

**Suffering in the Pastures of Plenty:
Experiences of
H-2A Shepherders
in California's Central Valley**

An Issue Paper of
Central California Legal Services

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I. INTRODUCTION

In Central California, hundreds of legal, temporary, non-immigrant shepherders subsist in solitude, virtually invisible to anyone not working in the sheep industry. Someone driving through the valley during the winter, or through the mountains or deserts at other times of the year, may catch a glimpse of a flock of sheep and perhaps see a shepherd. They may have no way of knowing about the solitary life of the herder tending the sheep, or of his earnings of less than one dollar per hour. For at least the past ten years, shepherders have reported poor working conditions, treatment, and wages.¹

Shepherders are required to be at their work sites twenty four hours per day, seven days per week, 365 days per year. Part of the year they work and live on the valley floor. During the rest of the year they tend sheep in the mountains and deserts. Living alone, they have no contact with other humans for days or weeks. They live in small, dilapidated, one room trailers, called sheep camps, or tents. Most trailers have no form of heating or air conditioning. They become unbearably hot in the summer and intolerably cold during the winter. There are no bathing facilities. There is no running water. No field toilets are provided. Instead, employers provide workers with a shovel to bury their excrement. Sometimes, there is not even a shovel. Many tell of employer prohibitions of speaking to others or of having visitors. Others report that their employers will not allow them to have radios, newspapers, books or magazines.

For most, all communication and contact with the outside world is controlled by the

¹ Scott Forter, *Shepherders Detail Life of Hardship, Allege Mistreatment*, Bakersfield Californian, July 17, 1990 at A8; Barry Ginsbarg, *Visiting Peruvian Politician Wants to Help Shepherders*, Bakersfield Californian, Feb. 5, 1991, at A7; Pamela J. Podger, *Herders Say They Face Exploitation*, Fresno Bee, Nov. 11, 1991, at A1.

employer. Phones are non-existent at the sheep camps--even in the cellular age. Employers deny them access to any form of transportation. Workers must depend upon the employer to: send or deliver mail; bring food, drinking water and provisions; arrange for a doctor's appointment if they become ill or are injured on the job; or go to town to place a phone call.

Workers state that requests for medical attention often go unheeded. Others recount stories of food or water not being delivered in a timely manner, of having to drink canal water, and of being sent by the employer to steal fruits and vegetables from the nearby orchards for their own consumption. Workers report threats, beatings and firings for complaining about their treatment and conditions.

State and federal governmental officials ignore the shepherders' complaints and their employers deny their claims.² Ranchers and their trade associations, including the Western Range Association (WRA), traditionally claim that: (1) the H-2A Program is fair to shepherders;³ (2) the work is easy and workers are merely on call like a fireman;⁴ (3) shepherders make enough to send money home, build homes, and start businesses that are completely paid for;⁵ (4)

²Scott Forter, *Rancher Disputes Charge From Fired Shepherd*, Bakersfield Californian, July 20, 1990; Scott Forter, *Herders Denied Minimum Wage*, Bakersfield California, Dec. 22, 1990; Carl Nolte, *An Odd Little State Hearing On the Rights of Shepherds*, S.F. Chron., Dec. 22, 1990, at A4; Roy Patrick, *Rejects Herders' Petition*, Delano Record, Sept. 25, 1990, at A1.

³See Pamela J. Podger, *Herders Say They Face Exploitation*, Fresno Bee, Nov. 11, 1991, at A1 (statement by Western Range Association executive director, Larry Garro).

⁴See Ben Elgorriage, *Sheep Producer Responds to Article*, Fresno Bee, Nov. 22, 1991 (Letters to the Editor).

⁵*Id.*

mistreatment is an exception and claims of bad living conditions are overstated;⁶ and (5) workers “are provided with good living conditions.”⁷

Central California Legal Services (CCLS) conducted a survey which produced a broad picture of the lives of shepherders working in the Central Valley. The survey questions elicited specific information concerning hours and conditions of work, living conditions, availability of fresh food and water, availability of health care, amount of control exerted by the ranchers, amount of outside contact, and amount of contact with government officials. Also included were questions regarding contracts, wages, and withholding. In particular, CCLS sought answers to the following questions:

- What are the working conditions, including hours of work and wages?
- What are the living conditions?
- Are shepherders aware of their rights?
- What happens to injured workers?
- Do shepherders have opportunities to effectively voice complaints to employers or others?
- Do employers exercise over the shepherders’ lives?
- How do shepherders view their treatment by their employers?
- What are the best experiences of the shepherders?

⁶See Barry Ginsbarg, *Visiting Peruvian Politician Wants to Help Shepherders*, Bakersfield Californian, Feb. 5, 1991, at A7 (Western Range Association Executive Director, Larry Garro).

⁷Scott Forter, *Shepherders Detail Life of Hardship, Allege Mistreatment*, Bakersfield Californian, July 17, 1990, at A8 (statement by Western Range Association Executive Director, Larry Garro).

- What are the worst experiences of the sheepherders?
- What changes would the workers like to see implemented?
- Are there indications of systemic abuse of the H-2A Program by sheepherder employers?
- Have the governmental agencies responsible for protecting the workers' rights fulfilled their obligations?

Forty-one sheepherders participated in the study between December 1999 and February 2000. Typically sheepherders were interviewed individually as they live and work alone. All the interviews took place on the valley floor where it is easier to locate and talk to the workers. Interviews took place at sheep camps, outside the presence of employers. Many workers specifically requested that the interviewers come to talk to them after dark so that their employers would not see them talking to anyone. All sought assurances that their names would not be revealed to their employers.

CCLS interviewers drove through the Central Valley looking for sheepherders. Each sheepherder that was seen, and accessible, was offered an opportunity to participate in the survey. To assure that workers would not be unduly influenced by the presence of their employers, team members passed locations where the employer was present and returned at a later time. In addition, several injured sheepherders living in Bakersfield were interviewed. There was no pre-determination as to whom would be interviewed. Because of the remote locations of the herders, and the difficulty in locating them, often only one interview per day was completed.

