

Inter-American Institute On Migration And Labor

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THE FARM LABOR MARKET: IMMEDIACY OF IMMIGRATION ISSUES Roundtable Discussion December 13, 1994

Luis R. Torres explained that the main purpose for the Institute and the National Council of La Raza (NCLR) in sponsoring the meeting was to discuss the changing nature of the farm labor market, its dynamics and the policy implications which stem from the data developed by recent research. It was emphasized that any discussion should be framed within the present political context, i.e., the approval of proposition 187, electoral results and the perception of a rising xenophobic climate. Recent research findings were summarized and distributed. Within this context, particular attention was given to consideration of potential initiatives for the enactment of a new non-immigrant guest worker program.

Labor Enforcement and Immigration

The initial discussion addressed labor enforcement issues as they relate to the farm labor market, the correlation of such enforcement and illegal immigration, and the role of the U.S. Department of Labor in any future Bracero-type program.

Although immigration is a labor issue, the notion of a tie between the enforcement of labor standards and the curtailment of illegal immigration is not accepted by many in the present Administration. Thus, illegal immigration is often not seen as a labor issue. DOL has had to invite itself into policy discussions related to the immigration question. A request is on the table to assign additional labor enforcement resources to the seven states with the largest proportion of undocumented immigrants.

By looking at the Targeted Industries Partnership Program (TIPP) (state/federal coordinated enforcement) in California, one can see that statistics generated by the program don't reflect what is

found at the site visit. Violations regarding posters, workers' compensation, and child labor are easier to determine than wages, so it looks like these other things are the major problem. California's Labor Commissioner has made it clear that this program should not be connected in any way to INS or immigration policy; that to do so would undermine any possibility of gaining credibility among workers.

Filing a complaint is not rewarding to workers. DOL needs intermediaries and in-service training so that government workers are not as culturally removed from the farmworkers; and, perhaps, not as culturally similar to employers, or not as sympathetic with them. In addition, employers need to be told that they will get checked in other areas when a wage and hour violation is found.

There is a basic question of whether the targeted enforcement of labor standards can lead to the reduced employment of unauthorized workers. The question is whether DOL can mount a targeted enforcement effort similar to INS's "Operation Gatekeeper." A problem with targeted enforcement is its political sensitivity as it often results in complaints of "harrassment."

Wage and Hour's resources have decreased over the last 12 years. There are now about 800 inspectors nationwide. With strained resources, there is no way that Wage and Hour could effectively monitor employment conditions under a large guest-worker program. The only solution would be to shift "enforcement" to the front end of the program. That is, it should be difficult for employers to be certified for the use of foreign workers. Currently, it is fairly easy to obtain certification and resources are spent on monitoring conditions once contract workers have been admitted. A new program would also need to allow for record-keeping penalties so that an employer could not avoid fines by failing to have records adequate to determine violations.

Another problem the agency has with monitoring agriculture, as well as other low-wage industries, is the manner in which performance standards are determined. When it is determined by the amount of back wages collected, as it is now, the tendency is to avoid industries with low wages. The experience has been a low rate of collection, because everyone contests the penalties. Also, few staff are bilingual. The agency needs to consider bilingualism as a required work skill.

Too often, within the present system, when an employer does not pay minimum wage, the penalty is only what it would have cost to comply with the law and pay workers in the first place. Thus, when an employer decides on whether to break the law, he takes two things into consideration: the likelihood of getting caught and the severity of the penalty. Legal Services depends on the second. DOL might want to consider fewer inspections with bigger fines. There also needs to be bigger penalties for repeat and willfull violators.

Changing Characteristics of the Labor Market

The total national labor market has changed. There is more use of immigrant workers, spread over many industries. There are several outdated views of the agricultural labor market:

a. Agriculture is a revolving door whereby workers start in agriculture and then move up the occupational ladder to better employment in other industries. This is no longer the case. In the past, several other industries have lowered their labor standards to agriculture's.

b. There are general streams of migrant workers who move from southern, home-base states up to the more northern states but this migratory pattern is not as structured as it was in the past.

Furthermore, some argue that as many as half of today's agricultural labor force is unauthorized and this feeds the focus on undocumented workers. In California, large-scale deportations have already begun. e.g., the raids in Ventura County last June.

To discern patterns in the farm labor market we need to think in terms of types of economic strategies that farmworkers follow instead of discrete geographic streams. For many workers this involves spending part of the year in Mexico. Many workers shift in and out of agriculture, alternating that with work in other low-wage industries, such as low-wage construction jobs, meat packing and poultry.

