

UNITED STATES COMMISSION ON CIVIL RIGHTS

STAFF REPORT

FARM WORKERS

INTRODUCTION

Each year, Texas is the origin of the largest of the three streams of migratory farm workers who travel northward to harvest the Nation's crops, mostly fruits, vegetables, sugar beets and cotton. (The other two streams originate in Florida and Southern California.) The main stream flows north and west from Texas, covering most of the North Central, Mountain and Pacific Coast States before the end of the harvest season in December. 1/

Of the three million persons who did farm work at any time during 1967, 466,000 or 15 percent migrated. Mexican Americans provide a proportionately large part of the farm labor force and an even larger part of the migrant force. In 1960 the 261,000 Spanish speaking persons who did farm work represented 7% of the farm labor force; the 103,000 who did migratory farm work accounted for 25% of the migrant force. 20% of Spanish speaking wage earners did some farm work that year as compared to 4.5% for the rest of the Nation. 40% of the Spanish speaking labor force were migrants as opposed to 9% for other farm workers. 2/

The annual migration of over one million persons (including workers and their families) reflects the fact that farm work is one of the most poorly compensated occupations in this country. As the National Advisory Committee on Farm Labor declared in 1964, "... The American economy embraces many trades that are just as hot, just as dirty, just as backbreaking as farm labor... But no work is so ill-rewarded. 3/ The simple fact is that migratory workers travel because of extreme economic necessity; no other category of workers need move so often to obtain work. 4/

The particularly deplorable living and working conditions in South Texas account for that area's being the fountainhead of the migratory stream. A report by the Social Action Department of the

1/ 1968 Report of the Subcomm. on Migratory Labor, The Migratory Farm Labor Problem in the United States, S. Doc. No. 1006, 90th Cong., 2d Sess. 2 (1968).

2/ Id. at 4.

3/ National Advisory Comm. on Farm Labor, Agribusiness and Its Workers 4 (1964).

4/ The mobility rate for male farm workers in 1966 was 30.2 as compared with 21.5 for white collar workers, 20.8 for manual workers and 18.8 for service workers. See n. 1 at 5.

Texas Catholic Conference presented to the Senate Subcommittee of Migratory Labor stated:

Due to the lack of sufficient economic development and the declining state of American agriculture this condition of poverty is most acutely felt in the fields of the Rio Grande Valley. The overwhelming majority of hired farm workers in this state are Mexican-American. Because of the lack of opportunities in their area, 88,700 Texas farm workers (not including their families) are forced to migrate from their homes every year in search of employment. Unfortunately, because of the vast supply of "green carders", that is, people who have been granted immigrant status but who live in Mexico and work in the United States, the domestic workers are unable to compete with the depressed wages that result from the availability of cheap labor to the growers. This accounts for the fact that almost one-half of the Texas migrant workers come from the four counties of the Lower Rio Grande Valley. 5/

Whether migrants or non-migrants, farm workers rank lowest in annual income of all the Nation's occupational groups. 6/ In all sectors of the nonfarm economy and in every State the average hourly earnings of production workers are above farm wage rates. 7/ In 1967 employees in contract construction made almost four times as much per week as farm workers. 8/ The average hourly earnings in agriculture in 1967 were \$1.33; in laundries and dry cleaning \$1.73; in all manufacturing,

5/ Hearings on S. 88, 195, 197, 198 Before the Subcomm. on Migratory Labor of the Senate Comm. on Labor and Pub. Welfare, 90th Cong. 1st Sess. pt. 1, at 61 (1967).

6/ See n. 1 at 27.

7/ Id.

8/ Id.

\$2.83; in contract construction, \$4.09. 9/ The 1967 average farm rates in Texas were \$1.12 per hour as compared with a high of \$1.62 in California and a low of \$.89 in South Carolina. 10/ The average annual income of migrants employed exclusively at farm work was about \$1000 in 1964. 11/ And although many farm workers do receive such benefits as housing, meals and transportation, the value of these benefits does not compare with fringe benefits, such as paid vacations and medical insurance, commonly received by other occupational classes. As will be discussed later, housing provided farm workers is commonly substandard 12/ and transportation commonly less than safe.

Low wages are accompanied by steady unemployment and underemployment. The overall unemployment rate of agricultural workers was 6.5 percent in 1966, compared with an unemployment rate of 3.4 percent for workers in other industries. 13/ Farm workers have the shortest workyear of almost any occupation group. During 1965, only 31 percent of the wage and salaried workers in agriculture worked a full year (50 to 52 weeks) compared to 62 percent of the wage and salaried workers in nonagricultural areas. 14/ The same year, in California, the average farm worker worked 134 days, both in agricultural and non-agricultural employment. 15/

It is not surprising, therefore, that a substantial proportion of hired farm workers is employed outside of agriculture during part of the year. During 1965, about half the migrants did nonfarm work. Eventually many people abandon farm work altogether and migrate to cities which are ill prepared to provide adequate economic opportunities for this flow of unskilled workers. As Secretary of Labor Wirtz has said: "The urban poor who are today overwhelming our cities are the rural poor of yesterday... And the rural poor of today...are the urban poor of tomorrow". 16/

9/ Id.