II. WORKING CONDITIONS

A. Wages and Hours of Work

The wage rates do not deter domestic workers from working as shepherders. Americans do not take the job because they do not know how to tend sheep. Frank Munoz, executive director of the Kern County Wool Growers Association, quoted in *Herding: Industry Officials Opposed to Minimum Wage*, Scott Forter, Bakersfield Californian, Aug. 12, 1990, at B2.

The vast majority of the shepherders reported that they are required to be at the work site 24 hours a day, 7 days a week, 365 days a year. Although employers insist that the workers are merely “on-call,” the

workers consider themselves working around the clock since they may not leave the work site.

Ninety percent (90%) reported they were never given a day off from work in an entire year.

Number of Rest Days Per Year

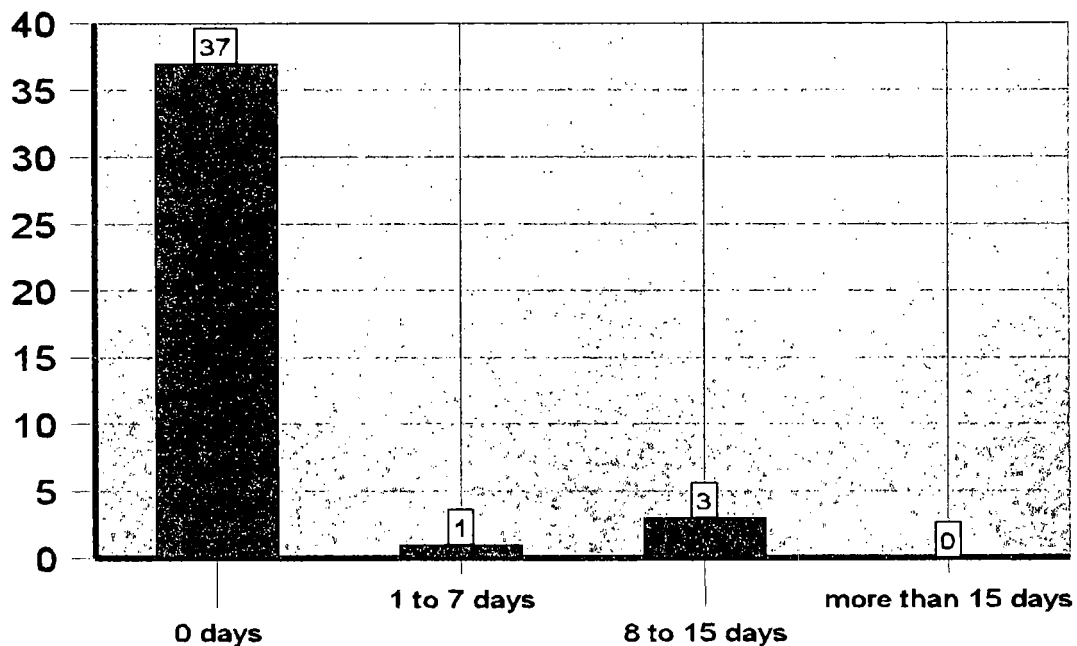


Figure 1: Workers response to “How many days a year do you rest?”

Probative of whether the sheepherders are working, or merely on call as claimed by the employers, is the ability of the workers to engage in activities which people commonly participate when they are not working.

They are on call, as is a fireman, doctor, mechanic or some people in the media.
 Ben Elgorriaga (sheep rancher); Fresno Bee, Nov. 22, 1991 at B. 7.

Sheepherders were asked if, during their time in the U.S., they had gone to the following places: church, a movie, shopping, restaurants, the park, a party, or the library. The chart below illustrates that the vast majority of sheepherders are not allowed to leave the trailer for even simple activities commonly considered non-work activities. Several of the sheepherders who stated they had gone to restaurants indicated they had done so covertly.

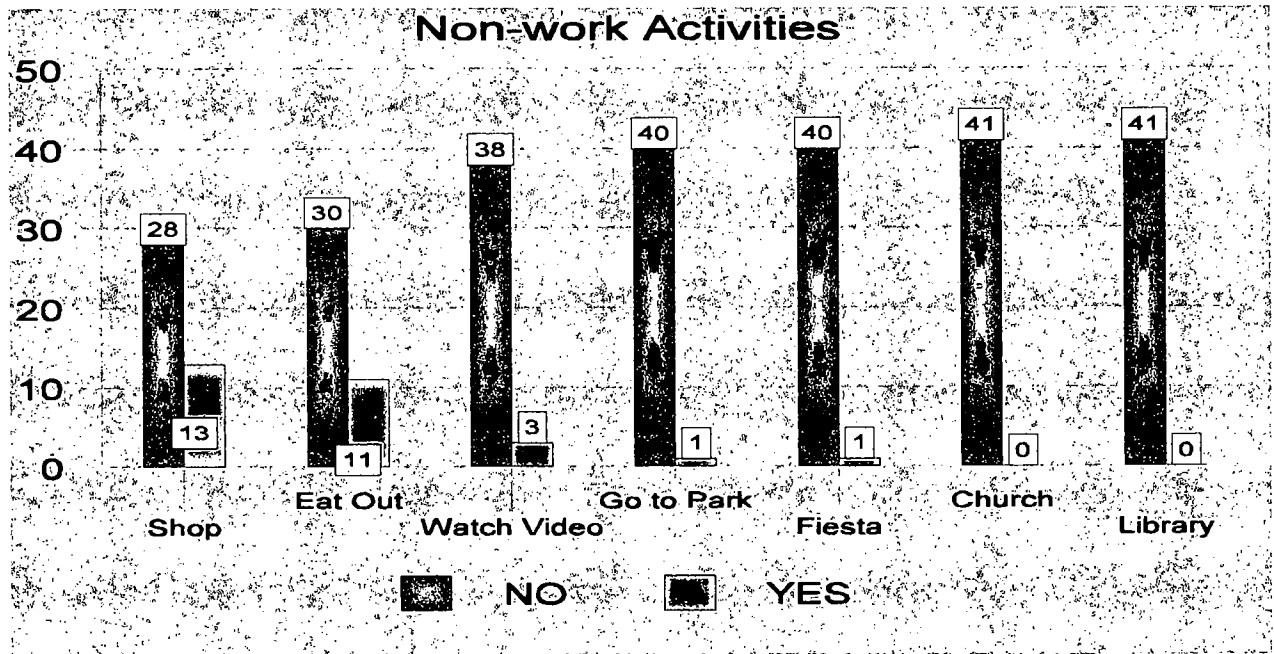


Figure 2: Displays sheepherder answers to questions regarding their ability to participate in certain non-work activities.

