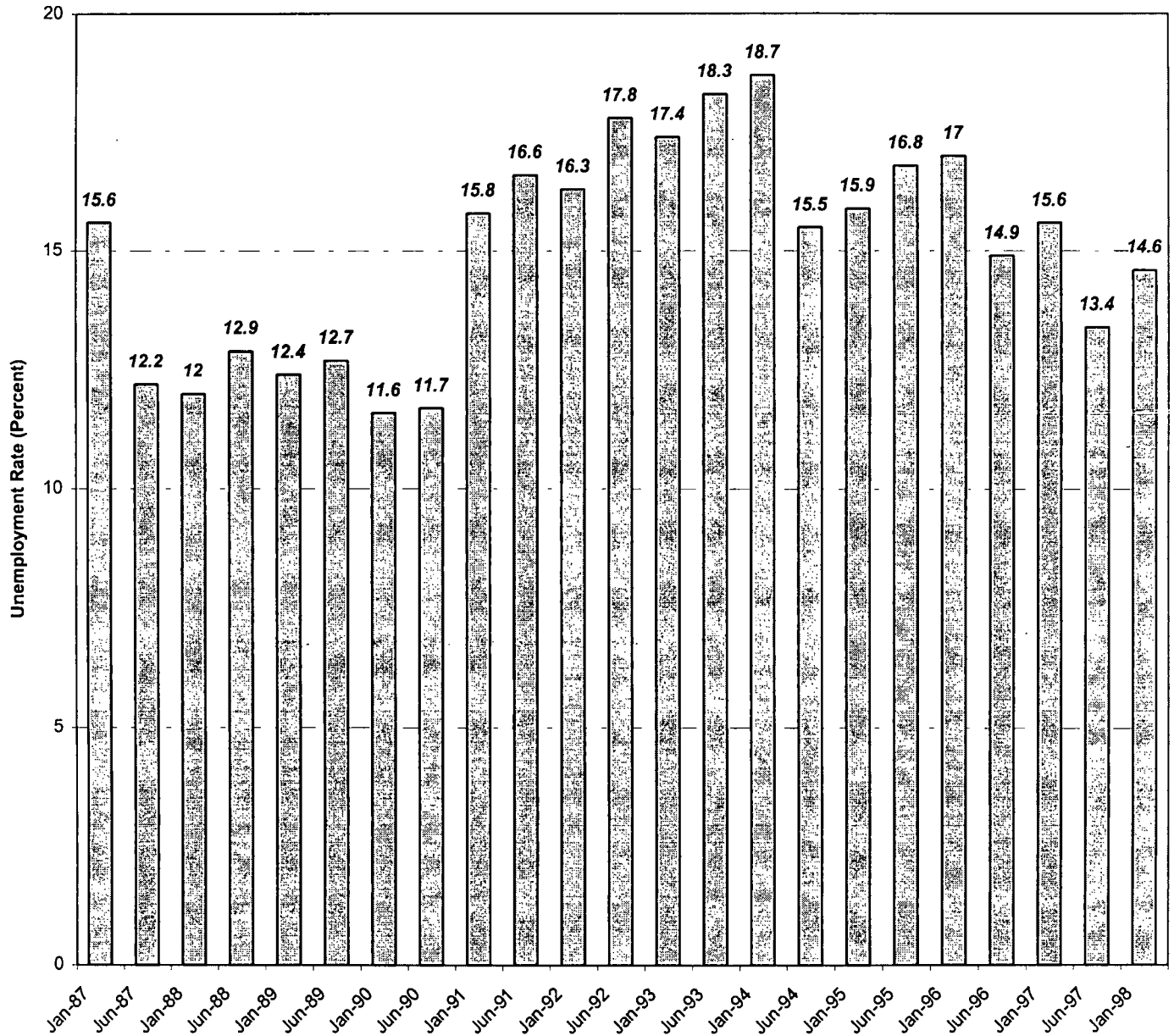


Source: State of California, Employment Development Department, Report 400C, Jan. 1987-Jan. 1998