Research undertaken over the past five years has consistently shown an agricultural labor surplus, although the number of farmworkers continues to elude researchers. Research has also shown that the vast majority of new entrants to the agricultural

work force are born in Mexico, and that many migrant farmworkers spend some time each year in Mexico. The agricultural industry has historically relied on new, cheap sources of labor. Recruitment practices have followed and fostered networks in which workers are directly recruited in Mexico. One of the current sources is indigenous workers from Mexico and Guatemala, but there are many more possibilities if that source disappears. Some feel that employment of these workers is being used to undermine existing labor standards.

The consistent recruitment and use of domestic workers is simply not something that has characterized agriculture. An important research finding is that today, on a national basis, nearly nine out of ten first-time farmworkers are foreign born. Thus, nationally, U.S.-born farmworkers are being displaced. Village-based migration networks have, to a large extent, replaced the migrant streams of the past. (See Attachment "A" for a listing of selected research findings.)

Based upon recent research there is a need to examine agricultural labor from a new perspective. The present situation can not be approached as "business as usual". Labor intensive agriculture has been expanding and the labor problems are national, and are reflected throughout the major agricultural areas.

Foreign Workers Non-Immigrant Programs

It is also important to keep in mind, during the upcoming discussion of a non-immigrant program, that most of such previous programs were, at least theoretically, developed as responses to emergency labor shortages. Another point to keep in mind is that the use of non-immigrant programs, specifically the Bracero program, did not coincide with a reduction in illegal immigration.

The United States currently has some non-immigrant Mexican as well as Caribbean workers coming in to agriculture through the H-2A program.

Canada also has a non-immigrant agricultural worker program with Mexico and the Caribbean. This is a formal intergovernmental program. In 1993 there were 4,700 Mexican workers on 635 farms. The program has been importing 10-15,000 workers in recent years, mostly from Jamaica. Prior to 1986, when the Canadian government liberalized the importation of foreign workers, the numbers have

been growing. Under this program, Canadian growers must provide free housing and pay for transportation from the country of origin, although the cost of transportation can be recovered from the worker's wages. Workers have complaints about working conditions and contractual compliance as well as the ability of the Mexican government to oversee or enforce contractual terms. (See Attachment B for a more detailed description.)

Following are some of the characteristics of guest worker programs in European countries:

Germany - can only recruit low-wage workers for contracts of less than 90 days. All industries can participate, but most workers are in agriculture. Housing is required. Employers draw up contracts and have them approved. They can recruit workers by name. Both employers and employees contribute to payroll taxes.

Unemployed workers (citizens) can be required to do seasonal agricultural work in order to obtain unemployment benefits. In addition to these, they receive \$15 per day.

Swiss - seasonal workers are for less than 10 months. If they come for 3 years, they get into a permanent program that allows them to move into non-seasonal jobs as permanent resident aliens.

France - program is like H-2A. Workers can keep coming back and don't earn points toward permanent resident status. Use of this program has been decreasing while the employment of unauthorized workers has been increasing.

Miguel Ruiz-Cabana, Minister for Social and Border Affairs, Embassy of Mexico, reported that to date, there have been no official conversations between the United States and Mexico about a guest worker program. He clarified that former President Salinas had suggested that there should be talks about immigration, in general but not restricted to a new guest worker program. It is also important to recognize that the Mexican government cannot, according to its Constitution as well as for humane reasons, stop illegal immigration to the United States.

Concern was expressed about a pattern of violation of basic rights of Mexican nationals while in the United States. A discussion was held on possible coordination between legal services programs in

the United States and non-governmental organizations in Mexico to better serve farmworkers. Mr. Ruiz-Cabanas explained on-going efforts by Mexican officials to upgrade their consular protection program as well as the restructuring of Mexico's civil legal system.

The group generally agreed that the following were important characteristics for any guest worker program:

- a. requirement for domestic recruitment. This would be necessary to avoid the marginalization of Mexican nationals.
- b. strong anti-retaliation or anti-blacklisting element. This would be difficult to enforce, particularly if workers can move around among employers.
- c. don't allow growers or grower associations to select particular workers. This gives them too much control.
- d. enforcement can't be left solely up to governments. Workers need access to lawyers and a private right of action.
- e. workers should be able to earn points toward permanent residency status.
- f. housing should be provided but should not be controlled by growers.
- g. there should be some sort of guarantee of work, as provided in the contract.
- h. workers should not be tied to a particular employers, nor to a particular region.
- i. wages withheld for a trust fund should earn interest for the worker.
- j. wages should be set at a higher rate than the current prevailing wage, or set at a percentage above minimum wage.