10/ Id.

11/ Id. at 29.

12/ See p. 11

13/ See n. 1 at 47. However, with respect to seasonal workers, the unemployment rate during the off-season often runs as high as 50%. Interview with Cruz Reynoso, Deputy Director, California Rural Legal Assistance, in San Antonio, Texas, Dec. 3, 1968.

14/ Id. at 28.

15/ Brunwasser, The Rural Poor, in Rural Poverty: Presentation of Discussion Material by the Issues Development Comm. of the Calif. Demo. Club (1965).

16/ See n. 5 at 959.

The unemployment and underemployment of farm workers are attributable in part to agriculture's irregular and seasonal labor requirements - during harvest season many hands are required for a short period of time. Furthermore the farm worker is often beset by competition from Mexican "commuters" ^{17/} and illegal entrants, as well as the continuing decrease in job opportunities brought on by mechanization and the greater use of chemicals to control weed growth.

The farm worker's low wages and erratic employment are compounded by his exclusion from normal worker's benefits. Farm workers are either excluded from or inadequately covered by federal minimum wage standards, unemployment insurance, social security benefits, federal child labor protection and the benefits of the National Labor Relations Act. State legislation for farm workers concerning minimum wages, workmen's compensation, unemployment insurance and migrant housing standards ranges from adequate in some states (like California) to inadequate in others (like Texas). (See Table I) Even where there is legislation, it generally is ineffective.

Exclusion of farm workers from meaningful social legislation is due to well organized opposition from farm employers. This opposition is based on the argument that "farming is different" - different from the majority of American businesses which are subject to laws protecting workers. The farm traditionally has been portrayed to Congress as a family-run affair, at the mercy of the elements, which could be burned out one day and frozen out the next and which would be destroyed if burdened by social legislation aimed at industrial employers.

In fact, a great transformation has occurred in agriculture. Technological developments, labor saving machinery, refrigeration, improved fertilizers, crop specialization and other advances have turned farming into an industry, resulting in the displacement of some two million farm operators and their families and an 85% increase in production within a decade. ^{18/} A farm worker in 1910 produced

^{17/} Commuters are Mexican immigrants who retain actual residence in Mexico and commute to their employment on this side of the border. They offer unfair competition to the American worker since they live in a lower cost economy and are thus able to work for lower wages.

^{18/} See n. 3 at 13.

Table I
STATE LAWS AND REGULATIONS COVERING FARM WORKERS AS OF DECEMBER 1, 1967*

State	Workmen's Compensation	State Minimum Wage	Social Insurance (Unemployment and disability insurance)	Housing
California	Compulsory	\$1.65/hr. for women and \$1.35 for all minors between 16 and 18	Disability insurance for most farm workers	Mandatory Standards
New Mexico	Voluntary at discretion of employer	\$1.00/hr to increase to \$1.30 on 2/1/69	None	Mandatory Standards
Texas	None	None	None	None
Colorado	Voluntary at discretion of employer	None	None	Mandatory Standards
Arizona	Compulsory for some workers	None	None	Mandatory Standards
Michigan	Compulsory for most workers	\$1.25/hr. for some workers	None	Mandatory Standards
New York	Compulsory	None	None	Mandatory Standards
New Jersey	Compulsory	\$1.25/hr until 1/1/69; \$1.50/hr. thereafter for persons over 18	None	Mandatory Standards
Hawaii	Compulsory	\$1.25/hr. for men and women	Agricultural workers covered	Mandatory Standards
Oregon	Compulsory	State statute probably applies to farm workers	None	Mandatory Standards

enough food for 7 people. Today, despite an increase in per capita consumption, he produces enough for 24 people. 19/

In 1960, less than 9 percent of all farmers owned nearly 40 percent of all farm land, accounted for nearly 50 percent of farm sales and paid more than two-thirds of the total farm wage bill. 20/ It is these large, modern farms, run as profitmaking businesses, that employ the vast majority of farmworkers. "As of 1964, 89 percent of all hired farm workers were employed by the large commercial sized agri-business interests." 21/ This description of the typical modern farmer appeared in the Los Angeles Times:

"Herb Lee, the personable young Vice President of Brock Ranches, can look out the big window of his modern new office and, without moving, watch the asparagus that helps pay his salary go from ground to packing crate. Set in the midst of cropland a few miles southwest of El Centro, the seat of California's Imperial County, the quarter-million dollar packing shed of which Lee's office is a part exemplifies agribusiness at its best." 22/

One representative of modern agribusiness is the Kern County Land Company, which owns 2,800 square miles of land, an area twice the size of the State of Rhode Island. KCLC owns land in 14 states.

19/ Id. "Agriculture in California is big business, extending over a third of the state's land, requiring an investment of some 727,000,000 man hours, and producing a gross income of more than three billion dollars. Much of this agri-business is run by large corporations which operate like industrial factories, with elaborate machinery, mass production techniques, and large numbers of unskilled or semi-skilled employees. The farmworker is one of these employees, the man or woman or child who works for an hourly piece-work wage on land which he himself does not own." Lorenz, Jr., Case Study of the California Farmworkers, 15 Kan. L. Rev. 409 (1967).

