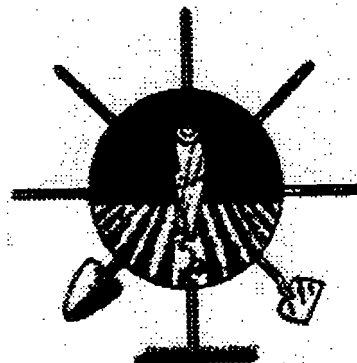


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FAX COVER SHEET

Please Deliver to:
Irene Bueno

Fax #: 456-5581
Company: Domestic Policy Council

From: BRUCE GOLDSTEIN

Pages: 2

Message:

Agricultural labor relations, it often seems, continues to be modeled after slavery, rather than the law of supply and demand. See attached article.

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Digest: 8-12

Filed: 08/11/1999

The Bakersfield Californian

Man arrested in shooting at farm workers who refused to pick weeds

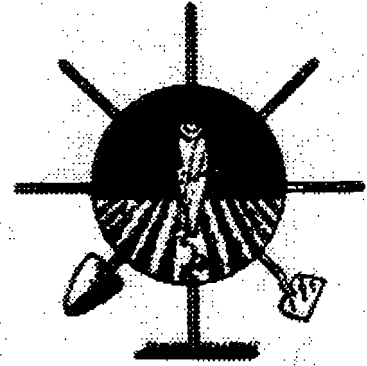
A 21-year-old rural Wasco man was arrested on assault with a deadly weapon charges for allegedly shooting at farm workers who refused to pick weeds from his watermelon field. Roger Nesheiwat is scheduled to be arraigned Aug. 19 on the charge in North Kern Municipal Court, Delano police Sgt. Frank Sadler said Wednesday.

Sadler reported that Nesheiwat became angry Aug. 3 when the farm workers stopped pulling weeds because the gloves he gave them did not protect their hands from stickers. The farm workers, who were hired by Nesheiwat at a Delano park, said he fired a 9 mm gun at the ground around their feet and legs.

None were hit, but one worker said Nesheiwat hit his legs with a cane to force him on his knees. Nesheiwat then fired more shots next to the man's ears, the man told police.

Nesheiwat, who was arrested Friday, has posted \$10,000 bail.

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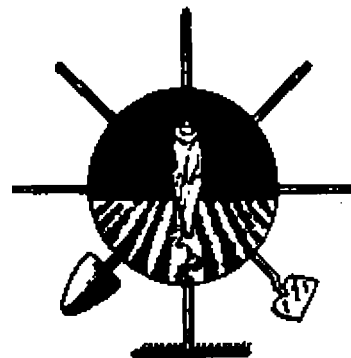
Pages: 4

Message:

Please distribute to farmworker supporters the attached update and action alert regarding the agricultural guestworker issue.

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UPDATE AND ACTION ALERT ON AGRICULTURAL GUESTWORKER LEGISLATION

TO: Farmworker Supporters
FROM: Bruce Goldstein, Co-Executive Director
DATE: August 6, 1999

This will be my last update until the first week in September. During the remainder of August, when I'm away, information will be available from Joel Najar at National Council of La Raza, (202) 776-1789, and on the guestworker legislation website operated by Mark Schacht of California Rural Legal Assistance Foundation, Inc. (<http://www.crlaf.org/gworkers.htm>), (415) 397-5715.

Congressional Update

The Senate and House have recessed until September 8 without enacting major agricultural guestworker legislation. No major bill was introduced (introducing a bill would allow our side to analyze and criticize it). The "action" for now has largely moved from the Senate to the House of Representatives. The growers are strenuously lobbying House members and working the media.

During this Congressional recess, farmworker supporters should (1) communicate with House members in their district offices and (2) seek media coverage, op-eds and editorials about farmworkers generally and guestworker legislation in particular.

You've all been doing very good work. A horrible guestworker bill would have been passed by now if not for you. We expect the growers to pull out all the stops when Congress reconvenes in September so your work is crucial now more than ever.

Senate Developments

The growers planned to add a guestworker amendment to a Senate appropriations bill. The growers were delayed due to difficulty getting sufficient votes in the Senate to overcome a possible filibuster or a presidential veto. Then, last week, the Senate voted to reinstate a rule (Rule 16) which allows Senators to object to an amendment offered on the Senate floor that would create a substantive piece of legislation as a rider to a spending

bill. This severely restricted the growers' options. The Senate has now passed several appropriations bills, but others remain to be considered. The growers would need a majority of Senators to vote to over-ride an objection based on Rule 16; it is not clear whether the growers could secure such an exception to the recently-reinstated rule.

On August 4, 1999, following debate on the agricultural appropriations bill, Sen. Slade Gorton of Washington State promised on the floor of the Senate to continue to try to secure "H-2A reform." Senator Bob Graham is also actively working the issue.

House Developments

The growers' chief lobbyists recently met with the Speaker of the House, Rep. Dennis Hastert of Illinois, to move the guestworker issue. We do not yet know what the legislative procedure will be. They may forced to go through the immigration subcommittee, chaired by Rep. Lamar Smith, an immigrationrestrictionist who has opposed the growers' demands. We expect that agribusiness would also attempt to move a proposal through the Agriculture Committee. We and National Council of La Raza have coordinated a letter on behalf of 173 organizations that is being sent to every member of the House, asking them to support farmworkers and oppose the upcoming guestworker legislative proposals.

White House Developments

The White House, including Deputy Chief of Staff to the President Maria Echaveste, seems committed to opposing the growers' demands.

Public Relations

The growers have been telling the media and members of Congress that they are negotiating with farmworker advocates and may reach a deal. They hope that this will give the appearance of broad support for Congressional action. The growers argue that they support "legalization," but what that means is granting a harsh guestworker status to undocumented farmworkers, eliminating most of the labor protections in the H-2A guestworker program. So far, they have been offering the same kind of phony provision as last year that would have let a few guestworkers, after years of work, eventually apply for immigration status and then not receive it.

Farmworker advocates have told growers' representatives that what they are offering is completely unacceptable. Their proposal for a new guestworker program with no labor rights cannot form the basis for a negotiation. And any discussion must begin with providing true immigration status to farmworkers and must also include policies to make improvements in wages, working conditions and housing.

One of the growers' hired guns, Rick Swartz, commissioned a poll of Latino voters. The purpose of a portion of the poll seems to be to engage in a publicity campaign arguing that Latinos would support the growers' demands for a new guestworker program. A large number of Latino organizations around the country have strongly

objected to the growers' demands, so I don't see how a valid poll could lead to the growers' desired conclusion, but polling questions, as we all know, can yield whatever conclusions you desire.

There has been some good media coverage about farmworkers recently. Keep up the good work. Rep. Howard Berman of California circulated to every member of the House of Representatives an article about the guestworker issue that was published in the Los Angeles Times of July 18 and written by Prof. Kitty Calavita, author of a book about the *bracero* program. The New York Daily News issued an extensive two-part special editorial about farmworkers, calling for collective bargaining and other rights for farmworkers.

Other Helpful Action

Several components of the American Bar Association will present to the ABA House of Delegates next week a resolution in favor of improving farmworkers' conditions and opposing the guestworker legislative proposals. The National Latino Summit on Guestworker Legislation informed Gov. George Bush by letter of its opposition to the growers' demands. National Council of La Raza, at its Houston convention, set up a computer advocacy system allowing conventioners to send pre-prepared e-mail messages to members of Congress about the guestworker issue.

The McConnell Provision under the H-2A Program

The McConnell provision changing the time frames under the H-2A guestworker program to reduce recruitment of U.S. workers prior to approval to hire temporary foreign workers is in section 746 of the Senate's agricultural appropriations bill. (It was not subject to a Rule 16 objection because it was inserted by the Senate Appropriations Committee.) The House agricultural appropriations bill does not contain this provision. We are hopeful that the White House and some House-Senate conferees in the agricultural appropriations process will demand that the provision be removed.

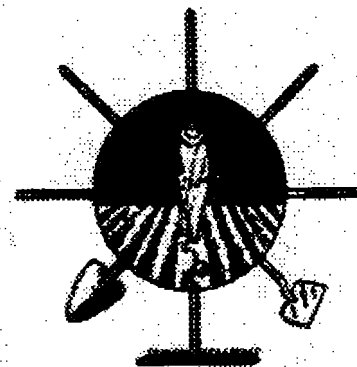
Unfortunately, the Department of Labor, effective July 29th, shortened the H-2A time frames, though not as much as the McConnell amendment would.

Labor Law Reforms

Rep. Canady of Florida introduced H.R. 1886, which would amend the Migrant and Seasonal Agricultural Worker Protection Act of 1983, gutting its modest protections. We are not aware of any hearings or other action scheduled on that bill. We are concerned that the Farm Bureau may try to add it to another major bill, such as a minimum-wage increase.

Have a good August.