Graph 16

UNEMPLOYMENT IN STANISLAUS COUNTY

Average Rates During Labor Peak & Off-Peak Months, Jan. 1987 - Jan. 1998

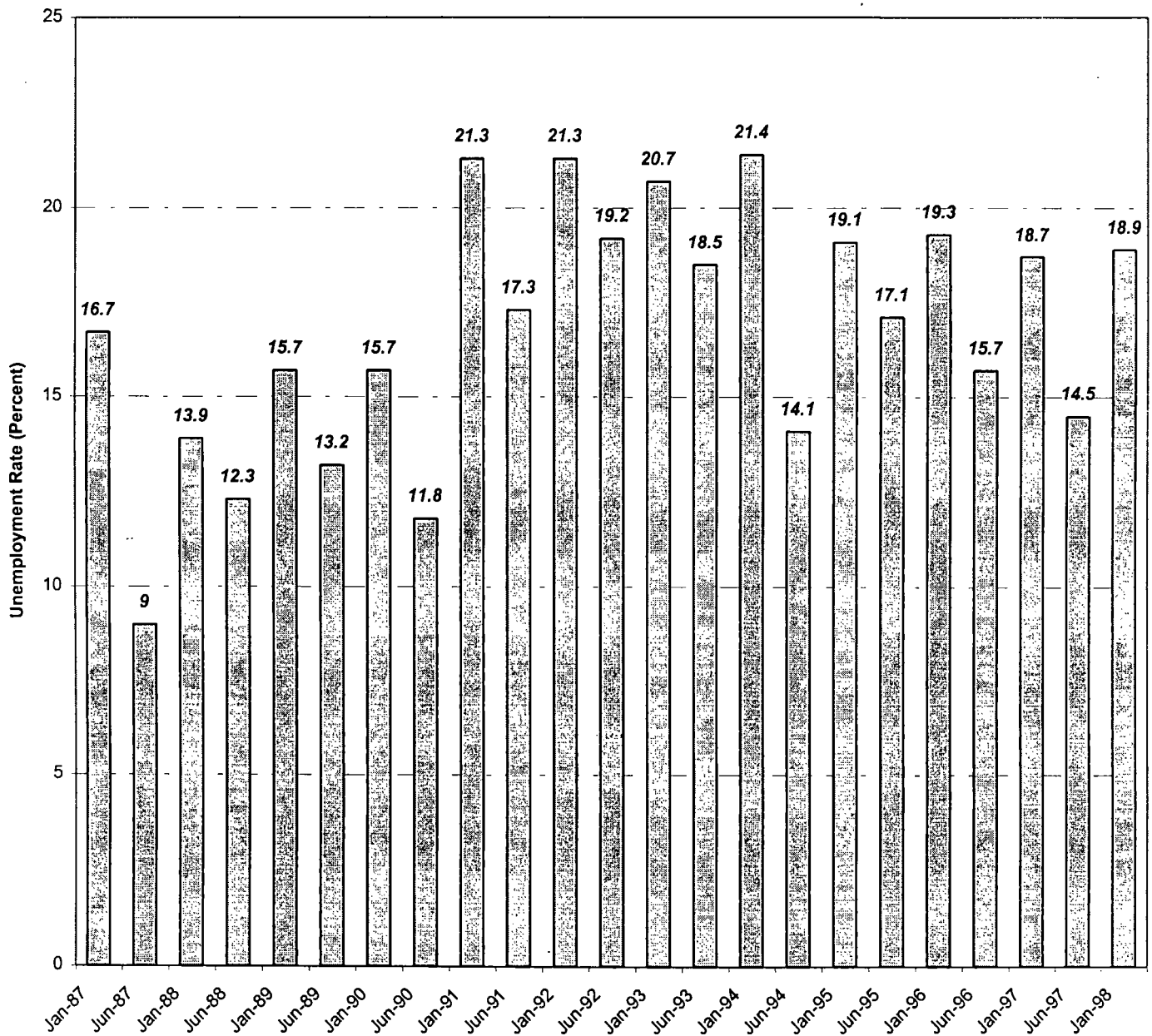


Source: State of California, Employment Development Department, Report 400C, Jan. 1987 - Jan. 1998