20/ See n. 3 at 10.

21/ Brief for Plaintiff at 4, *Romero v. Wirtz*, Civil No. 502134 (N.D. Cal., 1968).

22/ Los Angeles Times (1961).

At the very least, the company owns nearly 350,000 acres in the Central Valley of California.^{23/}

^{23/} Kerry Napuk, research director of the United Packinghouse, Food and Allied Workers, AFL-CIO, gave the following testimony before the Senate Migration Labor Subcommittee:

"Agribusiness influence rests on public acceptance of a myth developed and propagated by powerful interests in the farming community. This myth is that somehow farming and all agriculture is different from other forms of commerce.

Yet, the facts do not support this conclusion. Farming of the 1930's does not resemble farming of the 1960's. The public was duped into believing that farming is a rough and troubled business staffed by independent yeomen farmers with the help of their "hired man." In truth, however, farming is a big business, grossing more than \$3.8 billion in California alone, controlled by large industrial enterprises who's success depends on their very size.

This is the real structure of agriculture.

First, between 1940 and 1960 the total number of farms fell from 6.4 to 3.5 million - a decline of more than 45 percent. While the absolute number of farms were declining, the size of farms were increasing. With a 5-percent rise in farmland, the average size of farms increased from 175 acres in 1940 to 303 acres in 1959 - an increase of more than 73 percent. Farms with more than 500 acres (9 percent of all farms) accounted for 61 percent of land in farms during 1959. This situation led one student of agriculture to remark that "it would be hard to drive farmers out of farming faster than present economic conditions have been doing for years."

Second, although the 19,979 large-scale farms which marketed \$100,000 or more farm products represented only four-fifths of 1 percent of the 2.4 million commercial farms, they accounted for one-sixth of all commercial farm products sold during 1959, and employed more than 20 percent of all hired farmworkers. Moreover, 32 percent of all farm products sold in that year were marketed

(footnote 23/ continued

by only 3 percent of all farms classified as class I commercial enterprises with sales of \$40,000 or more. These farms employed 35 percent of all hired farm labor.

Third, and most important, roughly half the farms in the Nation employ no farmworkers, but rather rely on family labor. Another 30 percent of the farms spend less than \$500 a year on hired labor. Only 6 percent of all farms have a wage bill of over \$2,500 a year. In other words, the real impact of collective bargaining would fall on the top 12.9 percent of American corporate farms which paid 80.7 percent of the total farm wage bill in 1959.

Fourth, according to one source:

Concentration of landownership has grown along with its rising cost until today the Nation's 100,000 biggest farms control about one-fourth of all farmland resources. For many years now, about one-third of all farmland has been bought by purchasers who are not farmers.

Gentlemen, we are talking about the cream of American agriculture. We are discussing enterprises that reap millions of dollars in profits from the land. We are examining business enterprises representing billions of dollars in invested capital, managed by some of the best equipped technicians in our society. We are not talking about the small family farm with its one or two hired hands.

When this is realized, the supposed distinctions between industry and agriculture diminish. Enterprises in both sectors are characterized by their similarities, not their differences. Both are huge corporate organizations, both employ vast numbers of workers and both are immensely profitable. See n. 5 at 213.

Most of the farmworker's problems are indistinguishable from the problems affecting the poor generally. Some of these problems, however, are related to his particular employment status and cultural background. He is likely to be unskilled and uneducated and therefore, incapable of qualifying for higher paying jobs. Often he is a Mexican or Mexican-American, "separated from the dominant, Anglo-Saxon culture of America, the inheritor of a distinctive history, divergent values, and a profound sense both of his inferiority and of his own special worth".^{24/} He lacks effective economic organization and political participation and the conditions of abject poverty, poor education, poor health, squalid working and living conditions permeate every facet of his existence. "Understandably . . . (he) is not easily persuaded that his wages, hours, and working conditions can be readily improved. Redemption at the end of a lifetime may appear possible, but progress which is measured at an annual rate may be quite unthinkable to him".^{25/} Some of the basic problems of the farmworker will be discussed in the remainder of this paper.

WAGES

Despite recent increases, farm wages are still the lowest of all occupational groups. Moreover, they are becoming relatively worse. "(T)he gap between agricultural and nonagricultural earnings has continually widened since World War II. The relative worsening of the farm-nonfarm wage-rate situation exists when adjustments are made for cost-of-living increases, and holds for all major sections of the country."^{26/} The farm worker's situation is compounded by the fact that his work year is shorter than that of almost any other occupational class and his family and dependents more numerous.

The reason for the systematic depression of farm labor wage rates was summarized by Senator Yarborough of Texas during hearings of the Senate Subcommittee on Migratory Labor:

^{24/} See n. 15 at 421.

^{25/} Id. at 422.

^{26/} See n. 1 at 27.

The farmer has less income now. I think he has more gross income, but he has less net profit now than he has had in the past. The costs are constantly going up, so the owners of the farms have responded by fighting to hold down all the costs, he has less machinery because machinery has gone up fastest of all, because the workers who produce that machinery . . . are organized, so his machinery has gone up, his chemical fertilizers have gone up, his insecticides and pesticides to protect the crops have gone up.