The vast majority of sheepherders reported their wages as \$700 to \$750 per month--- approximately \$.97 to \$1.04 per hour. Federal law requires that H-2A workers earn the higher

of the applicable federal minimum wage, state minimum wage, or the DOL established Adverse Effect Wage Rate (AEWR).

Historically, federal and state minimum wage laws excluded shearers. The passage of the California Living Wage Act (LWA) in 1996 established a minimum wage for all industries. The statute directed the Industrial Welfare Commission (IWC) to immediately issue wage orders in compliance with the LWA. Although the IWC did so for other industries, it failed to do so for shearers. The California Labor Commissioner continues to ignore requests for the

Commission to comply with the LWA. (See Appendix 1).

It would be an administrative nightmare if the shearers are required to (be paid) the state minimum wage. The employer will not be able to tell when the shearer is working because the shearers work alone. Frank Munoz, executive secretary of the Kern County Wool Growers Association, quoted in *Herding: Industry Officials Opposed to Minimum Wage*, Scott Forter, Bakersfield Californian, Aug. 12, 1990, at B2.

The DOL, charged with the responsibility of protecting these workers, continues to permit the ranchers to pay workers less than one dollar per hour.

“An increase in pay. It is a misery.” A shearer’s answer to the question: Is there anything that you want to add?

B. Statutory and Contractual Work Requirements

Law makers have a long history of helping agricultural employers recruit and import foreign workers. The abuses of the Bracero program are well documented.⁸ Begun during the

⁸See Kitty Calavita, *Why Revive an Inhumane Program?* Los Angeles Times, July 18, 1999, at M-2.

second world war when growers convinced Congress that the war effort threatened agriculture because it had created a shortage of workers, it continued long past the war's end.⁹ During this time period wool growers began bringing impoverished shepherders from the Basque area of Spain to work in California's Central Valley. While the Bracero program ended for other farm workers, the importation of shepherders continues. The most recent continuation, part of a broader program known as H-2A, came in the form of provisions in the Immigration Reform and Control Act of 1986 (IRCA)¹⁰. Spain's economy improved and today the growers look to the mountainous regions of Peru and Chile,¹¹ where poverty is rampant, to recruit most of their workers.

The purpose of the H-2A program is to allow agricultural employers to bring foreign guest workers when there is a shortage of "ready, willing and able" domestic workers. The stated intent is to avoid the displacement of domestic workers and to prevent the depression of U.S. workers' wages.

Contained within IRCA is a directive to the Department of Labor to establish standards for shepherder housing.¹² Nearly fourteen years after IRCA's passage, the DOL has yet to issue the regulations Congress directed it to promulgate. Rather than adopting regulations as required

⁹See Jesus Martinez, *Braceros: Exploited, Swindled, Ignored*, San Francisco Examiner, August 8, 1999; Fred Ross, *Conquering Goliath: Cesar Chavez at the Beginning*, El Taller Graphico Press, Keene, CA (1989).

¹⁰Immigration Reform Control Act, 8 U.S.C. §1101 et seq.

¹¹See Scott Forter, *Herdling: Industry Officials Opposed to Minimum Wage*, Bakersfield Californian, August 12, 1990, at B2.

¹²See Immigration Reform and Control Act of 1986, 8 U.S.C. §1188(c)(4).

by the Administrative Procedures Act (APA),¹³ the DOL issued a "Field Memorandum"¹⁴ which provides "guidelines" concerning shepherd housing. The APA requires public hearing and comment on any proposed regulation. If the DOL were to follow its directive from Congress, shepherders and their advocates would be allowed opportunities to have their case heard. It appears that the DOL did not seek any worker or worker advocate input when it issued the "Field Memorandum." The memorandum itself makes it clear that it was developed through extensive consultation with the Western Range Association which is composed solely of the employers of shepherders

The contents of the job offer made by employers for H-2A workers must state "all the material terms and conditions of the employment."¹⁵ Employers may require H-2A workers to perform alternative work only if such work is stated in the job order and the job order is approved.¹⁶ DOL Field Memorandum No. 74-89 (FM 74-89) describes the content of job offers. FM 74-89 provides a "job specification" for shepherders. This job specification limits shepherd duties to attending to sheep on the range, guarding sheep from predators, and assisting with lambing, shearing, and docking. Employers may add to this description for reasons of business necessity provided review and approval is obtained from DOL. Thus, employers are limited by their contract with shepherders and by DOL as to what type of work shepherders

¹³Administrative Procedures Act, 5 U.S.C. §§551 et seq.

¹⁴U.S. Dept. of Labor, *Special Procedures: Labor Certification for Shepherders Under the H-2A Program*, Field Memorandum No. 74-89, May 31, 1989. [hereinafter Field Memorandum No. 74-89].

¹⁵Agricultural Clearance Order Activity, Requirements for Accepting and Processing Clearance Orders, 20 C.F.R. §653.501.

¹⁶ *Id.*

may perform.