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Fax #: 456-5581
Company: Domestic Policy Council

From: BRUCE GOLDSTEIN

Pages: 4

Message:

Attached is a very good, long editorial from Sunday's New York Daily News about the plight of New York's farmworkers. It includes a comment on the H-2A guestworker program: "Foreigners who come legally are exploited even more than the illegals. They are bound by visas under the federal H2A program that restrict them to working only for the growers who recruited them. If they are fired - and they can be, without cause - they cannot switch jobs. They are deported. This is indentured servitude."

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New York Daily News: A Daily News Special Editorial

First of a two-part series on the plight of farm workers

[photos omitted]

**From: News and Views | Opinion |
Sunday, August 01, 1999, p. 40**

New York's Harvest of Shame

s New York swelters through the hottest summer in memory, thousands of men, women and children are fanning out across the state's vast farmlands. They will toil 12 hours a day, seven days a week, to put nature's bounty on your table.

August begins the harvest season, and as difficult as it may be for the citybound to fathom, agriculture is New York's No. 1 industry — a \$50 billion-a-year enterprise.

Yet the 20,000 individuals who labor in New York's vegetable fields, in the apple orchards and in the factories where poultry is processed, endure conditions so harsh they are prohibited in all other lines of work. State law not only allows those conditions on farms, it actually encourages them.

It does so by expressly excluding farm workers from protection against employer retaliation should they seek to unite to negotiate better conditions. While all other workers enjoy that safeguard — granted by the state Constitution — farm laborers are effectively denied the right to join unions.

The average wage for field hands is \$7.20 an hour. But they are not entitled to overtime pay, a day of rest or days off when they are sick. They often live in shanties with limited running water and no cooking facilities. Rules for disability insurance, unemployment insurance and workers' compensation — the essence of the employment safety net — are so skewed against farm workers that the rules might as well not exist.

This is New York's harvest of shame.

Nearly 40 years after Edward R. Murrow shocked the nation with his TV probe of the way migrant workers were abused and exploited, and 25 years after Cesar Chavez won collective-bargaining rights for California farm workers, New York remains in the labor Dark Ages. Little has changed here since the Great Depression.

The fact that these abuses still occur on the eve of the 21st century, and only an hour's drive from Manhattan, is the dirty little secret of the union movement.

The powerful public employee unions that get almost everything they want from a compliant Legislature certainly don't care about farm workers. And neither do the legislators themselves. They think they're compassionate because they required — just last year — that farm owners give field hands access to a toilet.

The New York farm belt begins in the Orange County towns of Florida and Pine Island and Goshen. There, no more than 50 miles from midtown, is an endless rural landscape of narrow back roads and rich "black muck" fields, which Polish immigrants reclaimed from swamps in the early 1900s. It is in these fields where the largest onion crop east of the Mississippi is harvested each year.

At the height of that harvest, which is just now beginning, some 2,000 workers, most of them migrants of Mexican origin, will be in the fields. They also will be in a time warp. Workers refer to the growers as *patrones* and say that many run the farms like medieval fiefdoms. In the hamlet of Florida, the Daily News met with current and former workers who are members of the Independent Farm Workers Center, an advocacy group known by its Spanish acronym, CITA. Their stories were of growers who routinely ignore even the scant protections afforded farm laborers.

One man, old beyond his 56 years and with fingers stained black from the soil, told of unsafe pesticide use, of a lack of the washing facilities and field toilets required by statute, and of pay that is late and less than promised. Another noted that, with no toilets, workers relieve themselves in the fields — where your food is grown.

Before they even get to the fields, workers may have to give up 10% of their pay. State law allows growers to deduct that much for transportation — rides in flatbed trucks or old school buses. Complainers can be fired.

Various state and federal agencies are supposed to regulate pesticide use, field conditions and housing. But workers say growers are routinely given advance notice of housing inspections and that environmental officials rarely monitor hazardous-chemical laws. Additionally, they say, there are too few bilingual inspectors to communicate with the labor force.

A visit to workers housing on one farm, situated on a dirt road at the edge of an onion field, reveals a Third World scene: cinderblock barracks with communal toilets, half-naked children, a chorus of barking dogs, a goat wandering freely about. This is considered good housing for migrants. Other workers live in battered trailers or shacks. The *patrones* can — and do — charge workers for such accommodations.

Workers are legally allowed to have visitors — anyone from friends to lawyers — yet a sign at one compound warns: "No visitors allowed without written consent of owner." Once again, who'd dare complain?

In one Orange County case brought before the National Labor Relations Board, 31 migrants were fired from a single farm after questioning their wages. Most were rehired months later, but those branded as ringleaders are still jobless.

Similar reports come from the vast apple orchards along Lake Ontario and in the Hudson Valley, in the potato fields and horticultural nurseries of Long Island and on upstate dairy farms.

This, in New York, home of the American labor movement. In no other industry would such abuses be tolerated. Even illegal immigrants toiling in Manhattan sweatshops can count on some law enforcement protection.

Compounding the shame, growers can hire children as young as 12 to work in these Dickensian conditions.

The farm workers' plight has deep roots. The National Labor Relations Act of 1935, the Wagner Act, secured the right of workers to bargain collectively, except for farm workers. The states passed their own so-called Little Wagner Acts. New York's, passed in 1937, specifically excluded farm workers from the definition of "employee" — a vicious irony made worse by the fact that the state Constitution, adopted a year later, guarantees that "employees shall have the right to organize and to bargain collectively through representatives of their own choosing."

That raises the question: If farm workers are not employees, what are they? Serfs? That is how many are treated.

New York's farm workers — whites, blacks and Latinos — are bound to the land, but most are rootless. They are seasonal migrants who arrive individually or in organized crews from Florida and Texas, or as "guest workers" from Jamaica and Haiti.

Illegal aliens, whose numbers are growing dramatically, are forced to work under whatever conditions their bosses impose. But, as one told this page, "I can earn \$7 an hour here. I'd be lucky to make \$4 a day back home in Mexico." Immigration officials look the other way, knowing that forged documents are as common as kernels on corn.

Foreigners who come legally are exploited even more than the illegals. They are bound by visas under the federal H2A program that restrict them to working only for the growers who recruited them. If they are fired — and they can be, without cause — they cannot switch jobs. They are deported. This is indentured servitude.

Like everything the government does in agriculture, the H2A program favors the farmers, all in the name of supporting the family farm. Indeed, a spokesman for the state Agriculture Department admits that the agency exists partly to "defend farmers" against allegations of worker exploitation.

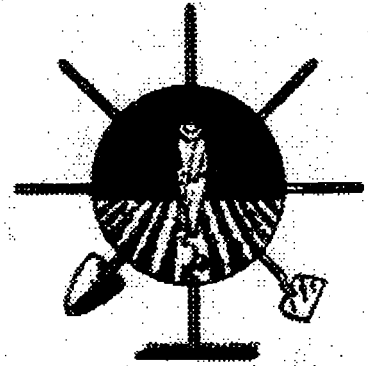
But the term "family farm" is misleading. The traditional mom-and-pop operation is not the issue. In fact, most farmers don't employ anyone outside their own families. Those who do, however, hide behind the bucolic Norman Rockwell image, and they are the ones who benefit by exploiting workers. This is agribiz, and it has disproportionate clout in Albany.

The big growers and their lobbyists defend their unfair labor practices by saying the work is seasonal and that their profit margins won't support better conditions. A strike by organized workers, they insist, would destroy the family farm.

The argument is unpersuasive. Many businesses are seasonal — tourism, for one — but its employees are free to join unions. And many other jobs are just as critical. Cops, firefighters, even doctors, can bargain collectively. There is no humane reason farm workers should be treated differently.

Tomorrow: Ending the Harvest of Shame.

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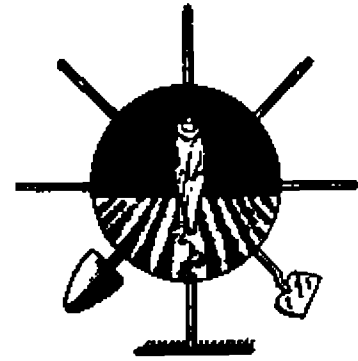
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Message:

Re: Agricultural guestworker issue.

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FAX COVER SHEET

TO: Farmworker Supporters

FROM: Bruce Goldstein, Co-Executive Director

DATE: August 3, 1999

RE: Northwest Growers Moving into Guestworker Program

Pages: 2

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

The following article from Fruit Grower magazine (June 1999) demonstrates that agricultural employers will form organizations to recruit exploitable foreign guestworkers, but do not form such organizations systems to hire or share U.S. farmworkers. For domestic recruitment, the growers generally try to distance themselves from the hiring and employment process by retaining labor contractors. The article also reveals that the H-2A program, contrary to the growers' lobbyists' claims, is all too usable.

H-2A program group formed in Northwest

The Northwest Growers Association (NGA), a new organization formed to sponsor H-2A and H2-B applications for employers of workers in agriculture, food processing, and related occupations in the Pacific Northwest, is seeking members.