Graph 17

UNEMPLOYMENT IN SUTTER COUNTY

Average Rates During Labor Peak & Off-Peak Months, Jan. 1987 - Jan. 1998

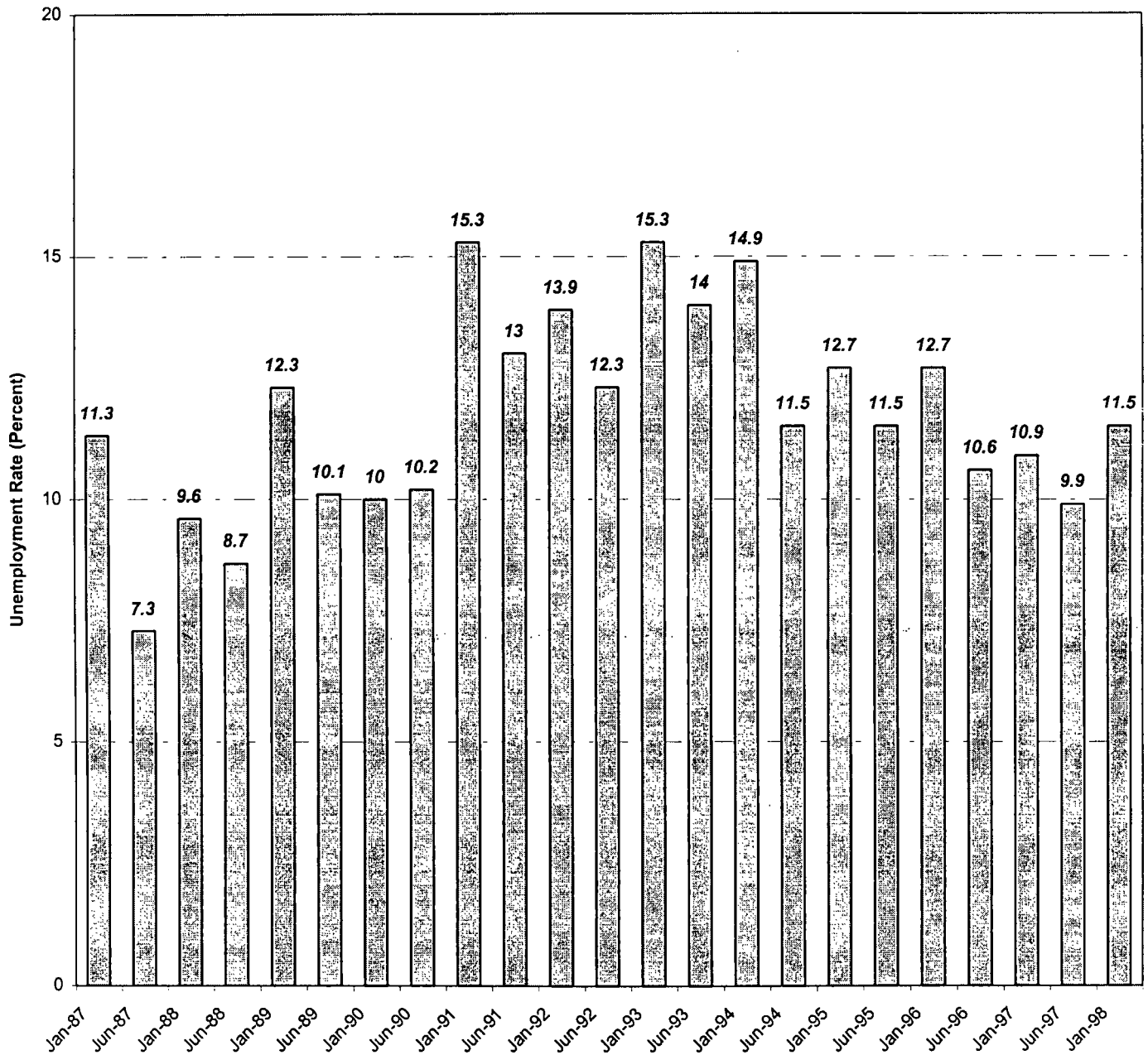


Source: State of California, Employment Development Department, Report 400C, Jan. 1987-Jan. 1998

Graph 18

UNEMPLOYMENT IN TEHAMA COUNTY

Average Rates During Labor Peak & Off-Peak Months, Jan. 1987 - Jan. 1998

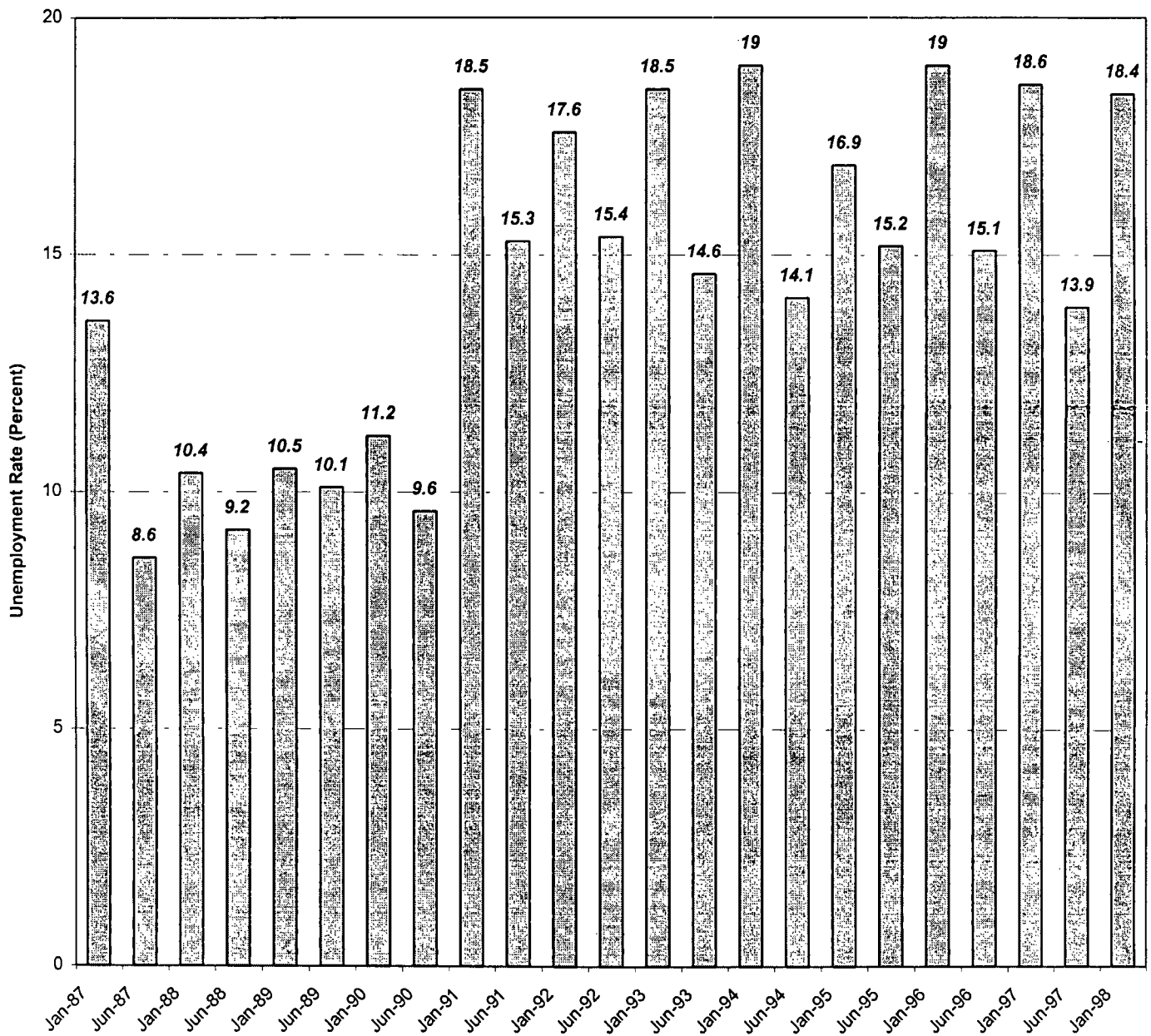


Source: State of California, Employment Development Department, Report 400C, Jan. 1987-Jan.1998