Seventy percent (70%) of shepherders reported they were required to perform work other than shepherding, including construction, fence building, cooking, and driving. It has not been

“My boss made me work too hard as a welder. And work as a driver.” Response to question concerning non-shepherding work.

established that there is a shortage of carpenters, construction workers, drivers and cooks in the U.S. and these jobs are not included in any “guest worker” programs. None of these jobs are included in the content of job offers specified by DOL FM 74-89. Workers surveyed who performed non-shepherding work were not paid extra for these duties.

C. Illness or Injury on the Job

Forty-six percent (46%) of shepherders reported having become ill or injured on the job. Of this number, sixty-one (61%) percent reported receiving no medical attention for their injuries. Shepherders were asked to describe what happened when they complained to their employer about lack of medical services. Complaints seldom resulted in a correction and often resulted in retaliation against the herder. (See VII Shepherders Right and Opportunity to Voice Complaints, *infra*).

Job Related Injury or Illness

Injury or illness at work?

Did you receive treatment?

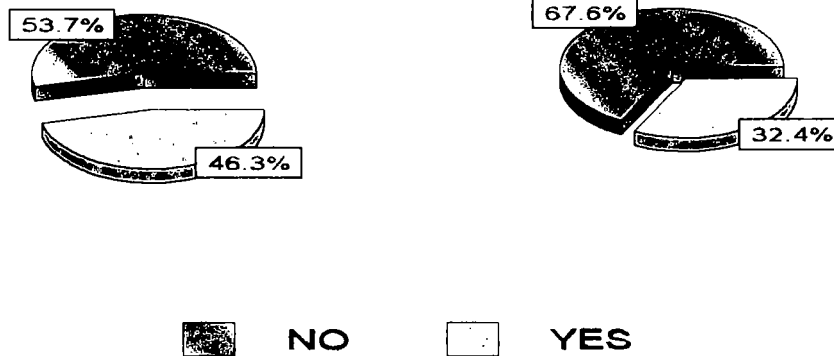


Figure 3: Shepherd responses to questions about health.

III. LIVING CONDITIONS

Because the shepherders are required to be at the work site 24 hours per day, 365 days per year, it is difficult to separate working conditions from living conditions. We have considered the amenities that are present or lacking in the sheep camp as the indicators of the living conditions.

A. Standard of Living

The survey posed a number of questions aimed at determining the standard of living of shepherders. Workers were asked if their trailers had electricity, heating, cooling, a toilet, bathing facilities, and a working refrigerator. They were also asked about the availability of potable drinking water.

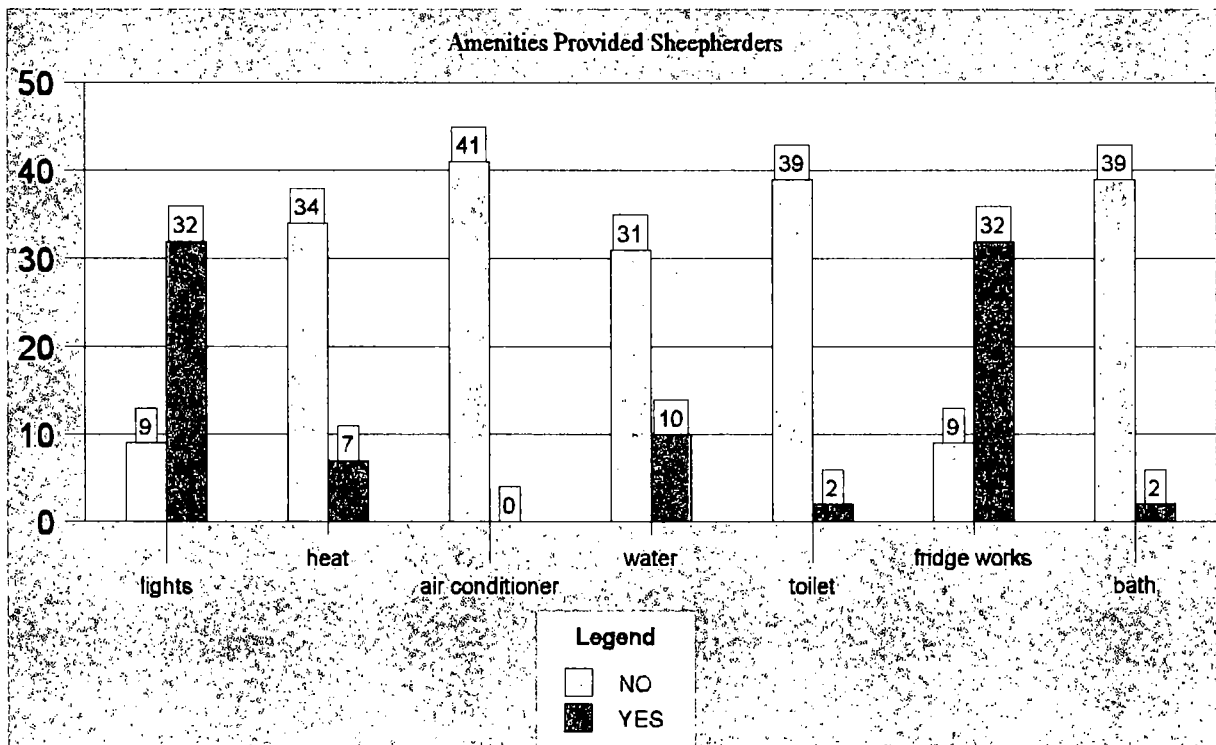


Figure 4: Graph displays frequency of no and yes as shepherd answers to questions regarding availability of lights, bathing necessities, toilets, heaters, and air conditioners.

Employers must certify that shepherd housing meets DOL standards.¹⁷ The California Employment Development Department (EDD) is supposed to inspect one third of such housing units each year.¹⁸ Forty-six percent of shepherders reported their camp has been inspected. Fifty-one percent reported that their trailer had been fixed just prior to the inspector's visit. EDD inspectors routinely certify that the sheep camps meet DOL standards even though there are no toilets, heating or air conditioning, or bathing facilities. None of the camps meet properly issued DOL standards because the DOL has failed or refused to issue regulations.