So the only thing he is strong enough to protect himself on is wages, because the migrant worker is economically weak -- weaker than the farmer. 27/

In 1966 the Fair Labor Standards Act was amended to cover for the first time agricultural workers. By and large the coverage is ineffective. The Act applies only to workers employed by employers using more than 500 man-days of farm labor in any calendar quarter of the preceding calendar year. Its provisions thus apply to only 35,000 farms (about 1 percent of the total farms) and 400,000 workers. The wage is presently set at \$1.15 per hour and will increase to an inadequate \$1.30 on February 1, 1969. Certain workers who are paid on the piece rate are exempted and all farm workers are excluded from the Act's overtime provisions. 28/ The Act has been less than enthusiastically enforced. For example, in Hidalgo County, Texas, where about one fourth of the labor force is employed in agriculture, the

27/ See n. 5 at 113.

28/ At present seven states, Hawaii, California, Massachusetts, Michigan, New Jersey, New Mexico and Wisconsin, have minimum wage provisions affecting agricultural workers. California recently revised its farm wage order setting a \$1.65 minimum for women and a \$1.35 minimum for 16 and 17 year olds. U.S. Dept. of Labor, Bureau of Labor Standards, Status of Agricultural Workers Under State and Federal Labor Laws, Addendum (Dec. 1965, rev'd Dec. 1, 1967).

Sugar beet workers are treated under special legislation. Under the Sugar Act of 1948, 7 U.S.C. ^{ss} 1100-1161 (1964), wages for these

wage and hour office spends only about five percent of its time on agricultural enforcement. ^{29/} The officials realize that infractions are widespread, but point out that the intermittent work pattern of employees makes violations hard to pin down. Furthermore the amount collected by a suit against any individual employer might be no more than \$15 or \$20. ^{30/} Few farm workers are aware of the provisions of minimum wage legislation and of those that are aware many are afraid to complain.

The Migratory Labor Subcommittee 1968 Report urgently recommends expansion of minimum wage legislation -- both in terms of rate set

(footnote 28/ continued)

laborers are determined by the Secretary of Agriculture on the basis of annual regional hearings. 7 U.S.C. s 1131 (c)(1) (1964); 7 C.F.R. § 802 (1966); 32 Fed. Reg. 5458 (1967). (One commentator has stated that these hearings are usually dominated by sugar processors and producers and lack adequate representation of the workers' interests. Chase, The Migrant Farm Worker in Colorado - The Life and the Law, 40 Colorado L. Rev. 45, 64 (1967)).

As of 1967 producers of sugar beets are given the option of paying \$1.40 per hour or paying on a piece-work basis. 32 Fed. Reg. 5458 (1967). (Compliance with these rates is ensured by requiring evidence thereof from the employer as a prerequisite to receiving annual sugar payments. 7 U.S.C. §1131 (1964); 32 Fed. Reg. 5459 (1967).) "It should be noted, however, that at \$1.40 per hour, working 50 weeks for eight hours a day which is extremely unlikely) a worker would have an annual income of \$2,800, hardly a living wage". See Chase, infra, at p. 65, n. 40.

On October 26-28, 1967, the Inter-Agency Committee on Mexican American Affairs held cabinet hearings in El Paso, Texas. Testimony was heard and a discussion group was held concerning the problems of farm workers in sugar beets. The discussion group responded to the presentation by recommending to Secretary Freeman that the minimum hourly wage for workers in sugar beets be raised to \$2.00 per hour.

^{29/} Interview with Mr. Michael Ward, Wage and Hour Investigator, in McAllen, Texas, Sept. 1968.

^{30/} Id.

and number of workers included. More adequate coverage of farm workers would not, as farm interest groups have alleged, put any undue burden on the consumer. The Report demonstrated that wage increases for farm labor would have little, if any, impact on the consumer in terms of his spending power in the supermarket:

It has been alleged that the wages needed to attract American workers to our fields would force the consumer to pay higher prices for his foods. The fact of the matter is that the cost of field labor is only a minute part of the retail price paid by the consumer. On a head of lettuce which has a retail price of 21 cents the field labor cost is 1 to 1.3 cents. On a pound of celery retailing at 15½ cents per pound, the cost of field labor is 0.3 to 0.5 cent. On lemons retailing at 24 cents per pound, the field labor costs are 0.6 to 1 cent. On dates retailing at 49 cents per pound, field labor comes to 1 cent per pound. On oranges retailing at 50 to 72 cents per dozen, the field labor costs are 1 to 2 cents. And on grapefruits having a retail price of 8 to 10 cents each, the field labor costs are 0.2 to 0.4 cents. 31/

HOUSING

A vast number of federal programs to improve farm labor housing are administered by the Farmers Home Administration, the Department of Housing and Urban Development, the Economic Development Administration, the Small Business Administration and the United States Department of Agriculture Rural Community Development Service. These programs provide financial assistance for the construction and improvement of farm labor housing. As a general matter they are too complex, involve undue delay, and often apply different standards and regulations. 32/ Most important, they lack centralization and coordination.

31/ See n. 1 at 30.

32/ Id. at 19.