Graph 19

UNEMPLOYMENT IN TULARE COUNTY

Average Rates During Labor Peak & Off-Peak Months, Jan. 1987 - Jan. 1998

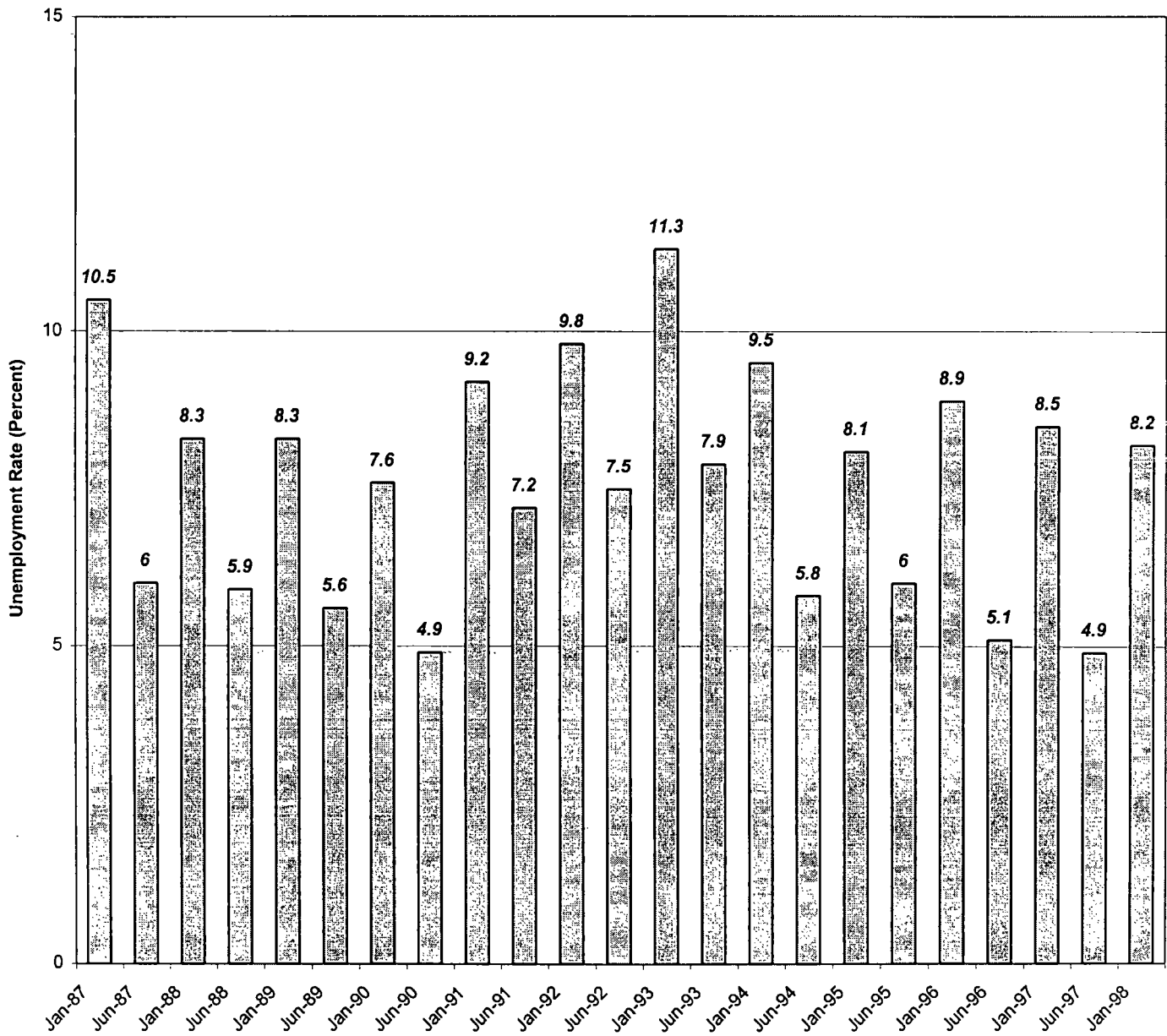


Source: State of California, Employment Development Department, Report 400C, Jan. 1987-Jan. 1998