¹⁷See 20 C.F.R. §653.501; 20 C.F.R. §655.102 - §655.103; U.S. Dept. of Labor, *Special Procedures: Labor Certification for Shepherders Under the H-2A Program*, Field Memorandum No. 74-89, May 31, 1989 [hereinafter Field Memorandum No. 74-89].

¹⁸See Field Memorandum No. 74-89

1. Availability of Fresh Food and Water

Questions were asked to determine if employers were late in bringing food and water.

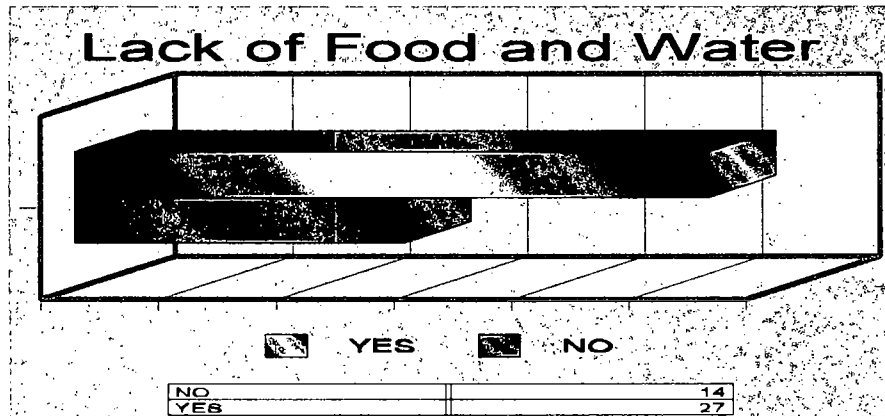


Figure 5: Displays shepherd answers to question regarding whether ranchers are late in bringing food and water to the camps.

“I was three days in the desert without water to drink.”

IV. EMPLOYER CONTROL

We tried to determine if the employers exercise control of the shepherders' lives.

A. Contacts with Others

The employer control over workers begins with the remoteness of the work sites. A single worker will often find himself miles from any town or city. They are often alone in the foot hills of the Sierras or in the desert. When they work on the valley floor they are often on posted private property, miles from paved roads. Telephones are not accessible to the workers. Because of their location, and lack of transportation, (see discussion on transportation below) it is unlikely that they will have contact with anyone save those working at the company. Even when the workers find themselves in fields along major highways or roads, and very close to towns, most are still not allowed communication with others.

Questions were asked to determine the type of contacts they were allowed. Fifty-nine percent (59%) reported they were prohibited from having newspapers, magazines, or books. When asked

about contact with others who do not work with them, most reported this was forbidden by the employer. Answers to questions regarding contact show that ranchers control all communication with the outside world, including association, speech, correspondence and receipt of information.

- (1) Are you permitted to have visits from people who do not work with you?
- (2) Are you permitted to make a visit with someone who does not work with you?
- (3) Are you permitted to speak with other people who do not work with you?
- (4) Must you send or receive correspondence through your employer?
- (5) Are you permitted to have newspapers, books, or magazines?

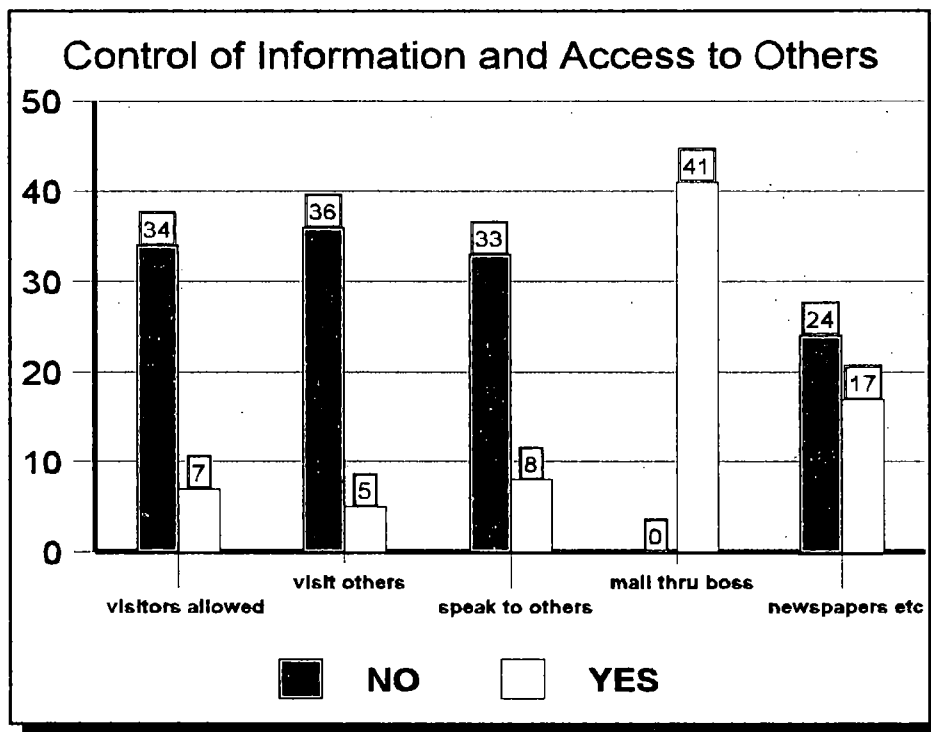


Figure 6: Answers to questions regarding employer control over access to information and contact with others.

B. Transportation

More than 93% of the shepherders reported they have no transportation. The 7% who were allowed transportation were usually the “camperos,” persons responsible for delivering provisions to other workers and for transporting workers to remote job sites.

Question: Are you allowed some type of transportation?