Other laws attempt to force employers to maintain decent housing conditions. Under U.S. Department of Labor regulations 33/ an interstate employer of farm labor may not use state employment services for recruitment unless he furnishes housing that is hygienic and adequate to the climate, reasonably calculated to accommodate the workers sought, and safe and sanitary. If state standards are more stringent than the federal requirements, compliance with them also is mandatory.

Similarly, thirty-two states have mandatory laws or regulations governing housing facilities provided for migratory workers. 34/ These states include all those with heavy migrant demand except for Texas. But all too often the standards established are too weak or inadequately enforced. "State inspection laws are necessary, followed by meaningful enforcement action. One possible approach is prelicensing powers to forbid the occupancy of defective structures". 35/ Along these lines, a recent amendment to Massachusetts's housing regulations requires annual inspection and certification of all housing facilities.

In spite of state and federal legislation decent housing remains an urgent need of the rural poor. "They live in dilapidated, drafty, ramshackle houses that are cold and wet in the winter, leaky and steaming in summer. Running water, inside toilets, and screened windows are the exception rather than the rule". 36/

In making these observations, the 1967 Commission on Rural Poverty Report took particular note of the fact that the housing of Mexican Americans in the Southwest is far below the level of other housing in the area. The Report refers to a study in New Mexico revealing that while 89 percent of the homes had electricity; only 33 percent had running water; only 26 percent had flush toilets, only 13 percent had telephones. A similar study showed that only a third of the rural Mexican American families in Atascosa County, Texas, had indoor plumbing and only a fourth had hot running water.

33/ 20 C.F.R. 602.9(d).

34/ See n. 28 at 4.

35/ See n. 1 at 19.

36/ President's National Advisory Commission on Rural Poverty, The People Left Behind 99 (1967).

Testimony recently given before the Texas Interim Committee Considering Wages, Employment and Economic Problems pointed out that in Starr County, an overwhelmingly Mexican American county, 35 percent of all housing was classified by the local Community Action Program agency as either "deteriorating" or "dilapidated". More than half of the houses had neither a bath nor shower, more than half had no flush toilets, more than a third had no running water, either inside or outside. 37/

Similarly, in California, one of the most progressive states in terms of farm worker legislation, a 1962 study made for the Governor's Advisory Committee on Housing made the following findings based on a study of six representative communities:

Fewer than 20 percent of the farm worker families covered in our study live in dwellings which could be considered adequate by present standards of health, safety and comfort. Sixty-three percent of the dwelling units occupied by general field workers were dilapidated or deteriorated. For 33 percent of the dwelling units occupied by general field workers, the only toilet facilities were pit privies. Thirty percent of the dwellings had no bathing facilities, and 25 percent lacked even so basic a necessity as a kitchen sink with running water. 38/

The housing problem is compounded in the case of migrants who take up temporary residence in a series of living quarters as they

37/ Testimony presented by Rev. Edgar Krueger.

38/ Mr. Thomas Pitts, quoted in Supplement B, Housing Needs of California Farm Workers (1962). This observation was elaborated upon by James Lorenz, Jr., who points out that "(s)eventeen percent (of the California farm workers) rent housing from landlords who are also their employers and who thereby possess magnified power over their lives. In such cases, and in others, the workers may be wary about pressing for redress of their grievances". 15 Kan. L. Rev. 421 (1967).

(No page 14)

travel, often living in hotels, furnished rooms or trailers. The President's Commission on Rural Poverty Report stated:

Migratory farm workers as a group are discriminated against. They are not welcome to take up permanent residence in the communities where they work for a brief period, or season each year. They are tolerated because their labor is necessary to harvest crops. Established residents and service organizations have little contact with them and want less.

Although Federal funds have been available for many years for the construction of housing for migratory workers, farmers and farm associations have been reluctant to build housing for migratory workers with the aid of these funds. Many farmers are unwilling to make the capital investment required for the construction of housing for migratory workers in spite of the liberal terms of financial assistance by the Federal Government. Moreover, they are reluctant to build housing and maintain it in good condition, since they fear it will be vacant for much of the year.

While some improvements have been made in recent years, the general condition is still deplorable. Twenty-eight States have enacted legislation establishing minimum standards for living space, provisions for running water, bath and toilet facilities, cooking and dining space, sewage disposal, and requiring more frequent inspections of labor camps to see that standards are met. In general, however, housing for migratory labor is still intolerable. 39/

39/ See n. 1 at 16.

HEALTH

As an occupational class, the farm worker has one of the highest accident rates in the country. 40/ At the same time his living and working conditions are among the most unsanitary. Labor in fields recently sprayed with toxins 40a/ and use of contaminated water supplies and unsanitary toilet facilities frequently lead to health problems.

When migrants congregate to harvest a crop, disease and epidemics become a major threat;

It is hard to imagine how anyone, even those with rugged health and some understanding of sanitary principles, could stay well in the housing furnished to many migrant families. Sanitary facilities may be primitive or so badly maintained as to be worse than useless. Where facilities do exist, they may contaminate nearby shallow wells. Water supplies are often nonexistent or water may have to be carried several hundred feet from a common tap or well. Families of 8 or 10 people may be crowded into a space adequate for 2 or 3. 41/

In 1967 the average per capita health care expenditure for the one million migrant workers and their families was \$7.20 as compared with \$200 for the population as a whole and \$170.15 for the Indian population. 42/ It is not surprising, therefore, that the health of the farm worker is far below the national norm. To a great extent

40/ Agriculture is the third most hazardous industry. Its fatality rate is exceeded only by that of mining and construction. National Safety Council, Accident Facts 23 (1967).

