

COMMITTEE PRINT

THE STATUS OF FEDERAL LAWS AFFECTING
OUR NATION'S FARMWORKERS

A STAFF REPORT

PRESENTED BY

THE CHAIRMAN

OF THE

SELECT COMMITTEE ON AGING
HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

FIRST SESSION



NOVEMBER 1991

Comm. Pub. No. 102-829

Printed for the use of the Select Committee on Aging

This document has been printed for informational purposes only. It does not represent either findings or recommendations adopted by this Committee.

U.S. GOVERNMENT PRINTING OFFICE

47-689 †

WASHINGTON : 1991

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-036922-3

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FOREWORD

I am pleased to issue this summary report which highlights the Select Committee on Aging's exploration of the shameful conditions faced by migrant and seasonal farmworkers of all ages. I hope this report will assist Congress and the public in developing adequate legislation to address the needs of this essential component of our workforce. These valuable laborers help ensure our Nation has an adequate food supply, but they are denied the basic protections and resources available to other working Americans.

I wish to extend my appreciation to the staff of my committee who helped to contribute to this report. I especially would like to thank Richard Veloz, Majority Staff Director; Paul Ceja, General Counsel; Mary Hanlon, and Gladys Rodriguez, Professional Staff; and Kathy Desmond and Stephanie Jones, Staff Assistants. This report has been printed for informational purposes only and does not represent either findings or recommendations adopted by this committee.

EDWARD R. ROYBAL,
Chairman.

MIGRANT AND SEASONAL FARMWORKERS

BACKGROUND AND OVERVIEW

The substandard working and living conditions of the migrant and seasonal farmworkers were first brought to the Nation's attention 30 years ago in an Edward R. Murrow documentary entitled "Harvest of Shame." The Select Committee on Aging began looking at the needs of the elderly farmworker in 1987 which culminated in a 1990 hearing entitled, "After 30 Years, America's Continuing Harvest of Shame." We were alarmed by the discovery that the life expectancy of farmworkers is estimated to be considerably lower than the Nation's, and further investigation was deemed necessary. As a result, the Committee determined that the needs of elderly farmworkers could not be made distinct from issues affecting the entire farmworker family, because many problems faced by the older farmworker were linked to the living and working conditions of the entire lifespan of the farmworker.

Since the first hearing and the resulting preliminary investigation, the Aging Committee has focused on the lack of data corroborating the undeniably deplorable conditions in which the farmworkers live and work. As a result, the Committee called on the General Accounting Office to conduct a study to determine how Federal laws and programs affect farmworkers. The GAO findings were presented at a July 17, 1991 hearing, "Farmworkers High Mortality: Government Neglect?" and clearly indicated the need for further governmental attention in order to meet the needs of the farmworker population.

WHO ARE OUR NATION'S FARMWORKERS?

American farmworkers, including both the seasonal and migrant worker, comprise a unique and complicated segment of the Nation's population. Most farmworkers are young married foreign-born males according to the Department of Labor's 1990 *National Agricultural Workers Survey (NAWS)*, and over two-thirds are of Hispanic origin. Because of their tendency to move with the fruit and vegetable seasons from one of the four major homebase States—Florida, Puerto Rico, Texas, and California—the process of determining an accurate number of farmworkers in the country has proven more difficult than classifying their demographics (Sosnick, S., *Hired Hands*, 1978). The three main routes taken by migrant farmworkers are the Atlantic Coast Stream from the Caribbean and southern Florida up to New England, the Midwest Stream from northeastern Mexico and southern Texas up to Michigan, and the Pacific Coast Stream from northwestern Mexico and Southern California up to Washington State.

According to the U.S. Department of Agriculture (USDA) in its report entitled *The Agricultural Work Force of 1987*, a hired farm-

worker is any person 14 years of age or older who was paid for farm work at any time during the year; based upon this definition, their count in 1987 was 2,463,000. This figure is questionable because it included neither retired farmworkers nor the estimated 1.3 million Special Agricultural Workers (SAWs) who applied for legalization under the Immigration Reform and Control Act of 1986 (IRCA) (*Ancianos Network News*, National Council of La Raza, Volume 1, Number 1). In addition, it is understood that migrant and undocumented workers are usually significantly undercounted, and a special effort for accuracy is needed with regards to a farmworker count.