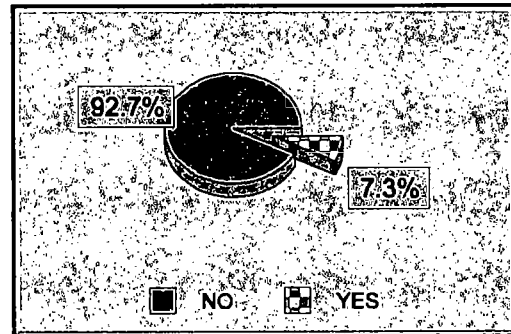


Figure 7: Availability of transportation

C. Documents Kept By Employer

Employers regularly retain employee documents which show that the worker is legally in the United States. Workers present as H-2A guest agricultural workers are issued a form I-94 from the United States Immigration and Naturalization Service (INS). Shepherders report that it is the common practice for the rancher or the Western Range Association to keep the I-94. The survey asked workers whether they had their Form I-94. Sixty-one percent (61%) reported they did not have their Form I-94.

D. Deductions From Pay

Under the H-2A program, the employer is entitled to deduct from the worker's pay the cost of transportation and subsistence incurred by the employer in bringing the worker from his native country to the U.S.¹⁹ The worker is entitled to reimbursement of these deductions after

¹⁹See 20 C.F.R. §655.102(b)(5).

completing 50% of his contract time.²⁰ The contract time is usually three years for sheepherders. In contrast, other H-2A workers have contracts of only a few months. The employer is responsible for transportation costs back to the worker's native country.²¹ Field Memorandum No. 74-89 states that under certain circumstances the employer is not required to reimburse the worker for this withholding, nor to pay his transportation costs home. These circumstances include: (1) the worker quit or ran off before finishing the contract;²² (2) the worker was fired for a legitimate reason;²³ or (3) the worker refused to be transferred to another WRA member regardless of locality (i.e. different state) or reduction in pay.²⁴

Workers report that complaining of conditions often results in their being fired. One of the workers surveyed reported that after having complained of conditions to his employer, he was fired and left at a hotel. Shortly thereafter he was picked up by the INS and detained for two months at an INS detention center because he could not prove his legal right to be in the country since the WRA had retained his I-94 and the rancher had his passport.

²⁰*Id.*

²¹*Id.*

²²*See* 20 C.F.R. §655.102(b)(11).

²³*Id.*

²⁴*See* Field Memorandum No. 74-89, *Supra* note 33.

V. SHEEPHERDER RIGHTS and OPPORTUNITY TO VOICE COMPLAINTS

Not a single shepherd surveyed spoke English. Fifty-four percent (54%) reported they were unable to read their employment contract. The job duties and living conditions were not explained to most shepherders prior to leaving their countries and traveling to the United States. Sixty-six percent (66%) did not know what their duties would be before they arrived in the

United States and started working as shepherders. Ninety-five percent (95%) reported they did not know what was waiting for them in the United States. Reports of retaliation, coupled with employers' control over all aspects of life, indicate that shepherders have reason to fear complaining about their situation.

He was angry and they shouted.

He said I can die behind the sheep.

He criticized me and was annoyed.

He was angry and did nothing.

They do not listen.

He said we do not have a right to claim anything, and that was in the contract.

Responses to question of how employers responded to complaints about lack of food or medical

He attacked me and soon he fired me.

He fired me from the job, telling me I was a nobody.

He fired me.

He treated me very badly and then fired me from the job.

Responses to question of how the employer responded to complaints about lack of food or medical services.

Although the H2-A program is administered by DOL, there appears to be no effort by DOL to inform workers of their rights. Workers are not provided DOL information about how to contact the DOL if they have a complaint. Even if such information were provided, it is unlikely the DOL would receive complaints since the workers would need to mail a complaint through the employer or request a ride to a public telephone to call the DOL.

VI. SHEEPHERDERS' VIEW OF THEIR TREATMENT

The survey sought to determine how sheepherders view their treatment by the employers. They were asked if they believed that the Western Range Association complied with the contract.

Do you think the WRA complied with the contract Do you perform work other than sheepherding

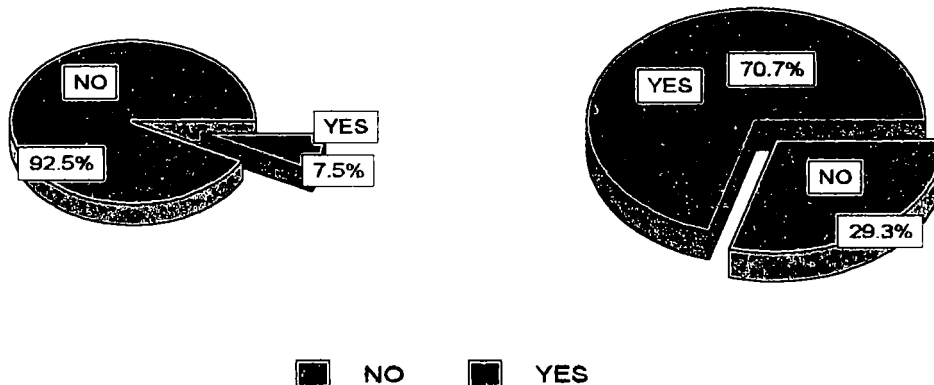


Figure 8: WRA and Rancher Compliance with H-2A Program Requirements.

Participants were also asked, in open-ended form, how they are treated by their employer.