40a/ In June of this year a Rio Grande Valley newspaper reported the hospitalization of 14 Mexican-American farm hands "felled by deadly parathion sprayed on the cotton field in which they were working". "Three were nearly dead when they arrived at the hospital..." The examining doctor reported that the workers "apparently absorbed through their skin the poison which (the morning dew) contained". "He said symptoms of parathion poisoning are, progressively, tightness of the chest, nausea, vomiting, diarrhea, fluid in the lungs; convulsions, and death". Valley Morning Star, June 15, 1968.

41/ Hearings Before the National Advisory Commission on Rural Poverty, Rural Poverty 106 (Jan. 1967).

42/ See n. 1 at 15.

this is due to financial inability to secure proper medical and dental treatment. For example, at a meeting on migrant health problems recently held in Hidalgo County, Texas, it was pointed out by many persons that farm workers are often refused service in the local hospitals because they are unable to pay the \$50 or \$75 required as down payment.^{43/} Constant mobility, lack of education on basic health and dental matters, and unawareness about available health services are also factors.

The Migrant Health Act of 1962, ^{44/} extended in 1967, ^{45/} represents an important step in upgrading the health of the migrant family. The program pays part of the cost of (i) establishing and operating family health service clinics for domestic migrant workers and their families, including training persons to provide services in the establishment and operation of these clinics, and (ii) special projects to improve existing health services. Through these services farm workers receive medical diagnosis and treatment, immunization, family planning and prenatal care. Nursing services, sanitation services, health education and dental programs also are available under the Act. The year 1967 saw a total of 115 projects located in 36 states and Puerto Rico.

Although the number of migrants having access to these projects has increased from less than 100,000 during the first year of the program's existence to an estimated 310,000 in 1967, ^{46/} this represents only one third of all migrants and "even for this portion of the migrant population, the care is intermittent and accessible only if the migrant happens to live and work in a county where a project is in operation."^{47/}

^{43/} Interview with Rev. Edgar Krueger in Pharr, Texas, Oct. 27, 1968.

^{44/} Public Law 89-692.

^{45/} Public Law 87-692.

^{46/} See n. 1 at 14.

^{47/} Id. at 15.

The urgent need for expansion and improvement of the program was underscored by the findings of the President's Commission on Rural Poverty that:

nowhere in the United States is the need for health service so acute, and nowhere is it so inadequate as with the low-income citizens in rural America. We have failed miserably to protect the health of low-income people in rural areas. The health service they get is not only inadequate in extent but seriously deficient in quality. It is badly organized, underfinanced, rarely related to the needs of the individual or the family. Such health service as there is too often is discriminatory in terms of race and income and heedless of the dignity of the individual. 48/

FARM CHILDREN

A most depressing aspect of the farm labor situation is the plight of farm children. The general poverty and erratic employment pattern of their parents result in serious educational difficulties. When asked about the problem his family faced in educating his children, one farm worker stated:

My father and mother live with us and we must support them. We have to go North each year because we don't make enough here. I don't want to keep the kids out of school, but I have to. When we are picking tomatoes in Michigan its hard to return in time to put the kids in school because we lose a bonus if we do not stay until the end of the season. On the other hand the principal puts pressure on us to come back in time for school saying that the children will not pass if they do not return in time. 49/

In a report outlining the problems of migrant education, former Secretary of Health, Education and Welfare, Anthony Celebrezze pointed out that migrant children "are the most educationally deprived group of

48/ Id. at 16.

49/ Interview with Mr. Santos Gonzales in Mission, Texas, Sept. 11, 1968.

children in our Nation. They enter school late, their attendance is poor, their progress is slow, they drop out early; consequently their illiteracy is high. Studies indicate that most migrant children are far below grade level and that their school achievement is usually under fourth grade." 50/

To meet the special needs of migrants the Office of Education and the Office of Economic Opportunity have instituted special programs providing services such as day care, compensatory education, special drop-out programs, adult education and basic health, food and clothing supportive programs. Texas migrant education programs include special bilingual training, concentrated six month instruction programs, and various supportive programs.

State compulsory school attendance laws often are inadequately enforced and in many cases migrant children are not covered by them since they are often nonresidents of the states where their family is employed.

Another critical factor in the life of farm labor children is the health problem resulting from their labor. Presently, agricultural labor of children outside of school hours is exempted from the child labor provisions of the Fair Labor Standards Act. 51/ Only 11 states provide a minimum age for the employment of farm children outside of school hours. 52/ Yet excessive muscular activity of children at an early age has serious harmful effects on children. Agricultural labor requiring constant bending, stooping and lifting expends the child's energy which is needed for normal growth, and chronic fatigue lowers a child's resistance to disease. 53/ Furthermore children are acutely affected by the rising accident rate accompanying the mechanization of farm labor. It has been estimated that there are about 800,000 farm laborers under 16, comprising one fourth of the total work force. "A recent Department of Labor study covering only seven states, and incomplete even in those seven, showed nearly 4,000 injuries in 2 years to farm workers 10 to 17 years old". 54/

50/ See n. 36 at 49.