The association will serve as an agent for agricultural and food processing employers in Idaho, Oregon, Washington, and Alaska, taking care of the administrative work related to H-2A and H-2B programs. By banding together, employers can share

administrative and transportation costs, and jobs can be coordinated to gain maximum cost-sharing by members and maximum work opportunities for the workers.

Both H-2A (agriculture) and H-2B (food processing) are programs administered by the U.S. Department of Labor that allow employers to recruit and employ foreign workers in temporary and seasonal jobs if enough qualified U.S. workers are not found in domestic recruiting efforts. Special visas are issued to the foreign workers, who can work up to ten months. Housing and transportation must be provided by the employer.

Membership is open to employers for a one-time initiation fee and nominal annual membership fee. Employers need not actively participate in the H-2A or H2-B programs to maintain membership. Employers are encouraged to sign up for membership if they believe they may need to use a foreign worker program in the near future. Members who join during the association's initial membership drive can join for substantially lower fees (see table).

The annual membership fee is waived in the year in which the initiation fee is paid. Initiation fees will be used to develop the initial applications.

Annual membership fees for subsequent years are not yet set, but are expected to be much lower than initiation costs. Fees for recruitment and transportation of foreign workers cannot be estimated at this time because they depend on the number of workers needed and the type of growers participating in the program. However, they are not expected to be more than a few hundred dollars per worker, including transportation costs.

NGA is incorporated in the state of Washington and registered to do business in Oregon. Its board of directors includes: president--Larry Knudson, orchardist, Yakima, Washington; vice president--Ken Bailey, orchardist, The Dalles, Oregon; secretary--Norbert Kinen, who has a nursery company at Boring, Oregon; treasurer--Mike Youngquist, berry and vegetable grower, Mt. Vernon, Washington; Varon Blackburn, Agri Northwest, Tri-Cities, Washington; Ernest Del Rosario, orchardist, Tonasket, Washington; Terry Bergevin, asparagus grower, Walla Walla, Washington.

The Washington Growers League is providing administrative services for NGA during its start-up period. For answers to questions about NGA, contact the League at (509) 575-6315 or e-mail <wgl@televar.com>.

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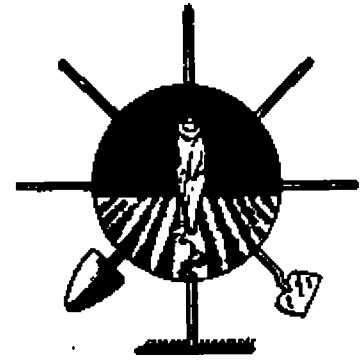
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M E M O

TO: Irene Bueno, Caroline Frederickson
FROM: Bruce Goldstein, Co-Executive Director
DATE: August 4, 1999
RE: The H-2A 50% Rule and Sen. Coverdell

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

I read a story indicating that Sen. Coverdell has put a hold on Administration nominations in part due to the 50% rule job preference in the H-2A temporary foreign worker program.

The H-2A program's 50% rule which requires H-2A employers to hire qualified U.S. workers who apply for work until half the season has elapsed. It is the primary method for granting U.S. workers a job preference over guestworkers. The rule has existed for many years. It is published at 20 C.F.R. § 655.103(e).

In the 1986 amendments to the H-2A program, due to grower opposition to the rule, Congress ordered DOL to continue the rule for three years while the agency considered the costs and benefits of the rule and determine whether to maintain it. 8 U.S.C. § 1188(c)(3)(B).

Under the Bush Administration, DOL commissioned a study by the Cosmos Corp., which concluded that, in actual practice, the benefits of the 50% rule substantially outweighed the costs. Bateman, Rudolph, & Dain, "The Benefits and Costs of the '50 Percent Rule,'" Prepared for the U.S. Department of Labor Under Contract No. 99-4700-75-059-01 by the Cosmos Corp., October 25, 1990.

On July 19, 1990, DOL issued a notice in the Federal Register announcing that it was maintaining the 50% rule. (DOL had already received the draft of the Cosmos Corp. report and had conducted its own investigation of the facts and considered submissions by interested parties.)

DOL explained that a significant minority of (the few) U.S. workers hired by H-2A employers gained their job after the foreign workers departed their homelands, so that elimination of the 50% rule would foreclose legitimate employment opportunities for U.S. farmworkers. Indeed, the first day of the season is often a day on which there is little work, so arriving by that day is often pointless.

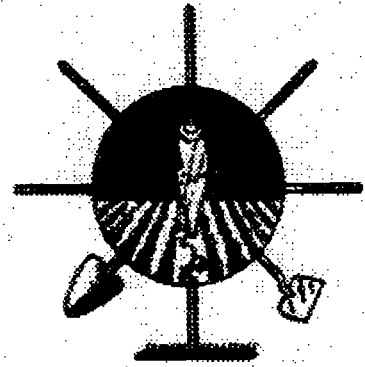
Moreover, attrition often means that there are job openings during the season for those U.S. workers who do arrive after the first day of the season. Further, the nature of some farmwork permits absorption of an extra worker in some instances.

It was, therefore not unexpected when DOL concluded, "DOL also is not aware of any circumstances wherein application of the rule has resulted in any significant burden, financial or otherwise, being placed on employers or workers." Further, few employers were affected by the rule because so many H-2A employers fill their jobs only with H-2A workers.

The notice of continuation of the rule occurred at 55 Fed Reg. 29356, 29358 (July 19, 1990).

If you need further information, please let me know.

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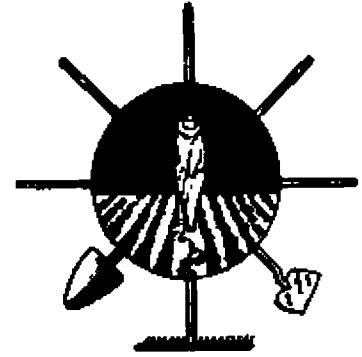
Pages: 3

Message:

The attached letter responds to a letter sent to Congressional staff by Monica Heppel, Luis Torres and their colleague at the Inter-American Institute on Migration and Labor regarding agricultural guestworker programs.

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August 4, 1999

David Griffith, Monica L. Heppel, Luis R. Torres
The Inter-American Institute on Migration and Labor
1761 S Street, N.W., Suite 4
Washington, D.C. 20009

Dear Luis, Monica and David:

Given all the work you've done over the years with farmworkers and their advocates, I was really saddened to read your letter of July 28, 1999, to staff members in Congress. In that letter, you suggest that Congress should begin "crafting a new temporary foreign worker program for agriculture." I wonder whether you have paused to consider the encouragement this gives to those who would support and enact policies that would inflict great harm on farmworkers.

Accepting your argument that the farm labor force is and will continue to be largely binational, I cannot understand how you could condemn large numbers of farmworkers to the indentured servitude that is represented by non-immigrant guestworker programs.

Guestworker programs subject participants to economic and political weakness that is inherently unfair. Journalists, government agencies, Congressional committees and farmworker advocates have consistently found that the guestworkers -- due to their non-immigrant status -- are justifiably too fearful of discharge and deportation to assert their rights, that the U.S. workers' bargaining power is stripped away when having to compete with persons in guestworker status, that union organizing is impeded, and that the government is unwilling to expend political capital to enforce the requirements of the program in the face of fierce employer opposition. Consequently, U.S. workers experience discrimination and the wages and working conditions for foreign and domestic workers often violate the law. For these reasons, the Helsinki Commission in 1993 went so far as to recommend the abolition of the H-2A program.

There are no labor shortages in agriculture because there are plenty of people who are willing to do farm work, including many who have few alternatives and will take the inadequate job terms that agribusiness is offering. However, the fact that vulnerable migrants coming from poor countries will accept these jobs as guestworkers (or as undocumented workers) does not justify a conclusion that such status is appropriate. To the contrary, their vulnerability requires our vigilance to prevent their exploitation.

Farmworkers need and deserve immigration status, along with the economic and democratic rights that immigration status conveys.

Since the results of your study have not been published, it is impossible to evaluate the evidence which you say has contributed to your conclusion. I very much doubt that any empirical evidence in your study could justify a restructuring of the farm labor market, or yet another "experiment," with a guestworker system.

Your letter contends that a new guestworker program is "the best policy approach" partly because it is "politically viable." Perhaps this assertion allows you to contend that your harsh policy choice is not desirable but is necessary due to the current political reality. Well, you are wrong. The political reality does *not* require the establishment of a new guestworker program. Even if the political reality were that a new guestworker program had to be created, moreover, you should have placed yourselves squarely on the side of farmworkers and against such proposals.

In any event, a "new" guestworker program is not at issue. The goal of the agribusiness lobbying is to strip away the modest worker protections in the H-2A guestworker program, as well as those in the Migrant and Seasonal Agricultural Worker Protection Act, and reduce government oversight of the few protections that would remain.

Your letter, perhaps naively, places in you in the middle of a complicated legislative maneuver by powerful agribusiness groups.