Graph 20

UNEMPLOYMENT IN YOLO COUNTY

Average Rates During Labor Peak & Off-Peak Months, Jan. 1987 - Jan. 1998

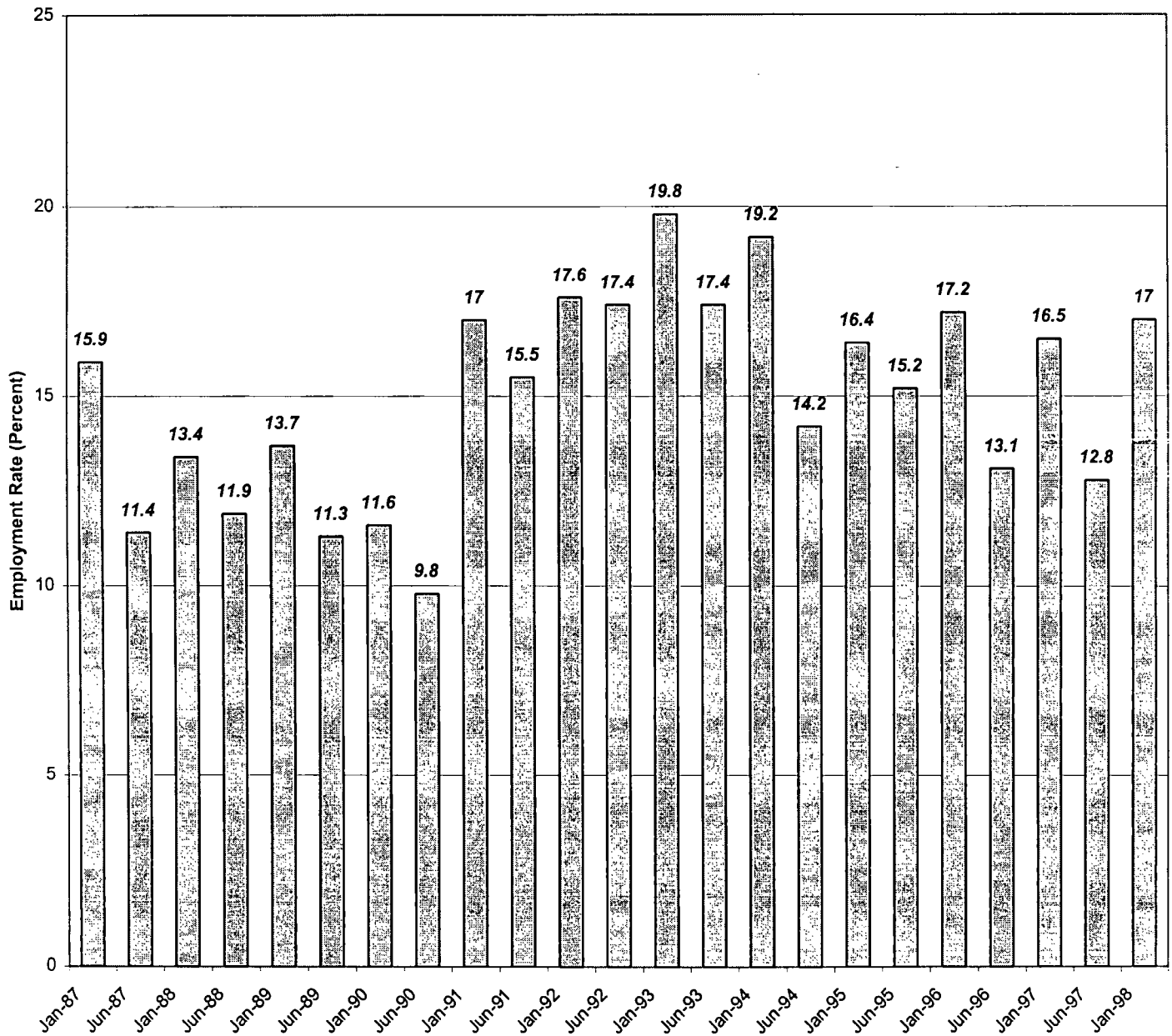


Source: State of California, Employment Development Department, Report 400C, Jan. 1987-Jan. 1998

Graph 21

UNEMPLOYMENT IN YUBA COUNTY

Average Rates During Labor Peak & Off-Peak Months, Jan. 1987 - Jan. 1998



Source: State of California, Employment Development Department, Report 400C, Jan. 1987-Jan. 1998

Table III.2: Food Stamp Waiver and Labor Surplus Area Designations for 20 Counties With Significant Production in Fruits, Tree Nuts, and Vegetables, 1997

County^a	Scope of food stamp eligibility waiver^b	Reason for USDA waiver^c	Scope of labor surplus area designation,^d fiscal year 1997
Fresno County, Calif.	Entire county	Over 10 percent unemployment rate	Entire county
Imperial, County, Calif.	Entire county	Over 10 percent unemployment rate	Entire county
Kern, Calif.	Entire county	Over 10 percent unemployment rate	Entire county
Madera County, Calif.	Entire county	Over 10 percent unemployment rate	Entire county
Merced County, Calif.	Entire county	Over 10 percent unemployment rate	Entire county
Monterey County, Calif.	Entire county	Over 10 percent unemployment rate	Excludes cities of Monterey and Salinas
Riverside County, Calif.	Entire county	Insufficient jobs	Excludes city of Palm Desert
San Diego County, Calif.	Cities of Chula Vista, El Cajon, Imperial Beach, Lemon Grove, National City, Oceanside, and Vista	Insufficient jobs	Not designated as labor surplus area
San Joaquin County, Calif.	Entire county	Over 10 percent unemployment rate	Entire county
Santa Barbara County, Calif.	Lompoc City, Santa Maria	Insufficient jobs	Not designated as labor surplus area
Stanislaus County, Calif.	Entire county	Over 10 percent unemployment rate	Entire county
Tulare County, Calif.	Entire county	Over 10 percent unemployment rate	Entire county
Ventura County, Calif.	Entire county	Insufficient jobs	Excludes cities of Camarillo, Moorpark, Simi Valley, Thousand Oaks, and Ventura
Collier County, Fla.	Entire county	Insufficient jobs	Entire county