The value of our Nation's migrant and seasonal farmworkers to the agricultural industry is immense. Their long hours of work help to maintain low food prices for consumers by providing farmers with a flexible supply of labor. Rather than receiving substantial reward for their efforts, however, the farmworkers have had to endure many difficult circumstances such as low wages, harsh working conditions, substandard housing, and other abuses (*Partnerships: Helping Migrant Farmworkers Help Themselves*, Association of Farmworker Opportunity Programs, on JTPA, 1988).

The average farmworker is employed about 25 weeks per year with few earning more than \$6,000 a year. Their work is physically demanding, lacking job security, and providing little opportunity for promotion (Sosnick, S., *Hired Hands*, 1978). And because many cannot vote due to their undocumented status, they are disenfranchised and disempowered (1990 Select Committee on Aging Hearing Report: *After 30 Years, America's Continuing Harvest of Shame*). Exacerbating the lack of governmental representation for their concerns, farmworkers are without an audible voice in either the Nation's agricultural fields or the Nation's capital.

WHAT FEDERAL LAWS ARE APPLICABLE TO FARMWORKERS?

The general United States work force is covered by 42 labor standards which, for the committee report's purposes, can be divided into 10 main categories: 1) child labor, 2) civil rights, 3) health and safety, 4) housing, 5) insurance and compensation, 6) labor contractors and worker recruitment, 7) labor relations and collective bargaining, 8) pesticides and agricultural chemicals, 9) transportation, and 10) wages and hours. In several categories, there is a significant gap in Federal oversight with regard to farm laborers, namely in the form of farmworker exemptions. In other categories, laws applicable to farmworkers exist, but numerous studies have shown that little effort has been exerted to ensure their execution.

Child Labor—The only Federal child labor law which is applicable to farmworkers is the Fair Labor Standards Act of 1938 which covers age, hour, and related standards. The Act, which prohibits "oppressive child labor," offers limited protections for farmworkers. Exceptions to the Act allow children under the age of 14 to work in the fields as long as they are with parents who are also employed at the same workplace. Also, while those children under 12 years of age would not normally be able to work, farmers can obtain a special child labor waiver from the U.S. Department of Labor. Farmers can obtain a waiver in circumstances in which not having 10 or

11 year-old children work a short harvest would be detrimental to the industry or when the industry has traditionally used younger workers without affecting the employment of others. In addition, data on the Department of Labor's enforcement of child labor regulations in all industries indicate that enforcement has been hampered by limited resources and low fines (September 1991 GAO Study, "Farmworkers Face Gaps in Protection and Barriers to Benefits").

Civil Rights—All four Federal civil rights laws—Civil Rights Act of 1964, Equal Pay Act of 1963, Age Discrimination in Employment Act of 1967, and the employment discrimination provisions of the Immigration and Nationality Act—are fully applicable to farmworkers. A loophole exists, however, as farm operators are subject to the Age Discrimination in Employment Act of 1967 only if they employ at least 20 workers on each workday in 20 or more weeks a year. This exception affects countless farmworkers who work on smaller farms. And because farm work is a physically demanding job, the agricultural industry may try to justify age discrimination by arguing that younger workers are more physically fit to do the job.

Health and Safety—The Occupational Safety and Health Act of 1970 (OSHA) is at least in principle applicable to farmworkers. OSHA covers workplace safety but only includes provisions regarding safety measures on tractors and other agricultural equipment. OSHA also covers field sanitation and requires certain agricultural employers to provide farmworkers with clean drinking water, toilet facilities, and handwashing facilities. However, due to a special provision in the annual appropriations bill funding the U.S. Department of Labor, OSHA is prohibited from enforcing the Act against any farm employer who employs fewer than 11 workers in a given year unless the employer also operates a "temporary labor camp." Thus, according to the July 20, 1988, *Occupational Safety and Health Reporter*, the more than one million persons who are employed on small farms are excluded from the protection of OSHA.

Housing—Two Federal laws, the Wagner-Peyser Act and the Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA), regulate farm labor housing standards. The Wagner-Peyser Act, as applicable to farmworkers, requires farm operators to meet minimum housing quality requirements before they are able to use the Federal-State employment service system to recruit farm laborers from distant areas. MSAWPA requires farm operators to have their housing certified in order for it to be occupied by farmworkers. Farm operators merely have to request an inspection of farmworker housing at least 45 days before the scheduled occupancy. Nevertheless, they are permitted to use such housing if no inspection is made within that time period. (*Federal and State Employment Standards and U.S. Farm Labor*, Brian Craddock, 1988). Much of the deficient, crowded, and unsanitary housing provided to the farmworkers by growers can be attributed to this loophole in the law. Also, GAO reports that enforcement of Federal regulations for farmworker housing has been limited, in part due to the level of DOL resources available for enforcement.