51/ On July 1, 1967, the Secretary of Labor issued regulations declaring certain jobs to be hazardous for persons under age 16 with the effect of excluding these children from certain farm occupations. 29 C.F.R. 1500, Apr. 18, 1967.

52/ See n. 1 at 34.

53/ Id.

54/ Id. at 32.

RESIDENCE REQUIREMENTS

Most states have residence requirements having the dual effect of disenfranchising the migrant farm worker and excluding him and his family from public assistance programs. For voting most states require establishment of residence and previous registration. "Only in a minority of states is it possible for absent residents both to register and vote by mail. Accordingly, migrancy is likely to disenfranchise the farm worker in his home State without conferring the right to vote elsewhere". 55/

Federal programs - old age assistance, aid to the blind, aid to families with dependent children, aid to the permanently and totally disabled and medical assistance for the aged, are usually tied to state residence requirements of up to one year. General assistance payments and, to a lesser extent, emergency relief assistance are normally tied to residence requirements of up to six years. Since general relief programs are usually administered by the county, applicants generally have the additional burden of demonstrating residence in the particular county where application is made.

Residence and length of residence is difficult to prove for farm laborers who move from farm to farm without formally registering in each county. Assuming a county can be determined to be responsible for a worker it must still be proven that he has lived in the state for the requisite number of years with the intent to make it his home. For farm laborers living in labor camps or fringe area "flop houses" intent is not easily demonstrable and thus the ambiguity of a farm worker's place of residence may result in the denial of general relief.

These residence requirements for public assistance, currently under attack in the courts, 56/ are incorrect in their inference that migrant workers provide an undue burden on local welfare systems. First, they ignore the extent to which the state depends on this seasonal labor force to harvest its crops. Secondly, the assumption that the poor will flock to a state to receive benefits when the state has no residency requirements has been proven unfounded. The Moreland Commission on

55/ Id. at 62. Mexican American farm workers suffer an additional disadvantage in states like California where English literacy is a prerequisite to voting. Cal. Const. Art. II, §1.

56/ Lower federal courts have sustained attacks on many such requirements. Several of these cases are presently pending in the Supreme Court: Shapiro v. Thomason, prob. juris. noted, 389 U.S. 1032 (1968); Washington v. Legrant, prob. juris. noted, 390 U.S. 940 (1968); Reynolds v. Smith, prob. juris. noted, 390 U.S. 940 (1968).

Public Welfare in New York, after studying that state's welfare system, which is uniquely devoid of durational requirements, found that:

To assume that people are influenced to move or not to move according to the availability of help on a relief basis is to misunderstand the dynamics of human behavior.

...welfare aid is not a lure for people on the move, and...migration to States where living is attractive is high despite strict residence requirements. (Emphasis in the original) 57/

Residence requirements for voting are traditionally based on the desire that voters be familiar with local issues and candidates. This does not justify disenfranchisement in presidential and congressional elections. There is no rational connection between a person's length of residence in a given place and his ability to cast a meaningful vote for national officers. It is not surprising that this class of people, which has been systematically excluded from all meaningful worker benefit legislation, both state and federal, is also a class which is devoid of any political voice.

UNEMPLOYMENT INSURANCE AND WORKMEN'S COMPENSATION

The purpose of unemployment insurance is to "alleviate the burden on the unemployed, to insure a diligent worker against the vicissitudes of enforced unemployment caused through no fault of the worker, and to bolster the national and local economics by providing a minimal sustenance and spending power during periods of involuntary unemployment". 58/ Yet farm workers, a group which annually encounters unemployment and severe economic hardship during the late autumn and winter months, are the only significant occupational class employed by private enterprise which is excluded from unemployment insurance benefits. 59/

57/ See n. 1 at 58.

58/ See n. 21 at 3.

59/ The federal statute providing for the collection of unemployment compensation exempts employers of agricultural workers from payment of the federal tax. 26 U.S.C. §3306 (c) & (k). Although states are free to provide coverage independently of the federal scheme, of all the fifty states, only Hawaii has opted to do so.

Two traditional reasons are given for the exclusion of farm workers. The first is that the transient pattern of agricultural employment would make the administration of the program for farm workers too difficult. The second is that the financial burden of coverage would be too great on the farmer. Both are based on the characterization of the average farm employer as the small family farmer. Thirty three years ago when the national plan of unemployment insurance was enacted this characterization was correct. Today, as has been seen, agriculture is dominated by high financed, highly mechanized and computerized commercial farms.

To accurately reflect the realities of present day agri-business it has been suggested that unemployment compensation coverage be extended to farm employees working for employers who used more than 300 man days of labor in any of the four preceding quarters. This would cover about 67,000 farms employing about 572,000 workers. It would not affect small family farm operators and the increase in cost to farms covered only would be about .2 percent of their total production expense.