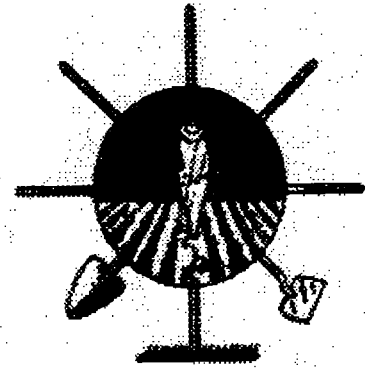
These employers and their lobbyists and consultants have sought to create the appearance that they are negotiating with farmworker supporters over vague "reforms" that are cloaked in the rhetoric of "legalization." They hope to garner credibility and momentum in Congress by instilling the false impression they are close to a "deal" with farmworker advocates. Yet, after all these months, the only concrete proposal is last year's completely unacceptable guestworker legislation. By lending support in Congress, you are providing momentum to this legislative strategy. Moreover, the legislation is likely to follow the path of last year's Senate guestworker amendment, when the few worker protections which appeared in the original bill were systematically stripped away behind closed doors. Although you will be free to say that you did not support the bill that ultimately passes, you have injected yourself into this legislative strategy in a manner that is likely to cause serious harm to farmworkers.

I ask that you rescind the letter sent to Congressional staff and reconsider your position.

Sincerely,

Bruce Goldstein
Co-Executive Director
Farmworker Justice Fund, Inc.

FARMWORKER JUSTICE FUND, INC.
1111 19th Street, N.W., Suite 1000
Washington, D.C. 20036
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FAX COVER SHEET

Please Deliver to:
Irene Bueno

Fax #: 456-5581
Company: Domestic Policy Council

From: BRUCE GOLDSTEIN

Pages: 3

Message:

A brand new article on H-2A guestworker abuses is attached.

The shepherders generally must be available 24 hours per day, 7 days per week. They usually live in very isolated areas. These workers are from Peru but others come from Mexico and the Basque region of Spain.

We expect the new guestworker bill may be introduced next week and added to a Senate appropriations bill, but don't know for sure.

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

Bakersfield Californian Newspaper article about H-2A guestworker mistreatment

Wool growers deny allegations of abuse

Filed: *July 14, 1999*

By OLIVIA GARCIA

Californian staff writer

e-mail: ogarcia@bakersfield.com

The Kern County Wool Growers Association is disputing claims of mistreating sheepherders hired for work.

"It is unconceivable that an employer would abuse or mistreat a sheepherder after trusting him to care for such a valuable asset," the association's board wrote in a prepared statement. "It would be safe to state that 99 percent of sheepherders employed in Kern County are satisfied with their work conditions as well as the employers that hire them."

The association, which has a membership of about 40, issued the statement in response to claims made by a Peruvian government Human Rights Commission.

The deaths of nine sheepherders — three in Kern — within the past few years prompted the Peruvian commission to investigate charges of abuse and maltreatment.

After a three-day investigation, the commission concluded sheepherders have been threatened, physically attacked, and gone unpaid for months at a time, living in inhumane conditions. The commission has made a presentation to Peru's government, which has asked for additional information.

Frank Munoz, executive secretary of the Kern County Wool Growers Association, said the claims are false and made up by disgruntled former Peruvian sheepherders.

"It's common knowledge that, in any industry, there can always be found a few disgruntled past employees," Munoz said. "Experienced sheepherders are well aware of what sheepherder duties entail before signing their contract to come to the United States to work."

Kern hires Peruvian sheepherders under a three-year contract with the Western Range Association, which assigns them to employers prior to leaving Peru. The range association hires them for work under a guest worker program that provides them with temporary visas. The employer pays the transportation costs to and from Peru.

Sheepherders earn about \$700 to \$750 a month and receive free room and board. Under the contract, the range association provides the sheepherders with two weeks' paid vacation each year, group health and worker's compensation insurance.

Ranchers said sheepherders are usually assigned to control and care for up to 800 sheep.

Munoz said the contract spells out guarantees for sheepherders, in addition to housing being inspected annually by the U.S. Department of Labor.

"These statements (of the commission and sheepherders group) are made to intimidate, annoy and appeal to emotions rather than provide facts," Munoz said.

Victor Flores, a former sheepherder, disagrees.

Flores is president of the local Peruvian Sheepherders Union, formed to advocate for the rights of sheepherders.

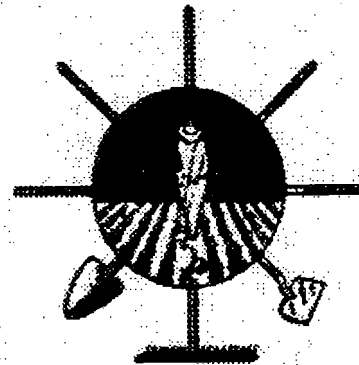
Flores suggested about one-third of employers may be mistreating sheepherders.

"We're not making false statements," Flores said, "and a human rights commission from Peru would not make this up. They interviewed sheepherders and documented what they say. They have the proof."

A Peruvian newspaper, Peru NewsReview, in Dana Point also published stories. Munoz said its association was never contacted about the claims. He said he doesn't understand the reasoning behind the allegations, noting their relationship with sheepherders have been productive.

"The majority of sheeppmen in Kern County take pride in their relationship with Peruvian sheepherders and understand the status of working in another country," Munoz said.

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FAX COVER SHEET

Please Deliver to:
Irene Bueno

Fax #: 456-5581
Company: Domestic Policy Council

From: BRUCE GOLDSTEIN

Pages: 5

Message:

Please attend the National Latino Summit Against Guestworker Legislation, May 3-6 in Washington, D.C. See attached.

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

NATIONAL LATINO SUMMIT AGAINST GUESTWORKER LEGISLATION

WASHINGTON, D.C.

MAY 3-6, 1999

Steering Committee**AGENDA****Chair****Mario Obledo**

President, National
Coalition of Hispanic
Organizations

Antonia Hernandez

President, Mexican
American
Legal Defense and
Education
Fund

Arturo Rodriguez

President, United Farm
Workers of America

Baldemar Velázquez

President, Farm Labor
Organizing Committee

Raúl Yzaguirre

President, National
Council of La Raza

Monday, May 3

9:30 am Participants Meet (location TBA)

Welcome by Mario Obledo, President, California Coalition
of Hispanic Organizations

Orientation:

Background / Current Issues

State of Affairs

Updates: Raisin Harvest and reports from across

country

Congressional Visit How-to's (demonstration by
Senate Staffers)

Discussion of Congressional "target list"

12:30 pm Break for Lunch

Begin Congressional Visits (**Please schedule your own
visits before coming to Washington, D.C.**)

Tuesday, May 4 ---Congressional visits continue (all day)

6:00 pm "Community Meeting" with all participants and advocates
(location TBA)

"War Room" with phone service will be available and
staffed by DC advocates through Thursday, May 6.
Location TBA.

Wednesday, May 5 ---Congressional visits continue (all day)

11:00 am Press Conference (time tentative)

NCLR Reception (tentative): Cinco de Mayo evening
celebration (location TBA) .

Thursday, May 6 --Congressional visits continue (all day)

Summit Sponsors: California Coalition of Hispanic Organizations,
Mexican

**NATIONAL LATINO SUMMIT AGAINST GUESTWORKER LEGISLATION
WASHINGTON, D.C.**

MAY 3-6, 1999

American Legal Defense and Educational Fund (MALDEF), National
Council of La Raza (NCLR), United Farm Workers (UFW), Farm Labor
Organizing Committee (FLOC)

NATIONAL LATINO SUMMIT AGAINST GUESTWORKER LEGISLATION
WASHINGTON, D.C.
MAY 3-6, 1999

Steering Committee

April 15, 1999

Chair**Mario Obledo**President, National
Coalition of Hispanic
Organizations

To: Farmworker Supporters

From: Mario Obledo, President, National Coalition of Hispanic
Organizations

Re: Summit II

Antonia HernandezPresident, Mexican
American Legal Defense
and Education Fund**NO GUESTWORKER LEGISLATION! A THOUSAND TIMES NO!!!****Arturo Rodriguez**President, United Farm
Workers of AmericaHelp us carry this message to U.S. Senators and Representatives. Join
us at the upcoming National Latino Summit Against Guestworker
Legislation on May 3 - 6, 1999.**Baldemar Velázquez**President, Farm Labor
Organizing CommitteeFollowing the success of the February Summit kick-off and motivated
by the threat of another guestworker legislation bill, farmworkers,
advocates, labor groups, community leaders and concerned Senators
and Representatives will convene on Capitol Hill on May 3 - 6. This
Summit's main focus is on Congressional visits, but will also include a
press conference, and an evening "community meeting" where
participants and advocates can share experiences.**Raúl Yzaguirre**President, National Council
of La RazaEnclosed are an agenda, contact information for members of Congress,
guestworker legislation talking points, and information on area hotels.**Please remember to call your respective representative/s and
make appointments before arriving in Washington.**If you are unable to attend the National Latino Summit Against
Guestworker Legislation, please remember that there is still much you
can do from home. Use the enclosed list of Congress members and
send them faxes, write them letters, and call them. Let them know
that any new guestworker legislation is wrong! Feel free to share this
list and any other information we provide.For further information, please contact Christina Chavez Cook,
MexicanAmerican Legal Defense and Educational Fund (MALDEF), at 202/628-
4074; or Joel Najar, National Council of La Raza (NCLR), 202/785-
1670.