The main problem with such a program, no matter how it is constructed, is the lack of freedom that workers feel. Another concern with guest worker programs is that it hurts women and families. Women would likely be displaced by a guest worker program.

The real issue is that there is no labor shortage, and we should not have a guest worker program until the flow of undocumented workers is curtailed. If we do have such a program, an additional suggestion included the following:

- a. It should not be strictly for agriculture.
- b. Discussions on the establishment of any such program should be held with both Mexico and Canada.
- c. Workers should be 18 and over.
- d. There should be a new INS status of "temporary immigrant" and admit workers for a renewable 5 year period. Temporary immigrants should have all the rights and privileges of other immigrants, except they could not petition for relatives nor have access to social security. Like people under other temporary visas, they should be able to petition for a regular immigrant visa.
- e. There needs to be a strong reporting requirements so we can keep track of where everyone is.
- f. When a person leaves the program, they could be replaced.

A problem with waiting for a labor shortage before we act is that such a shortage will not occur until after a great deal of human suffering. We have to keep in mind that from now on we can't assume that things are going to continue as "business as usual." With Prop 187 and the election results, there is a new anti-immigrant climate. We need policies to defuse the level of hostility.

It is possible that the House could vote for a program that would not include worker protections. There needs to be a push from the other side to provide details for a program. An important piece is that the critical issue of enforcement not be relegated to government agencies. This is a problem given potential restrictions and funding limitations to Legal Services.

We need to go to the states in Mexico to see how legal services can best be provided for Mexican workers while they are home based. We also need to work with the Mexican consulates in the United States to cooperate in protecting workers.

Mr. Ruiz-Cabana stated that the interest of consulates in farmworkers has been long-standing. What is recent is that they are now establishing the proper infrastructure to accomplish this.

Legislative Outlook

We can speculate on what an upcoming immigration bill will look like. There will be increased border control; faster detention and deportation processing; an emphasis on smugglers and criminal aliens; some revenue sharing or redistributive mechanism; possible increase of fines for employer sanctions; and a national ID card. There probably will be no reduction in legal immigrants.

It is also likely that they will extend the period before which LPRs are eligible for benefits. And, there will be a massive loss of benefits to undocumented aliens.

One possibility of bipartisan agreement is a broad package of labor law enforcement with an emphasis on farmworkers.

RECENT RESEARCH FINDINGS

Research during the last years has established the following:

- 1) U.S. agriculture, more than any other industry, and more than at any other time this century, depends on foreign-born workers to meet its highly seasonal labor demand. The result is a transnational labor force with an increasing proportion of unauthorized workers. According to the NAWS, 88% of all first year farmworkers are foreign-born.
- 2) There is an increasing number of indigenous workers employed in agriculture. This is the most recent, in a long history, of potential sources of labor that can be utilized in U.S. agriculture.
- 3) Migrancy appears to be increasing. Currently, migrants comprise slightly less than one-half of the work force. Depending on the time of year, between 60 and 70% migrate from outside the United States.
- 4) Rural labor markets throughout the United States are becoming Latinized. In some areas the growth of farmworker communities has led to increased labor market segmentation and a reduced tax base in these communities.
- 5) Despite employer sanctions, illegal immigration for employment in agriculture has continued and is not likely to be significantly curtailed. Increasingly sophisticated fraudulent documents have become available.
- 6) There is an agricultural labor surplus. The labor market's structure itself allows and even encourages under-employment.
- 7) Earnings for farmworkers are low and have remained stagnant for the last several years. Very few employers offer worker benefits to farmworkers.
- 8) The recruitment system and the continuous use of new foreign-born workers has fostered a proliferation of labor intermediaries [farm labor contractors (FLCs)] with the Employment Service being almost completely superfluous.

9) Workers under FLCs have lower earnings and suffer poorer working conditions than those hired directly by farm employers.

10) The use of FLCs provides a range of perceived advantages to growers, including simplified recruitment and a lack of liability for labor and immigration violations.

11) In the long run, there will continue to be an increasing demand for agricultural labor. Early indications are that NAFTA and GATT will accelerate this trend.

12) Agricultural employers generally feel that the government has a responsibility to provide them with adequate, cheap labor. Past immigration programs (from bracero to SAW) have affirmed this while the continued existence of the H-2A program provides the "necessary" safety valve.

13) The Department of Labor lacks the resources to adequately police fixed-situs agricultural employers or elusive labor contractors. This problem is compounded by other limitations such as access to workers, disposition of workers to file complaints, or their availability to pursue cases and testify given their illegal immigration status.