Labor Contractors and Worker Recruitment—In this category, MSAWPA is the applicable law which provides for the registration of farm labor contractors and imposes restrictions and requirements on their activities. It does not apply, however, to contractors who get workers for a family business, settled small-scale contractors, or any small farm business which uses less than 500 worker-days of agricultural labor in any calendar quarter. Also, there are no Federal laws regulating private employment agency licensing and recruitment (*Federal and State Employment Standards and U.S. Farm Labor*, Brian Craddock, 1988).

Labor Relations and Collective Bargaining—The only Federal law which establishes rules for labor activities among employers, workers, and labor organizations is the National Labor Relations Act, and it specifically excludes farmworkers.

Pesticides and Agricultural Chemicals—The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) covers field worker safety standards in relation to migrant and seasonal farmworkers. This requires the certification of private and commercial applicators, but private applicators are not required to keep records of pesticide usage. The law also sets guidelines for general standards, field re-entry times after spraying, and employee warnings. The Federal Aviation Act of 1958 is fully applicable to farmworkers regarding aerial application standards. OSHA covers toxic substances disclosure and anhydrous ammonia safety by requiring hazardous chemical lists, labeling, material safety data sheets, employee information, employee training, and ammonia transportation and containment. However, OSHA exempts small farms from its enforcement (*Federal and State Employment Standards and U.S. Farm Labor*, Brian Craddock, 1988).

From the evidence provided, it is clear that Federal laws and regulations provide less protection to workers exposed to pesticides than to workers exposed to other toxic and hazardous substances. The EPA estimates that each year agricultural employees suffer 20,000 to 300,000 acute illnesses and injuries from exposure to pesticides (Joseph Delfico, General Accounting Office testimony from July 17, 1991 hearing *Farmworkers' High Mortality: Government Neglect?*).

Transportation—Federal transportation laws and MSAWPA cover migrant worker transportation safety. These laws cover driver qualifications, driving regulations, vehicle safety, and regulations for specific types of cars. There is no Federal law covering general employee transportation safety (*Federal and State Employment Standards and U.S. Farm Labor*, Brian Craddock, 1988).

Wages and Hours—The Fair Labor Standards Act of 1938 ensures minimum wage for farmworkers, but the following farmworkers are specifically excluded: 1) workers on farms that employ less than 500 worker-days of agricultural labor during a calendar quarter, 2) local piece-rate paid hand-harvesters who work for less than 13 weeks each year, and 3) piece-rate paid workers under 17 years of age. Farmers may also include in their minimum wage the costs of providing workers with food, lodging, or other facilities. Regarding the Act's coverage of overtime, farmworkers are specifically excluded. The MSAWPA covers farmworkers regarding wage payment and collection by setting up guidelines for fair and prompt

payment. Finally, the Internal Revenue Code of 1954 partially covers farmworkers with regard to income tax withholding. As of January 1, 1990, any farm employer who is required to withhold and pay FICA on behalf of an employee must also withhold Federal income tax. There are no Federal laws establishing Agricultural Liens (*Federal and State Employment Standards and U.S. Farm Labor, Brian Craddock, 1988*).

CONCLUSION

The severe problems facing the Nation's farmworkers and the lack of Federal oversight of these deplorable conditions have become central issues of investigation for the Select Committee on Aging. No segment of the population in the United States should have an average lifespan significantly lower than the national average which was estimated at 74.9 in 1988 and is projected to rise to 77.0 years by the year 2000. No one should be forced to work past the average retirement age of 65 years to compensate for Social Security taxes that were not properly deducted. No group of children should be exposed to poisonous pesticides without warning. No children in the United States should be 50% behind the average education level by the first grade. All Americans should be entitled to drink water and to use the toilet facilities during the workday. All Americans are entitled to a decent place to live. Unfortunately, however, the American farmworker is rarely granted these rights.

Disproportionately exposed to labor, health, and housing abuses, American farmworkers continue to rise at dawn and help to put food on our table, yet they continue to suffer undue hardships. The Select Committee on Aging pledges to apply its investigative and oversight authority to bring about solutions in the working conditions facing our farmworker population so that they too may enjoy the fruits of their labors as equal partners with all Americans as they move into their retirement years.