Hope to see you in Washington on May 3 - 6!

NATIONAL LATINO SUMMIT AGAINST GUESTWORKER LEGISLATION
WASHINGTON, D.C.
MAY 3-6, 1999

Hotels

Please make reservations as soon as possible. The tourist season has begun and hotels are booking rooms quickly.

Best Western - Capitol Skyline Hotel (5 blocks from the Capitol)

10th and I St., S.W.

Washington, D.C. 20024

202-488-7500

Mention Farmworker Summit for \$89.00 single/double occupancy rate

FOR THE DISCOUNTED RATE YOU MUST CALL NO LATER THAN APRIL 26th

Allen Lee Hotel

2224 F St. NW

202-331-1224

Approx. \$60.00

Connecticut - Woodley Guest House

2647 Woodley Rd. NW

202-667-0218

Approx. \$66 for double occupancy

Capitol Hilton

1001 16th St., NW

202-393-1000

Reservations # 1-800-HILTON

Hyatt Regency - Capitol Hill

400 New Jersey Ave.

202-737-1234

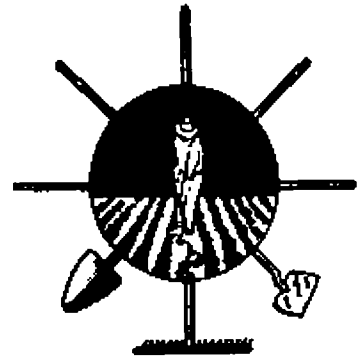
Reservations # 1-800-233-1234

Suggested web sites for accommodation / travel information:

www.washington.org

www.washingtonpost.com/wp-srv/travel/vistorsguide/hotels.htm

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M E M O

TO: Irene Bueno, Domestic Policy Council
Larry Matlack, Debra Bond, Office of Management and Budget

FROM: Bruce Goldstein, Co-Executive Director

DATE: April 30, 1999

RE: Guestworker policy and farmworker housing

The agribusiness lobbying for a new guestworker program has attacked a wide variety of worker protections and proposed legalizing a multitude of new abusive employment practices, but there are two issues fundamental to their objectives: the adverse effect wage rate and housing. My earlier memo focused on the reasons why the AEWR is too low to achieve its goal of compensating for the depression in wage rates caused by the presence of foreign workers in the agricultural labor market.

I am preparing a separate memo on the housing issue, making two key points. First, there is inadequate housing available for farmworkers. Second, **housing standards** for farmworkers are already inadequate and should be strengthened, not weakened. The need to improve housing quality through better standards, as well increased enforcement, is not merely a question of human dignity, or just an issue of hygiene, either of which should suffice to conclude that standards must be improved. Housing quality also must be improved to attract job applicants and retain employees so as to stabilize the workforce, a principal goal suggested by U.S. Commission on Agricultural Workers in 1992 and other studies during the last 100 years. If farmworkers are continued to be forced to live in shacks with portable toilets several hundred yards away, something that is permitted by current housing standards, or pup tents (something that is not permitted but is being sought), we will continue to see agricultural work attract vulnerable undocumented workers and deter U.S. citizens and legal immigrant farmworkers.

I will get you the housing memo shortly. Thanks for you consideration of these issues.

MEMO

TO: Farmworker Supporters
 FROM: Bruce Goldstein, Farmworker Justice Fund, Inc.
 DATE: April 7, 1999
 Re: GUESTWORKER LEGISLATION: THE RICKSWARTZ MEMO

Introduction

Lobbyist Rick Swartz, who has been hired by agribusiness groups demanding a new guestworker program, has circulated a 10-page, draft, "confidential" memorandum to several organizations. He would like to know whether we view this memo as the basis for discussions with agricultural employer groups. Swartz sent the memo to several immigration rights and civil rights groups, as well as Farmworker Justice Fund, but not labor unions. The memo does not contain any offers or proposals by growers. He warns that the growers have not agreed to anything in the memo.

The focus of the piece is on a new guestworker program with a suggestion that the parties could "compromise" so that some guestworkers might eventually earn the right to immigration status: in other words, the growers' proposal last year, which contained an illusory provision on legalization that they later eliminated. The supposed enticement to farmworker advocates is that other, non-guestworker issues would be discussed.

The memo outlines six groups, or "baskets," of issues that could serve as the "framework" for discussions about many issues affecting farmworkers. The proposed baskets are (1) legal status; (2) access to housing, health care, education and essential human services; (3) employment registry, rights and working conditions; (4) targeted enforcement against exploitation, smuggling and dangerous conditions; (5) temporary foreign worker programs and international considerations; and (6) assistance to state and local governments.

Analysis

The Swartz memo is a thinly-veiled step in the growers' strategy to achieve a new guestworker program, meaning removal of the worker protections in the H-2A program. The Swartz memo's discussion of process and substance does *not* represent an opening of negotiations. It is part of the growers' lobbying campaign. It is not particularly well-done.

- The Swartz memo's proposed *process* is fundamentally flawed.

The growers did *not* need to hire Rick Swartz to negotiate. They could have asked for direct negotiations with farmworker representatives or Congressional representatives who support farmworkers. Or they could have asked for the selection of a truly neutral person, not paid by the growers, to mediate or conciliate. Instead, they hired Swartz, thinking he might be able to be used to persuade the immigrant-

rights community that a new, slave-like *bracero* program would provide an acceptable legal status to undocumented farmworkers. The growers also figured that when these efforts led by Rick Swartz produced nothing, they could tell Congress that farmworker advocates are unreasonable.

That this memo is *not* a serious effort to stimulate a meaningful negotiation is further evidenced by the failure to send it to labor unions that have visibly worked on this issue: the United Farm Workers, the Farm Labor Organizing Committee, PCUN (the farmworker union in Oregon, the home of Senators Gordon Smith and Ron Wyden, the growers' friends on this issue), the United Food and Commercial Workers Union, or the AFL-CIO itself. These are the organizations that directly represent farmworkers every day in the fields. The growers do not want to talk to these farmworker labor organizations because they are so vehemently anti-union and it is inconsistent with their strategy of dividing the coalition to secure a *bracero* program.

- **The *political reality* asserted in the memo is incorrect, contradictory and biased.**

On one hand, Swartz suggests that "1999 may present an historic opportunity for Congress, the President and the nation to reform in fundamental ways the agricultural labor system in the United States." He says this to encourage farmworker supporters about the potential for a compromise that helps farmworkers in some ways.

On the other hand, Swartz suggests that in the context of immigration policy, a legalization (i.e. non-guestworker) program "would not attract widespread support" in Congress.

We believe his political assessment is inaccurate and reflects growers' priorities and propaganda. Mr. Swartz has suggested to me that he can "think outside the box" to secure major improvements for farmworkers. Despite his grandiose claim that farmworkers could gain major improvements in this conservative Congress, he cannot envision this Congress passing an immigration program. His political judgment (not surprisingly) is inconsistent in a manner that benefits his clients. He should not be making the pretense that he is an "honest broker." If Mr. Swartz were seeking to act as a true mediator, he would not have removed from the table the potential compromise -- an immigration solution -- that worker advocates and employers agreed to as part of the 1986 immigration law. He knows quite well that farmworker advocates oppose guestworker programs.

My own view is that if the growers cannot win a new guestworker program and do not want to use the H-2A guestworker program, then, eventually, they may use their substantial political capital to change the political dynamics in Congress (especially in the House) and press for a legalization/immigration program. Plainly, however, the growers are feeling strong enough politically to stick with their goal of securing a huge new guestworker program that has no worker protections.

- The proposed *framework* is skewed to resolving guestworker issues, without resolving farmworkers' basic labor problems. For example, two of the six "baskets" are focused on using guestworker programs. Another two baskets are mostly concerned with spending government money on services to farmworkers, which is not itself objectionable but would not benefit the ineligible guestworkers, and, more importantly, does nothing to improve job terms.
- The memo's suggestions as to *content* of a possible compromise are focused on what growers might (in Swartz's view, apparently) accept, rather than on what farmworkers need. The growers have not offered anything; the memo merely contains suggestions. Yet the lack of balance is obvious.

There is no discussion of raising the minimum wage, ending the labor contracting system, offering farmworkers overtime pay, reducing the discrimination against farmworkers in unemployment compensation or various other laws, promoting modernization of employment practices to reduce turnover, or protections for labor union organizing.