(continued)

County ^a	Scope of food stamp eligibility waiver ^b	Reason for USDA waiver ^c	Scope of labor surplus area designation, ^d fiscal year 1997
Dade County, Fla.	Entire county	Insufficient jobs	Excludes entire county except for cities of North Miami, Hialeah, Homestead, Miami Beach, and Miami
Hendry County, Fla.	Entire county	Over 10 percent unemployment rate	Entire county
Palm Beach County, Fla.	Entire county	Insufficient jobs	Excludes cities of Boca Raton, Jupiter, and Palm Beach Gardens
St. Lucie County, Fla.	Entire county	Over 10 percent unemployment rate	Entire county
Yuma County, Ariz.	Entire county	Over 10 percent unemployment rate	Entire county
Yakima County, Wash.	Entire county	Over 10 percent unemployment rate	Entire county

^aThese 20 counties accounted for about half of the total national value of production in fruits, tree nuts, and vegetables in 1992, the latest year for which data were available.

^bSection 6(o) of the Food Stamp Act, as amended by section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, provides that, among other criteria, a person is ineligible for the program if he or she previously received benefits but did not work at least 20 hours per week for at least a 3-month period. However, the provisions also say that, on the request of a state agency, the Secretary of Agriculture may waive these provisions for specified persons in the state. USDA issued most of the waivers to the designated counties during early 1997.

^cThe Secretary of Agriculture may waive current food stamp eligibility provisions if he determines that the area in which the persons reside has an unemployment rate of over 10 percent or has an insufficient number of jobs to provide employment for program participants. Among other evidence, designation of an area by Labor as a labor surplus area can be considered by the Secretary that an insufficient number of jobs are available.

^dLabor classifies a civil jurisdiction as a labor surplus area when that jurisdiction's average unemployment rate is at least 20 percent above the average national unemployment rates during the previous 2 calendar years. During periods of high unemployment, an area can be classified as a labor surplus area if it has unemployment rates of 10 percent or more during the previous 2 calendar years. Labor may also designate areas if an area had unemployment rates of at least 7.1 percent for each of the 3 most recent months or projected unemployment of at least 7.1 percent for each of the next 12 months or has documentation that this has already occurred. Labor designates labor surplus areas on a fiscal-year basis. Designated labor surplus areas are eligible for preference in bidding on federal procurement contracts.

Sources: USDA and Department of Labor.

Crewleader Violence Against Farmworkers in North Carolina

**A Report Prepared
for
The North Carolina Chapter
of
The National Lawyers Guild**

**by James H. Parker, III
David C. Hemingway**

That farmworkers encounter violence is hardly doubted by the service agency personnel who work with them on a daily basis. Abrasions, bruises, and cuts can be only poorly concealed by their bearers. Whether the violence comes from the crewleaders who manage the workers as opposed to other sources, however, and whether such violence serves a formal and condoned function in the agricultural economy are issues capable of much less obvious proof.

The primary goal and easiest accomplishment of this study has been the documentation of incidents of violence by farm labor crewleaders and their henchmen against the migrant and seasonal farmworkers they manage. Beginning June 1, 1981, the authors spent nine weeks in Nash, Wilson, Johnston, and Sampson Counties, keeping in contact with legal services offices, health departments, and employment assistance agencies to interview and scrutinize the victims coming through these agencies. The time elapsed between the alleged incident and the subject's interview ranged from three weeks to a case where Mr. Parker witnessed the actual assault. Most of the 14 incidents of violence arising during the growing season researched were documented within one week of the incident.

The conclusions expressed in the report are subject to inescapable handicaps of which the authors have been acutely aware. The research phase of the project covered only one-third of one growing season (nine weeks). With few exceptions, witnesses to the assaults were unavailable, either because there were none or because their identities were unknown or undiscoverable due to the victim's urgent need to leave the area. Moreover, the only victims contacted consisted of those confident enough of their own safety to speak with others about the problem. Most of those who have contact with victims of violence, including law enforcement officials, agreed that the majority of violent incidents go unreported; thus, those who feel free to talk about the problem, if anonymously, do not represent the norm. The Catch-22 quality of this problem, however, is obvious; the typical violence victim cannot be interviewed because such victim typically tells no one about the incident.

Acknowledging these handicaps, the authors securely maintain the validity of the report and its conclusions. All but two of the victims interviewed were also being scrutinized by persons with several years of experience dealing with farmworkers, thus providing, in effect, a double check on the authors' assessments. And while not all farmers, crewleaders and farmworkers could be interviewed, those contacted were chosen as being among the most experienced in the area. The similarity of their responses strengthens the authors' belief that the conclusions are based upon and consistent with prevailing mores and practices.