Employer Treatment of Workers

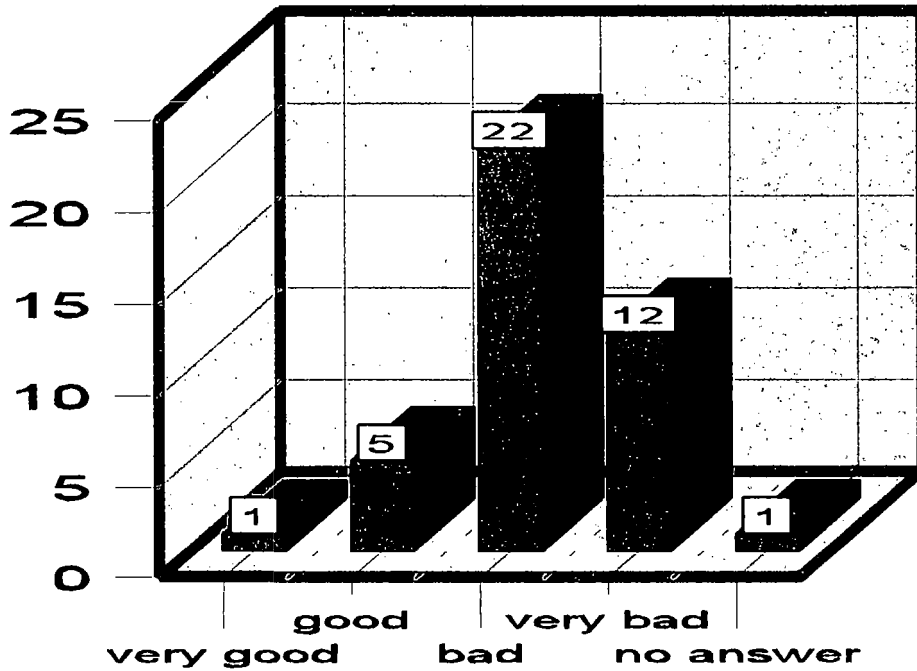


Figure 9: Shepherd response to question: “How do they treat you in this company?”

VII. SHEPHERDER COMMENTARIES

A. Best Experiences of Shepherders

The survey contained a number of open-ended questions.

Employers insist that the H2-A program offers tremendous opportunities to the workers. We sought to determine if the workers’ view is consistent with that of the employers’.

Describe your best experience as a shepherd in the U.S. “There are none.”

Participants were asked to describe their best experience as a shepherd in the United States.

Twenty-five of the workers did not answer this question. Eight responded that they had none. The

complete responses of the remaining participants are listed below.

What has been your best experience as a shepherd in the United States?

- “I don’t know.”
- “None. On the contrary, it has all been suffering.”
- “That some Americans gave me food that my employer never gave me.”
- “To work in another country.”
- “In the lambing season, the responsibility to save the lambs.”
- “Tending the animals.”
- “Guarding the sheep.”
- “Riding a mule.”
- “It is always the same, routine work.”
- “It was my boss who helped me immigrate.”

B. The Worst Experiences of Shepherders

In contrast to the 33 non-responses or response of “none” elicited by the question about the shepherd’s best experience, only 5 did not answer when asked about their worst experience. Only one replied “none.”

Describe your worst experience as a shepherd in the U.S. **“Bad treatment by my employer, to be treated like a slave and to live far away from the family.”**

By far the most common response concerned loneliness. Twenty-one of the thirty-seven answers referenced the loneliness the shepherders experience. Others told of being lost in the mountains, being in the desert without water, not having food for days, and of being sick with no ability to contact anyone. One worker summed up his experience this way: “Bad treatment by my

employer, to be treated like a slave and to live far away from the family.”

“It has been the worst experience of my life. I was thinking to overcome this, but they did not fulfill the rights that are stipulated in the contract.”

“I was made to sleep outside with the sheep and to cook with firewood on the ground.”

“They send me every year to the mountains with a donkey and to cook with only one pot.”

C. What Shepherders Want

The survey provided the participants the opportunity to comment on anything they wished by asking “Is there anything you would like to add?” The overwhelming majority of those who answered this question, thirty of thirty-four, said they wanted better wages. Others spoke of better treatment and working conditions. A succinct statement by one worker reflected the simple hopes of all the workers we interviewed: “That they treat us like humans, increase our pay and comply with the contract.”

Is there anything you want to add?
“That they treat us like humans, increase our pay, and be made to comply with the contract.”

Is there anything you want to add?
“Increase in pay, a day of rest each month, and equipment for work.”

VIII. CONCLUSIONS

The survey answers show a pattern of conduct on the part of employers and governmental agencies significantly injurious to the health, safety, and welfare of shearherders, including:

- failure of the California Labor Commissioner to enforce the Living Wage Act;
- failure of the Department of Labor to promulgate regulations;
- complicity by the Employment Development Department in certifying sub-standard housing;
- failure of employers to abide by assurances required by IRCA;
- failure to return documents to workers;
- failure to provide workers with pay stubs showing hours, rates, and deductions;
- illegally restricting workers' free association and speech;
- failure of employers to abide by the terms and conditions of the job order (contract);
- late delivery of potable water and food;
- failure to provide required medical services to injured or sick workers;
- abandonment of injured or seriously ill workers;
- physical and emotional abuse of workers.

Shepherders comprise an invisible workforce. Their plight is unknown to the general public. No previous surveys or studies attempted to document their working and living conditions.

Shepherders in California's Central Valley live lives of forced isolation, deprivation and

domination. Their employers exercise complete control over all aspects of their lives. They have no religious, emotional, or familial support available. Their most fundamental constitutional and human rights are denied on a daily basis. State and Federal governmental agencies charged with the responsibility of protecting the workers, fail to carry out legislative directives.

IX. RECOMMENDATIONS

The authors of this report suggest a few simple steps which can be taken immediately to begin the process of bringing the working conditions of shepherders into the twenty-first century. We recognize that these are only a beginning but view them as the basis for fundamental change that is necessary.

- The California Industrial Welfare Commission should follow the mandate of the Living Wage Act by issuing and enforcing a minimum wage order for shepherders.
- The United States Department of Labor should immediately begin the process of promulgating shepherd regulations in accordance with the Administrative Procedures Act.
- The DOL should initiate an outreach program to assure that shepherders are informed of their rights and have an effective enforcement mechanism available to them.
- Responsible members of the industry must step forward and demand that the employers end the employment practices revealed in this study.
- Members of the public should demand that public officials carry out their charge of protecting the rights of the workers.