The proposal suggests spending federal money, either directly or through tax credits to employers, to provide more housing, health care, education and human services to farmworkers. These are laudable goals but if enacted, they will lift very few people out of poverty. Wages and working conditions will not improve through such spending. They amount to subsidies to low-paying agricultural employers.

Swartz suggests greater and better enforcement efforts to protect workers' rights. This, too, is laudable. However, (a) the growers' guestworker proposals would remove many worker rights under existing law; (b) employers of guestworkers generally have succeeded in thwarting real enforcement due to the political and economic imbalance between the guestworkers and the employers, (c) labor law enforcement may get workers the minimum wages and benefits that are owed, but does not help workers improve their wages and working conditions, (d) the growers' successful opposition to the provision of Legal Services to poor farmworkers is not addressed, and (e) labor unions' roles are ignored quite purposefully.

Conclusion: What Is Really Going On Here

The Swartz memo is designed to achieve several goals related to passing the growers' soon-to-be-introduced guestworker legislation. Like lobbyist Tony Podesta (brother of John, the President's Chief of Staff), Rick Swartz was hired by the growers because of his connections to Democrats, as well as his history of lobbying to improve immigration policy. Swartz and his memo are intended to

- break apart the pro-farmworker coalition of immigrants-rights, Latino, labor, religious and other groups that is opposing the guestworker legislation, by claiming that an

alliance of immigrants rights groups and agribusiness wants to solve the problems of undocumented workers by "legalizing" them (through a new guestworker program)

- manufacture the appearance of a sense in Congress of urgency on the part of interested groups that "something needs to be done" right now by this Congress to help growers and to deal with the large number of undocumented workers in the country performing agricultural work
- create the impression that the only politically viable solution is a new guestworker program, one that removes most of the protections of the H-2A program and the old *bracero* program
- deflect attention from agriculture's backward employment practices, including low wages, subcontracting abuses, poor conditions, refusal to offer benefits, high turnover, inadequate housing, preference for exploitable undocumented workers or guestworkers, discrimination against U.S. citizens and permanent resident immigrants, and vigorous anti-union campaigns.

What Next?

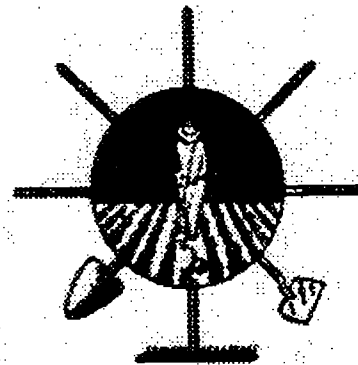
After receiving feedback, several of the recipients of this memo should contact Swartz and tell him that is memo is a "non-starter."

Senator Mitch McConnell of Kentucky is holding a hearing about the H-2A guestworker program in Bowling Green, Kentucky on April 10, 1999. A nun who works with farmworkers and a legal services lawyer are among the witnesses. Apparently the growers' main objection is that the Kentucky H-2A minimum wage rate of \$6.28 is too high because they can hire undocumented workers for \$5.00 per hour.

Senator Spencer Abraham, chair of the immigration subcommittee, apparently intends to hold a hearing on agricultural guestworker issues during the next few weeks. We are told that the growers probably will not have their legislation introduced before hand because they do not want to make it a target for witnesses.

The National Latino Summit on Guestworkers will occur May 3-6, 1999. Groups all over the country are telling members of Congress about their opposition to a new guestworker program for agriculture. Keep up the good work.

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Please Deliver to:
Irene Bueno

Fax #: 456-5581
Company: Domestic Policy Council

From: BRUCE GOLDSTEIN

Pages: 4

Message:

Irene Bueno, Debra Bond and Larry Matlack,

Thanks for meeting with us yesterday on the agricultural guestworker issue. The growers' bill last year had dozens of changes to the H-2A program, but one major provision would have changed the formula for determining H-2A program wage rates, especially the adverse effect wage rate (AEWR). The attached memo addresses the AEWR issue. Thanks again.

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

Guestworker Policy: H-2A Program Wage Rates Are Too Low

Agricultural employers lobbying for a new temporary foreign worker program frequently assert that the H-2A guestworker program's wages are too high. This memo explains why the "adverse effect wage rate" under the H-2A program is already too low to achieve the statutory goal of preventing the presence of foreign workers from adversely affecting the wage rates of U.S. farmworkers. Farmworkers' wages are not too high and the employers' demands lack merit.

The H-2A Program Wage Requirements

Under the H-2A program, employers must pay the highest of three minimum wages: (1) the federal or state minimum wage; (2) the local "prevailing wage," as determined by the Department of Labor using state agency wage surveys for each crop, and (3) the H-2A "adverse effect wage rate or "AEWR." The statewide AEWR frequently is higher than the local prevailing hourly wage and the state or federal minimum hourly wage. Where the prevailing wage rate is a *piece rate* (e.g., 80 cents per 50 lb. bag of onions), each individual worker, on average, must receive the federal or state minimum hourly wage or the AEWR, whichever is higher.

The AEWR is the regional weighted average hourly wage rate for field and livestock workers, as determined by annual wage surveys of the Department of Agriculture (USDA). Each year, the Department of Labor (DOL) issues these wage rates under the H-2A program as the adverse effect wage rate for each state.

One purpose of these wage requirements is to prevent employers from using foreign workers to undercut the wage rates of U.S. farmworkers. Because foreign workers from poorer countries will generally accept lower pay to obtain jobs held by U.S. workers, a guestworker program and the hiring of unauthorized immigrants can depress wage rates and displace U.S. workers from jobs. The AEWR is intended to help ensure fair competition for labor.

The "Adverse Effect Wage Rate" or AEWR is Too Low

The adverse effect wage rate methodology does not achieve the statutory purpose of avoiding adverse effects on U.S. workers' wage rates for several reasons.

First, the formula for determining the adverse effect wage rate is inadequate. In 1987, the Reagan Administration changed the AEWR methodology and thereby lowered the wages of affected U.S. and foreign workers by an average of 20%. The U.S. Court of Appeals, in a case brought by the AFL-CIO, ruled that the new methodology fell within DOL's broad discretion to measure adverse effect. This "new" AEWR formula suffers from several flaws:

- a. *The AEWR is an inadequate labor market test because employers who claim difficulty finding workers should offer a wage that is higher on the range of wage rates, rather than an average wage rate.* By definition, some workers earn more than

the average. An employer claiming a labor shortage should be expected to improve its wage offer to attract workers to its job. An industry average is too low.

- b. *The AEW is an outdated measure of wage competition because it is based on a survey of the prior year's wages.* The H-2A growers are always one year behind any wage increases that might occur, which is especially problematic for attracting U.S. workers in a labor market that is allegedly tightening.
- c. *The level of the AEW is depressed by the presence of exploitable foreign workers, whose low wages taint the average and weaken the ability of U.S. farmworkers to demand higher wages.* Because the average wage surveys include wage rates earned by guestworkers and unauthorized immigrants, the AEW is unduly low.
- d. *The declining real value of the federal minimum wage has suppressed increases in the AEW.* Many farmworkers are paid the federal minimum wage (\$5.15) or a rate based on the minimum wage. If the federal minimum wage had kept pace with inflation, average wages and, therefore, the AEW would be higher.

Second, AEW's do not automatically increase and at times decline. The AEW formula does not contain a cost-of-living increase mechanism. Because they merely echo the average regional wage level, the AEW's may increase, stagnate or decrease. For example, the Oregon AEW declined from \$6.51 in 1994 to \$6.41 in 1995. AEW's will certainly decrease if the labor market is flooded with vulnerable foreign workers.

Third, the AEW's have not kept pace with inflation during the last decade. Farmworkers earning the AEW under the H-2A program have generally experienced a decline in wages in real economic terms. The AEW in Oregon increased between 1988 and 1998 from \$5.26 per hour to \$7.08 per hour, an average annual change of 3.33 percent. Yet the cost of living has increased even more. The Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) rose during that time period at the faster pace of 3.41%. Each year, when DOL publishes the new AEW's, it also publishes the H-2A program's allowable meal charges, which utilizes the CPI-U for food prices. The CPI-U for food prices increased at 3.41% annually, again faster than the increase in the AEW. If a labor shortage were developing, one would expect real wages to have significantly increased, especially given the low wage rates in agriculture. (Oregon's AEW is one of the highest: \$7.34 per hour in 1999.)

Fourth, the Adverse Effect Wage Rate does not protect farmworkers against poverty; the AEW establishes a below-poverty wage rate. Consider a farmworker who managed to find 52 weeks of full-time farm work during the year 1998, cobbling together one job after another to support a spouse and two young children. That household earned, at the Oregon-Washington AEW of \$7.08 per hour, only \$14,726, below the poverty level (\$16,450 for a family of four in 1998) by \$1,723.60. Of course most farmworkers do not work 52 weeks per year. Partly due to employers' inefficiency and a labor surplus, the average worker finds only 31 weeks of farm work. More typically, *both* adults would work intermittently and, at the AEW wage level, their combined annual earnings would still not even reach the poverty level.