The urgency of the problem of violence against farmworkers requires examination and immediate attention. The prevalence of documented information herein justifies a serious consideration of the report's conclusions.

Having addressed the issue of validity, a short note is in order to explain the format and function of the report. The body of the study is in two parts: a narrative essay explaining the labor system and role in that system played by violence, and an equally important set of appendices cataloguing by year of occurrence reported incidents of violence against farmworkers. The authors intend that the appendices operate as the living part of the report, being open to additional entries as new cases arise.

The names of the victims and aggressors are used only when the victim gave permission or where charges were filed, creating a public record. This policy reflects the author's concern that the victims not encounter retaliation for talking about an incident. All anonymous reports were verified with the project director to vouch for the veracity of the report.

The authors wish to thank the National Lawyers Guild for the rare opportunity to examine this grave problem. Special thanks also go to the Farmworkers Legal Services offices in Wilson and Newton Grove, particularly to Faye Bowling and Chuck Eppinette for their patience and ready assistance.

The authors also wish to thank everyone who consented to be interviewed, since all information generates light by which the permanent change we live in may be more capably grasped.

— Dave Hemingway
— Jim Parker

II. The Farmers Who Hire the Crewleaders and Farmworkers

"It's a good feeling when you've borrowed all the money you can to try and get a crop in and you see them ole buses driving in and them niggers throw their arms out the windows waving at you. And it's also a good feeling when you see them leaving and you know nothing's happened."

— Nash County farmer Clay Strickland

The local farmers interviewed gave remarkably uniform answers to questions about the agricultural labor system and the crewleader's role in it. What they termed free government "hand-outs" (typically referred to as the "food-stamps" program) created the need for migrant labor because all the local labor force hooked into the social program and stopped working. The migrants, they will tell you, are a group of primarily drunk people with no self-motivation, who they say actually want a crewleader to order their every move. Nash County farmer Carson B. Barnes explained:

* *"You see, with the type of people . . . that migrants are they got to be managed for their own safety and for the organizational structure in a small way (like) big enterprises in a free society, in a capitalist society. And (crew-leaders) are the organizers, they are the managers just like General Motors have their organizers and managers. It's just in a minute way. So there's a place for them. These people, a group of unorganized people regardless of how good or bad they are, is worthless."*¹

Farmer Clay Strickland of Spring Hope added:

*"(I)t is just a little bit like giving a dog a little bone: 'Com'on, Com'on. If you get this row out I'll give you a pint' . . . Somebody has got to control that alcohol. That somebody is why you've got to have that crewleader."*²

The farmers frequently criticized organizations like legal services which visit workers in the camps as needlessly trying to change a lifestyle they believe

the migrants are contented with. As grower Cecil Williams, Sr., sees it:

*"Ninety-nine percent of them are satisfied with the way they are living. (Legal Services) tries to tell them 'You don't need to be a migrant. You need to have a 9-5 job and make \$10,000 a year' . . . The less money they have the better off they are, really. If he gets \$10 he does a \$10 drunk; if he gets \$100 he does a \$100 drunk."*³

The farmers referred to the migrant farmworkers as a necessary evil. "With the migrant you get more dependability that he's going to be here . . . a certain number of persons' going to be here between five and six hours a day," Williams said.⁴

Strickland explained:

*"It's a good feeling when you've borrowed all the money you can to try to get a crop in and you see them ole buses driving in and them niggers throw their arms out the windows waving at you. And it's also a good feeling when you see them leaving and you know nothing's happened."*⁵

The growers interviewed said they have little time to deal with the individual farmworkers directly, that being the crewleader's function, though two said they sometimes stop by the camps on weekends at times bringing complimentary cases of beer.⁶

All but one of the growers interviewed said they had not seen physical abuse of farmworkers by crewleaders at their camps and, on that basis, disbelieved that it happens at other camps. Fights may

occur among the workers themselves, but the growers characterized this as inevitable. One likened the violence to domestic violence: "They're to a great extent like a family," Williams explained. "A family's going to argue amongst themselves and they'll hit one another once in a while." Williams and his son Cecil, Jr., employ crewleader Willy Warren, Jr., charged this season with kidnapping and convicted of misdemeanor assault with a deadly weapon (a conviction being appealed). The Williams said they did not believe either charge holds merit. Nor did they believe the complaints of kidnapping and assault against the same crewleader the previous year.⁷ The Williams gave no indication that they knew of two other victims of beating from Warren during the current season. Cecil Williams, Jr., said that he drove to the camp when the charges arose last year to check out the charge. "I

id, 'If there's anybody here that's here against your will and wants to leave . . . now's the time to do it.' There's not a soul leaved with me."⁸

The farmers' claims that crewleader violence does not occur are well known to and disbelieved by farmworker advocates and some law enforcement officials. Clinton Police Officer Lester Souza said that regardless of what the farmers' professed connection with the violence is, "as far as I'm concerned it's aiding and abetting."⁹ McCall of Farmworkers Legal Services in Wilson commented:

"The farmers will tell you that it's all fighting and carrying on between the workers, which is sometimes true. But most of the time the people are too frightened to tell you about what actually happened. They might say they were

*fighting with another farmworker when it actually was the crewleader who beat them There's just always this fear, you know. They fear for their lives."*¹⁰