14) Other factors adversely affecting farworkers are the disparate protections afforded under labor laws, such as Unemployment Insurance, Worker Compensation and exemptions under the FLSA.

15) There is no effective coordination among the federal programs serving the farmworker population.

16) The "official" picture of the U.S. agricultural work force has recently changed, largely as a result of a spate of post-IRCA research and the ongoing National Agricultural Workers Survey (NAWS). Ongoing research is critical for obtaining accurate information, particularly during the ongoing, highly-charged immigration debate.

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Canadian-Mexican Bracero Program

Summary of: Rigoberto Caloca-Rivas, "Programa bracero entre México y Canada," Franciscan School of Theology, Berkeley, 1994

The Canadian program is strictly for agricultural workers, though there have been proposals to expand it to construction, garments, and tourism industries. It was started in 1974 by southern Ontario growers who were losing workers at the end of the season, probably as the amount of work declined.

It is a formal intergovernmental program, and the government of Canada requests agricultural labor from Mexico and a variety of Caribbean countries for specified periods of time. Mexican workers now constitute about 35 percent of total program workers, and Mexico's share is growing. Jamaica is the other principal source of workers with about one-third. In 1993 there were 4,700 Mexican workers used on 635 farms, and the program has been importing 10-15,000 workers in recent years. In 1992, 82 percent were sent to Ontario, with the rest divided among Quebec, British Columbia, and Manitoba. Before 1986, the program included less than 1,000 workers annually, but the Canadian government liberalized the importation of foreign workers in that year and the numbers have been growing since.

In 1987, at the instigation of the Canadian government, the Ontario growers formed a non-profit organization, Foreign Agricultural Resource Management Services (FARMS), to manage the program. Not all employers have to be members or use FARMS, but the organization deals with all bureaucracy and travel arrangements, so it is convenient. FARMS collected a fee of Can\$42.80 from the growers for every worker delivered to them. The board of directors of FARMS includes representatives from various farm organizations and commodity groups, from landscape, greenhouse, and food processing industries, from the Ontario Ministry of Food and Agriculture, and from the federal government. There are apparently no community or worker advocates represented.

The Government of Mexico is obligated to recruit "bona fide agricultural workers," to administer a medical exam, and to provide a passport and visa. The actual Mexican government qualifications for workers include:

1. Experience in various crops
2. 25-45 years of age
3. Minimum of three dependents in Mexico
4. Does not own farm land in Mexico
5. Passes a psychological exam
6. Passes a medical exam

In 1993, 24 percent of the workers were from the state of Tlaxcala, 21 percent from Guanajuato, 16 percent from Estado de México, 9 percent from both Morelos and Hidalgo, 6 percent from Puebla, 5 percent from both Oaxaca and Michoacán, 3 percent from the Distrito Federal, and small numbers from 5 other states. Since the program is administered from the capital, it is not surprising that there is a bias toward nearby population centers.

The Canadian growers are obligated to provide:

1. Weekly paychecks
2. Free housing
3. Insurance
4. Transport and visa from country of origin

However, the cost of transport and the visa can be recovered from the worker's wages at a certain rate per week, up to Can\$400 for the airfare and Can\$100 for the visa.

The worker and grower have a seven-day trial period, after which the worker must stay with the contracting employer. Since 1993, workers and employers must pay all taxes, unemployment insurance, pension, and health benefits required by law, and workers are nominally given the same rights as Canadians. Workers can be requested by name, and repeat at the same farm from year to year, however, the Mexican government has only complied with about 50 percent of such requests. The Mexican government apparently believes the workers should be paid more if they are learning job-specific skills, but the growers do not. FARMS requires growers who receive requested workers to cover the entire cost of transport.

Contract periods can be extended by employer request, but the Mexican consulates have resisted such requests because they apparently lack the personnel to cope with the required paper work.

Sharing workers among farms has also been resisted by the consulates, though it is obviously more rational for employers, who can share the costs of transport and not keep workers who are not needed.

Workers complaints include being poorly treated, not having enough work, not receiving medical attention when sick, poor housing conditions, and underpayment of wages. The Mexican consulates are charged with investigating such complaints and then contacting the Canadian government. This is a cumbersome process and the consulates lack personnel. Growers complain of alcoholism and fighting among workers, partly attributed to the isolated existence of the workers in Canada, where there are few settled Mexican communities.

Approximately 50 percent of the workers repeat in the program from Mexico. The program recently included women to work in packing houses, but there are fewer than 100 participating. The desertion rate in Canada is 7 percent and 5 percent of the workers return to Mexico for various reasons before their contract is completed.