Fifth, the H-2A program suppresses wage-rate improvements because, by law, it permits employers to reject any job applicant who demands a wage rate higher than the rate approved by the government in the labor certification process. A worker who demands \$6.40 per hour from an H-2A tobacco grower in Kentucky, where the AEWR is \$6.28 per hour, can be rejected or fired as “unavailable” for the job and replaced by a guestworker. By shielding employers from workers’ and labor unions’ demands for higher wages and other market forces, the H-2A program’s “minimum” standards often become the employer’s maximum offer.

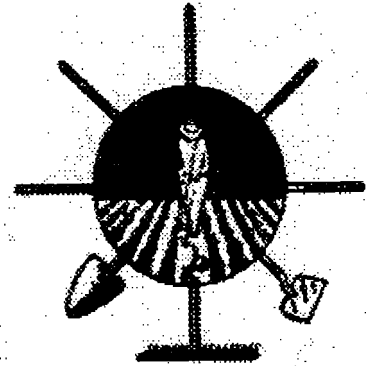
Sixth, in practice, guestworker programs depress farmworkers’ wages. The H-2A program and the old *bracero* program, by allowing employers to tap into an endless supply of guestworkers – economically-desperate foreign workers who are given a restrictive non-immigrant status – have manipulated labor market forces to keep wages low. While some growers entering the H-2A program initially might raise wages because they have been paying less than the law requires, over the long term guestworker programs reduce farmworkers’ wages below what they would have been. A telling example of the suppression of wage rates occurred in the Florida sugar cane industry. Small sugar-cane growers who did *not* use the H-2A program paid their U.S. farmworkers 7 cents per linear foot to cut rows of “seed cane,” which is chopped and re-planted to grow more cane. These U.S. workers generally earned \$8 to \$12 per hour. The larger growers, who hired Jamaican H-2A guestworkers, offered a different piece rate that was the equivalent of only 3 to 4 cents per foot. All of this came to light during litigation over the failure of the Department of Labor to set the proper prevailing wage and require the larger, H-2A growers to offer the wage rate being paid by employers who did not use guestworkers. *Joseph v. Department of Labor*, 787 F. Supp. 245 (D.D.C. 1991) and 787 F. Supp. 247 (D.D.C. 1992). Jamaican guestworkers eventually received backpay through settlements against the employers.

To conclude, the minimum wage rates under the H-2A program are not too high, but rather too low, reflecting that most farmworkers live in poverty. Agribusiness’ demands to reduce the H-2A program wage rates must be rejected. DOL should adopt farmworker advocates’ proposals for reform. Some of the wage-related problems under the H-2A program that DOL has refused to address include: the Department of Labor’s regulatory revision that permitted depression in wage rates by employers that use piece-rates and productivity standards; the failure to outlaw the use of so-called “task rates,” which formed one of the principal abuses in the sugar cane industry; inadequate prevailing wage surveys by state agencies under the H-2A program; the refusal to establish crewleader fees to ensure that U.S. workers gain access to jobs; the fixing of identical wage rates by hundreds of employers under the H-2A programs in Virginia and North Carolina, among others; the extraordinarily low wage rates allowed for sheepherders.

Bruce Goldstein, Farmworker Justice Fund, Inc.

4/99

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Irene Bueno

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Company: Domestic Policy Council

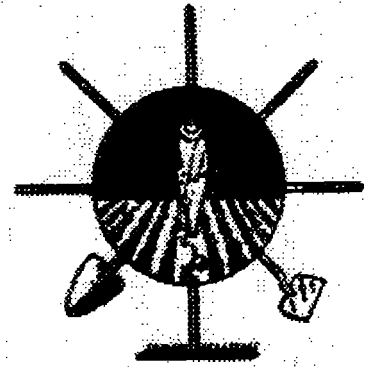
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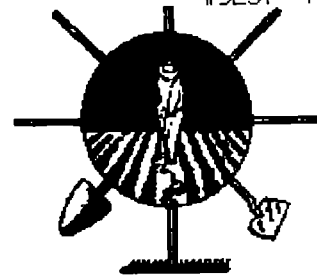
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Message:

The attached is for farmworker supporters.

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 May 26, 1999



GUESTWORKER LEGISLATIVE UPDATE & ALERT

Agricultural employers continue to want the "reform" of the H-2A guestworker program that they demanded in 1996 and 1998: (1) remove most of the H-2A program's (and Bracero program's) modest protections for wages, housing, working conditions, U.S. worker recruitment, government oversight, and (2) affirmatively authorize wage schemes and other practices that are abusive and/or illegal.

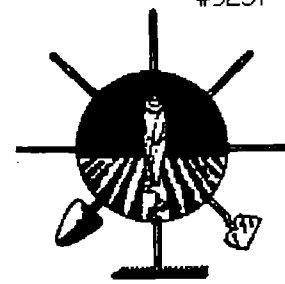
No guestworker bill has been introduced yet. The delay probably arises from the poor results of the hearing the growers demanded and secured on May 12, 1999, in the Senate immigration subcommittee. Senator Abraham, the subcommittee chair, indicated that, absent a compromise, the growers' efforts probably would not succeed. *Senator Dianne Feinstein announced that not only did she oppose a weakening of the H-2A program, but that she could support a carefully drafted program to provide lawful permanent resident alien status ("green cards") to certain undocumented farmworkers who are already in the United States. She also expressed interest in taking action to improve wages and other job terms. Her opinion is helping to shift the debate to a more reasonable platform.*

The employers are likely to announce, as they did last year, that they could support some kind of a legalization program but that it is not politically feasible to pass legislation to legalize a sufficient number of immigrant workers, and that therefore they need their "reform" of the H-2A program. Presumably, they would pursue a strategy in the Senate on an appropriations bill.

- **We should continue to send the message to Congress and the President that farmworker supporters are united in their opposition to a weakening of standards under the H-2A program or a new guestworker program.**
- **We should support a legalization program that provides real immigration status, not an alternative form of indentured servant status. We must oppose any proposal that would undermine H-2A labor standards.**
- **We should insist that any immigration program be accompanied by policies that will improve wages and working conditions for farmworkers.** The growers frequently claim that the "status quo is unacceptable." Providing true immigration status to undocumented workers would be very helpful to those workers and would answer the growers' demand for access to more authorized farmworkers. But legalization, by itself, does not improve farmworkers' wages and working conditions. **Attached are policy suggestions – a statement of our vision -- for improving the status quo for America's farmworkers.**



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A Vision for the Future of Public Policy on Migrant Farmworkers

America's treatment of its migrant and seasonal farmworkers has long been our national disgrace. Daniel Rothenberg's fine book about farmworkers, "With These Hands: The Hidden World of Migrant Farmworkers Today" (1998), concludes: "The key components of the farm labor system have been a steady oversupply of workers and the use of a series of techniques to consistently disempower farmworkers." As we enter the 21st century, how could Government empower farmworkers to improve their wages and working and living conditions?

The slogan of fruit, vegetable and tobacco growers during their recent legislative lobbying has been that "the status quo is unacceptable." Yet, their vision of policy in the 21st century would perpetuate farmworkers' lack of economic and political power: several hundred thousand "guestworkers" would displace U.S. farmworkers and work under wages and working conditions worse than those allowed by the current H-2A guestworker law and even worse than the old *bracero* program. These non-immigrant guestworkers would not possess the right to switch jobs to avoid illegal or unfair job terms; would not feel secure enough to join labor unions or demand higher wages; would lack political representation in Congress; would not be entitled to live in America with their family members; and would not become immigrants or citizens. These indentured servants would also be subjected to new, harsh labor law provisions.

The employers' vision should shock the conscience of this nation. Certainly, the impact of such a system, once in place, would result in international condemnation. If employers desire more migrant farmworkers (despite high unemployment and underemployment), at a minimum, they must be offered full status as *immigrants*, not as guestworkers. But if we submit to growers' demands for more authorized workers, then we must also improve workers' wages and conditions. We must reduce poverty and modernize labor practices to attract and retain workers.

What could Government do to modernize and improve agricultural labor conditions? Specific policy suggestions are listed on the following pages. To summarize:

- (1) **end discrimination against farmworkers in labor laws** so that farmworkers enjoy rights on the job that other occupations enjoy,
- (2) **enforce labor laws more effectively and improve access to the justice system** to implement farmworkers' rights and to protect law-abiding employers against unfair competition by labor-law violators,

- (3) **promote better wages, working conditions and housing** to attract and stabilize the agricultural labor force, increase productivity, continue growth of exports, and reduce poverty and its consequences.