Appendix

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January 25, 2000

Ms. Marcy V. Saunders
California State Labor Commissioner
Industrial Welfare Commission
1121 L Street, Suite 307
Sacramento, CA 95814

RE: Wage Order 14-80

Dear Commissioner Saunders:

Central California Legal Services, (CCLS), seeks clarification on the failure of the sheep industry to pay minimum wage. The failure does not involve one or two individual employers but virtually the entire industry. As many as one thousand workers may be affected. The employers' refusal to pay minimum wage is based largely on the failure of the Industrial Welfare Commission to make it clear that these workers are entitled to be paid the state mandated minimum wage.

It is our belief that the current exclusion is probably inadvertent. We hope that the as the Commissioner, you will clarify your position on this matter.

Hundreds of non-resident immigrant shepherders in California labor for an effective wage of less than \$1.00 per hour. They receive this wage with the tacit blessing of the California Industrial Welfare Commission Wage Order 14-80 purports to exclude these workers from its protective provisions. That Wage Order provides, in part:

F. APPLICABILITY OF ORDER

This Order shall apply to all persons employed in an agricultural occupation whether paid on a time, piece rate, commission, or other basis, except that:

(E) The provisions of this Order shall not apply to shepherders."

The IWC originally adopted this provision in 1975 and denied a shepherd's petition to remove it in 1991. Both these actions occurred prior to the passage of the Living Wage Act in 1996. Continuation of this provision is clear violation of California law.

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The California Labor Code provides, in pertinent part:

“§1182.11. Minimum wage for all industries; amount; adoption of minimum wage orders

Notwithstanding any other provision of this part, on and after March 1, 1997, the minimum wage for all industries shall not be less than five dollars (\$5.00) per hour; on and after March 1, 1998, the minimum wage for all industries shall not be less than five dollars and seventy-five cents (\$5.75) per hour. The Industrial Welfare Commission shall, at a public meeting, adopt minimum wage orders consistent with this section without convening wage boards, which wage orders shall be final and conclusive for all purposes.” (Emphasis added).

Although a new agricultural wage order was adopted, the new Order 14-80 continues to exempt sheepherders. Consequently, the wage order is not “consistent with this section” since it exempts an entire industry from the payment of minimum wage. It is our belief that Section 1 (E) was mistakenly left in at the time the IWC adopted the new order.

CCLS is presently preparing a white paper on the treatment of sheepherders in the Central Valley. Numerous sheepherders participated in interviews. The preliminary results reveal an industry that denies workers the most basic of human rights. Employers require sheepherders to stay at the job site 24 hours a day, 7 days a week, 365 days year. Workers are prohibited from leaving the work site at any time unless directed to do so by the employer.

Usually, they have no form of transportation available. Sheepherders often work in remote mountain or desert areas and have no human contact for days, sometimes weeks. At other times they work on the valley floor tending flocks in fields, vineyards and orchards. Even though they may be close to towns and cities, they are prohibited from leaving the work site. They are not provided any method to communicate with others. Often times, the nearest phone may be miles from the work site.

Sheepherders must depend upon the employer to bring food, water, medicines, mail, and newspapers. Many report that their employers instruct them not to talk with anyone else or to have visitors.

Most come to California from Peru or Chile. Upon arrival they are immediately placed at work. Given the total isolation in which they labor, coupled with linguistic and cultural barriers, they have no way to inform themselves of their rights, let alone take action to enforce them.

Sheepherders live in a trailer, or a tent. Typically, only one shepherd lives in a camp. The trailers are unbearably hot in summer and intolerably cold in winter. They do not have running water, electricity, heat, bathing, laundry, or toilet facilities. Usually a shovel is provided so the shepherd may bury his excrement. Sometimes there is no shovel.

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Shepherds in California are generally paid \$700-\$750 per month for being at the job site 24 hours a day, seven days per week. Most often, they do not receive check stubs showing hours, rates, and deductions.

Although most sheepherders are legal, non-immigrant aliens working under the federal H2-A program, their employers are not exempt from state laws. The H2-A Program does not preempt state employment laws. The wages and working conditions offered by the employer must be either "the prevailing wage and working conditions among similarly employed agricultural workers in the area . . . or applicable Federal or State minimum wage, whichever is higher." Requirements for Accepting and Processing Clearance Orders, 20 C.F.R. 653.501(d)(4)

Clearly, this is not occurring.

Our interpretation of the law is that the Wage Order 14-80 should be corrected to conform to Labor Code Section 1182.2. Does the Commissioner agree with this interpretation? If so, could you please inform us what actions will be taken by you to bring the Wage Order into compliance with section 1182.2? If you have a different interpretation of the law, could you please inform us what that interpretation is? We intend to publicly release the white paper in several weeks. We want to be certain that we properly present your position on whether or not sheepherders are entitled to be paid minimum wage.

Thank you for your consideration in this matter. Please contact me at the above address or phone number if you need any more information.

Sincerely,

Chris A. Schneider
Executive Director

Law Offices of

CENTRAL CALIFORNIA LEGAL SERVICES, INC.

2014 Tulare Street, Suite 600 □ Fresno, California 93721
Phone: 559 441-1611 □ Fax: 559 441-7215

March 2, 2000

Ms. Marcy V. Saunders
California State Labor Commissioner
Industrial Welfare Commission
1121 L Street, Suite 307
Sacramento, CA 95814

RE: Wage Order 14-80

Dear Commissioner Saunders:

On January 25, 2000, I sent you the enclosed letter. To date, I have not received a response. I realize, of course, that you have many pressing matters to which you must attend. To the hundreds of sheep herders who continue to be paid an effective wage of less than \$1.00 per hour and labor under intolerable conditions, this matter is of paramount importance.

I would greatly appreciate a reply at your earliest possible convenience. Central California Legal Services plans a media conference to release its study of the condition of sheep herders on March 15, 2000.

As Indicated in my earlier letter, we want to be certain that we represent the position of the Labor Commissioner correctly when we release our study.

I thank you in advance for your anticipated cooperation.

Sincerely,

Chris A. Schneider
Executive Director

encl.