Carson Barnes was the one grower who acknowledged violence occurring in the past on his camps:

*"As far as crewleaders abusing workers I'm sure it's been done. I'm sure policemen have abused winos laying on the street in New York. There's going to be abuse anytime you get people together in great numbers. And there has been some abuse . . . I've seen some of them on my farm. I put an immediate stop to it, because I'm not a part of slavery and human abuse. I'm not going to be any part of it . . . "*¹¹

Barnes, however, was one of two securities on Freddie Lee Black's \$20,000 bond for first degree murder in the 1975 killing of a farmworker.¹²

Nash County farmer Ted L. Bissett, while asserting that if he were to discover a violent crewleader he would dismiss him, said reports of crewleader violence are probably fanciful:

*"I think if there's been that problem of abusing people I would have seen it at one time or another. I've never seen this case of any crewleader abusing a worker. People like to believe bad things. People like to read about murder and rape. It's exciting to them."*¹³

Bisset signed as the second security for Freddie Black's \$20,000 bond.¹⁴

37. Interview with Doc Hunt, crewleader, farmer J.O. Parker, July 24, 1981, in rural Newton Grove, N.C.
38. Appendix A, Case No. 1981-6.
39. Interview with Freddie Lee Black, crewleader, farmer Carson B. Barnes, July 29, 1981, in rural Spring Hope, N.C.
40. Interview with Christine McCall, employee, Farmworkers Legal Services, June 29, 1981, in Wilson, N.C.
41. Interview with Linda Hasque, supervisor of Smithfield Office, Migrant and Seasonal Farmworkers Association, Inc., July 10, 1981, in Smithfield, N.C.
42. Interview with health official, July 16, 1981.
43. Interview with Larry Antill, deputy, Nash County Sheriff's Office, June, 1981, in Nashville, N.C. (1/3); Interview with Christine McCall, employee, Farmworkers Legal Services, June 29, 1981, in Wilson, N.C. (5%); Interview with Chuck Eppinette, community education director, Farmworkers Legal Services, July 23, 1981, in Wilson, N.C. (1%).
44. Appendix B, Case No. 1980-14.
45. Appendix B, Case No. 1980-11.
46. Interview with Larry Antill, deputy, Nash County Sheriff's Office, June, 1981, in Nashville, N.C.
47. Interview with Dr. Luiz Del Gotto, physician, Wilson County Health Department, June 16, 1981, in Wilson, N.C.; Interview with Sister Simone Begin, nurse, Nash County Health Department, July 31, 1981, in Nashville, N.C.
48. Ibid.
49. 42 U.S.C. 2996f(b) (1).
50. Telephone conversation with Linda Hasque, supervisor of Smithfield office, Migrant and Seasonal Farmworkers Association, Inc., August 14, 1981, in Smithfield, N.C.
51. Interview with Janice Ruffin, employee Employment Security Commission, July, 1981, in Wilson, N.C.
52. Interview with Frank Martin, employee, Employment Security Commission, June 1981, in Wilson, N.C.
53. Interview with Linda Hasque, supervisor of Smithfield office, Migrant and Seasonal Farmworkers Association, Inc., July 10, 1981, in Smithfield N.C.

II. The Farmers Who Hire the Crewleaders

1. Interview with Carson B. Barnes, farmer, July 23, 1981, in rural Spring Hope N.C.
2. Interview with Clay Strickland, farmer, July 21, 1981, in rural Spring Hope, N.C.
3. Telephone conversation with Cecil Williams, Sr., farmer, July 22, 1981, in rural Spring Hope, N.C.
4. Interview with Cecil Williams, Sr., farmer, July 31, 1981, in rural Spring Hope, N.C.
5. Interview with Clay Strickland, farmer, July 21, 1981, in rural Spring Hope, N.C.
6. Ibid.; Interview with Ted L. Bissett, farmer, July 22, 1981, in Spring Hope, N.C.
7. Interview with Cecil Williams, Sr., farmer, July 31, 1981, in rural Spring Hope, N.C.
8. Ibid.
9. Interview with Lester Souza, officer, Clinton Police Department, July 8, 1981, in Clinton, N.C.
10. Interview with Christine McCall, employee, Farmworkers Legal Services, June 29, 1981, in Wilson, N.C.
11. Interview with Carson B. Barnes, farmer, July 23, 1981, in rural Spring Hope, N.C.
12. Appearance bond, case file 75-Cr-2153, *State v. Freddie Lee Black*, Clerk of Court's Office, Criminal Division, Nash County Court House in Nashville.
13. Interview with Ted Bissett, farmer, July 22, 1981, in Spring Hope, N.C.
14. Appearance bond, case file 75-Cr-2153, *State v. Freddie Lee Black*, Clerk of Court's Office, Criminal Division, Nash County Court House in Nashville.

III. Law Enforcement Agencies

1. Interview with J.R. Thornton, deputy, Johnston County Sheriff's Office, June 30, 1981, in Newton Grove, N.C.
2. Interview with Cranford Fann, Sheriff, Sampson County Sheriff's Office, July 7, 1981, in Clinton, N.C.
3. Interview with George Johnson, Sheriff, Johnston County Sheriff's Office, August 10, 1981, in Smithfield, N.C.