- I. **End the Discriminatory Treatment of Farmworkers in America's Employment Laws.** Congress should stop denying farmworkers the same legal rights on the job as other workers receive. Some of the many examples include:
 - A. **Overtime pay**, under federal law, does not apply to farmworkers. They deserve time-and-one-half pay after 40 hours per week, like everyone else. California farmworkers receive overtime after 10 hours per day or 6 days in a week.
 - B. Federal **child labor law** permits children to work at younger ages and at more hazardous tasks in agriculture than in other, less dangerous occupations. Farmworker children deserve at least the same protection as other children.
 - C. **Access to sanitary facilities at work** – toilets, handwashing facilities and drinking water – should occur at all farms. The ability to wash one's hands with soap and water is one of the great health advances, limiting the spread of disease. Access to toilets during work is not only a serious health issue, but also a question of human dignity. Yet an annual rider on OSHA's appropriations severely restricts the "field sanitation standard" to farms with 11 or more employees.
 - D. **Unemployment insurance compensation** is denied to many seasonal farmworkers despite their need for such coverage. The Unemployment Advisory Council appropriately recommended that Congress eliminate the Federal Unemployment Tax Act's exceptions for agricultural employers, including those which pay less than \$20,000 in payroll in a calendar quarter, or use farm labor contractors (growers could use crewleaders but should be jointly liable).
 - E. **Workers' compensation** is unavailable to many injured farmworkers due to state laws that exclude or discriminate against farm work, even though farmworkers cannot afford health care and suffer higher injury rates than most occupations.
 - F. **Many farmworkers are excluded from the minimum wage** of \$5.15 per hour and other labor protections through various special exemptions for agriculture that should be ended. For example, the wage-hour laws exclude agricultural employers who did not, in a single calendar quarter during a year, use more than 500 man-days of farm labor (e.g., about 6 full-time workers during a 3-month season).
 - G. **Federal law does not protect agricultural workers from retaliation against labor organizing and union membership.** At a minimum, the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) should prohibit employers from retaliating or discriminating against workers for their union membership, labor organizing or similar activities to protect workers' interests.

H. **Attorneys fees** are available to most successful litigants workers under the Fair Labor Standards Act and civil rights law, but not to farmworkers under AWP. Attorneys fees awards should be available to attract private attorneys to farmworker cases.

I. **Guestworkers under the H-2A program are excluded from AWP**, the principal federal labor law for farmworkers. Consequently, H-2A workers are not entitled to disclosures of job terms during recruitment, transportation safety requirements, or access to federal courts. Such discrimination is an incentive for employers to replace U.S. workers with guestworkers, and violates NAFTA's labor side agreement, the North American Agreement on Labor Cooperation, which prohibits discrimination in labor laws against "migrant workers."

II. **Enforce Labor Laws in the Agricultural Industry and Grant Farmworkers Meaningful Access to the Justice System**

A. **Violations of the few rights that farmworkers do possess are rampant:** minimum wage violations; illegal wage deductions; piece-rate wage scams; child labor; lack of field sanitation; dangerous use of pesticides; discrimination against women in hiring; sexual harassment; failure to report earnings and pay into Social Security. Worker protections under the H-2A guestworker law are routinely ignored. Increasingly, growers have hired "farm labor contractors" or "crewleaders" to shield themselves from liability for labor law violations. Law enforcement is so rare and penalties are so mild that many employers do not fear the consequences of violating the law. By several measures, federal wage-hour enforcement on farms is about one-half of its levels during the Reagan Administration. Farmworkers' inadequate access to the justice system minimizes private vindication of labor law violations. By hiring undocumented workers, often through crewleaders, growers obtain employees who are too vulnerable to challenge illegal or unfair labor practices.

B. **Policies to improve law enforcement to benefit farmworkers include:**

1. **End farm labor contracting abuses.** Stop the sham of businesses claiming that they don't "employ" any farmworkers. Growers must be held responsible for the sweatshop conditions they perpetuate with labor contractors, through amendments to the Migrant and Seasonal Agricultural Worker Protection Act (AWP) and the Fair Labor Standards Act (FLSA). Several reforms of AWP's provisions are needed to address abuses in recruitment, wage deductions, and other aspects.
2. **Enhance farmworkers' access to justice.** The laws must be strengthened to eliminate unfair barriers against farmworkers who wish to enforce their rights in the courts. Undocumented workers who are victimized by illegal employment practices should receive work permits while they prosecute their cases. Access to legal services must be expanded. Congress could increase funding for the Legal Services Corporation to provide more desperately-needed legal assistance; remove LSC restrictions against representing undocumented workers to reduce employers'

incentives to hire and exploit them; end the ban against LSC class action lawsuits so that farmworkers have effective judicial remedies.

3. Clarify that workers have **the right to sue under AWPAs for violations of employment-related laws and retaliation for exercise of rights under such laws.** Workers' implied right to sue under AWPAs for violations of these expected terms of employment should be made explicit. These terms include: pesticide safety under the EPA Worker Protection Standard (under the federal pesticide law, FIFRA); access to toilets, handwashing water and drinking water during work under OSHA's Field Sanitation Standard; and violations of record-keeping and payroll requirements under the Social Security Act (FICA).
4. **Substantially increase law enforcement funding** devoted to farmworkers in the Department of Labor's Wage and Hour Division and Occupational Safety and Health Administration, the Equal Employment Opportunity Commission, the Environmental Protection Agency and the Justice Department.

III. **Adopt Policies that Reduce Farmworker Poverty and Promote Decent Wages, Safe Working Conditions and Sanitary Housing.** Government must stop following policies that help keep farmworkers in perpetual poverty.

- A. **Agricultural labor practices are often rooted in the 19th century**, yet in other aspects of their businesses, many fruit and vegetable growers are increasing productivity through state-of-the-art technology, including sophisticated computers, controlled-atmosphere storage, high-tech chemicals, and complex marketing systems to sell their crops on the international level. **Most farmworkers do not earn a living wage.** Their wages have declined in real terms during the last 20 years. Unemployment and underemployment remains very high. **Unsafe worksites and living areas pervade agriculture.** Farmworkers and their children suffer from unacceptable exposures to toxic pesticides in the fields and where they live. There is **a critical lack of affordable, decent housing**, partly because many farmworkers' wages are too low to stimulate housing development. These conditions also induce high employee turnover, suppress productivity and impose major costs on society. Yet Government has helped fruit and vegetable growers dramatically increase the value of their products recently, especially through exports.
- B. **Policy suggestions to modernize agricultural employment include:**
 1. **Raise the minimum wage.** Many farmworkers' hourly and piece-rate wages are based on the minimum wage level, which is too low to lift hard-working families out of poverty. Adults' low wages contribute to child labor and are especially punishing to the majority of farmworkers who cannot find work every week of the year. A living wage for farmworkers would help stabilize the work force, stimulate rural economic growth, with minor impact on the price of food here and in foreign markets.
 2. **Improve housing opportunities.** Provide increased funding for housing development for farmworkers and their family members. Massively increase USDA's

appropriation for section 514/516 housing to leverage 10,000 units per year and strengthen community-based nonprofit groups' capacity. Strengthen standards for housing provided to farmworkers: require roofs, flush toilets, electricity, hot water, etc. Strengthen the Fair Housing Act: clarify that its provisions against anti-family discrimination apply to U.S. farmworkers at employers who use H-2A guestworkers (rejecting an incorrect court decision).

3. **Improve toxic pesticide monitoring and safety:** Government should establish programs for reporting and monitoring (a) biological and environmental impact of use of pesticides on farmworker families and communities, (b) long-term effects of pesticides, including cancer, reproductive harm and neurological damage, and (c) incidents, injuries and illnesses potentially related to pesticide use. The law should guarantee farmworkers the "right to know" the specific pesticides used in their workplace and other safety information in language the workers understand. Protections against premature re-entry into sprayed fields should be strengthened. The Government should ban any pesticide known or suspected to cause cancer, birth defects, reproductive harm, neurological damage, or that is in the highest acute toxicity category, and promote transition from toxic pesticides to sustainable pest control methods.
4. **Reinvent the Employment Service ("ES"):** Some agricultural employers claim that they cannot find U.S. citizens or legal immigrants to apply for jobs. But decent wages, working conditions and modern employment practices would attract qualified workers and reduce employee turnover. The ES is a free job registry or labor exchange that is rarely used as a recruitment method by employers, primarily because they have no economic reason to do so: they find sufficient numbers of workers through informal recruitment networks or labor contractors, avoiding government oversight. Although H-2A employers must use the ES as a condition of securing guestworkers, they often are motivated to make the system fail to "prove" that U.S. workers are not available. To reinvigorate the ES, the Department of Labor could collaborate with state agencies, employers, unions, workers, and others on innovative "pilot programs" in several states. For example, using financial incentives that benefit employers to encourage their participation (e.g., by using public funds to pay workers' cost of transportation to the place of employment), ES could study whether employers improve their recruitment and labor stability by offering enhanced job terms, such as premium wage rates, health insurance, a promise of a job the following season, or a referral to other seasonal employers.

These suggestions do not directly deal with such major issues as health care, education and training, or other important policy matters. Nor do these suggestions necessarily reflect the priorities that all farmworkers or their advocates would select. They are, however, an indication of where this country needs to look if its vision for the next century includes a brighter future for the nation's farmworkers.

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