The limited extension of unemployment compensation to farm workers employed on our Nation's largest farms would obviously have little impact on food prices or labor costs. However, the extension of unemployment compensation coverage to farm workers would be a great step forward in providing small amounts of income for the migrant and his family during the periods of the year when employment is unavailable. 60/

The Department of Labor concurs in this position:

The national objective should be to achieve for farm workers the kind of protection which has come to be accepted for non-farm manpower. More specifically: 1. Unemployment insurance should be extended to farm wage workers...61/

60/ See n. 1 at 52.

61/ U.S. Dept. of Labor, Manpower Report 145 (1966).

The purpose of workmen's compensation is to assure that benefits be paid promptly to employees injured on the job, with a minimum of formality and without the need for protracted litigation. 62/ Although there is almost total compulsory coverage of industrial workers under state law, agricultural workers have been omitted from coverage on the grounds that the occupation is nonmechanized and therefore less hazardous. As has been seen, the introduction of mechanization and the widespread use of toxins have made farm labor one of the most dangerous occupations in the country. 63/

Nevertheless, only 14 states cover farm workers to approximately the same extent as other workers. Eight others cover farm workers to a more limited extent. In some states farm workers are exempted from automatic coverage but may be included voluntarily by the farmer. In five states, including Texas, there is no coverage whatsoever.

To remedy this situation the following recommendation was made in the 1968 Report of the Senate Subcommittee on Migratory Labor:

Compulsory workmen's compensation laws should be extended so as to provide coverage for all agricultural workers. While such laws traditionally have been within the province of State government, the interstate recruitment and employment of migratory farm workers and the continued lack of adequate coverage at the State level strongly suggest the desirability of Federal action in this area. 64/

LABOR ORGANIZATION AND NLRA EXCLUSION

One important route for alleviating the problems of the farm worker would be effective organization. Several obstacles stand in the way, however. In their daily field work farm workers are dispersed. They often migrate for parts of the year. Both of these factors make farm workers much harder to organize than industrial workers. The lack of a political voice results in action and inaction at both the state and federal level supporting or favoring farm owners rather than farm

62/ To be distinguished from workmen's compensation benefitting workers injured on the job are temporary disability insurance laws providing benefits for workers because of non-work connected illness or accident. Few states have such legislation and only California's covers farm workers.

63/ See discussion at p. 16.

64/ See n. 1 at 52.

workers and often interfering with organizational efforts. "It was apparent to me", stated Senator Edward Kennedy, referring to testimony he heard about organizational efforts in Delano, California, and Starr County, Texas, "that the problems faced by the farm workers are overwhelming, especially the violence that was perpetrated on the workers who were trying to organize and who were trying to better the fundamental conditions in which they work, in which they exist, in which they live, conditions which affect sanitation, affect their health, and affect the kind of food that they will eat". 65/

Most important, farm workers have been continually excluded from the National Labor Relations Act of 1935 which provides machinery facilitating the orderly and peaceful organization of workers. 66/ The exclusion of these workers has traditionally been justified on the familiar grounds that agriculture is different from industry, and that farmers are particularly vulnerable to strikes at harvest time and would have to accede to even the most unreasonable demands. One response has been that strikes would be no more likely were farm workers covered by the Act, that in fact the absence of coverage was partly responsible for the recent history of strikes and boycotts, alluded to by Senator Kennedy, above, and that had farmers been willing to negotiate contracts with the workers the strike would have been averted.

The primary issue in the organizational struggles in Delano and Starr County was self determination. They involved no single goal. "Wages and working conditions were basic, of course, but the primary objective was to have the workers share in the decisions that affected their lives." 67/ In the 1960s unionization efforts of California farm workers took new life, owing in part to vigor generated by the civil rights movement and the termination of the bracero program (Public Law 78) which deprived growers of their cheap labor supply. By 1965 two major California groups were active, the Agricultural Workers Organizing Committee, AFL-CIO, striking to increase wages from \$1.20 to \$1.40 in the Coachella Valley and the National Farm Workers Association in Delano (headed by Cesar Chavez), opposing rent increases, for the deplorable shacks which constituted public housing near Delano. The NFWA had

65/ See n. 5 at 53.

66/ 49 Stat. 449 (1935), as amended, 61 Stat. 137 (1947), 29 U.S.C. 151, et seq. (1964).

67/ National Advisory Committee on Farm Labor, Farm Labor Organizing 1905-1967, A Brief History 48 (1967).

organized a credit union, a newspaper, a cooperative store, a health clinic, a theatre group and other activities to meet the needs of the farm workers.

When the AWOC workers brought their demands for higher wages, better working conditions, and a union contract to Delano ranches, they were joined by the NFWA. Only the largest ranches like Schenley and DiGiorgio were struck:

The growers responded in traditional fashion by returning registered union letters unopened, hiring strikebreakers, denying the existence of a strike, and harrassing pickets. Trucks and tractors were driven near to choke the pickets with dust. Picket signs were riddled with bullets and the strikers sprayed with insecticide. Injunctions to limit picketing were secured and groups were arrested for unlawful assembly. Workers who had lived for years on grower property were evicted. 68/

Aided by outside donations, a refusal of the International Longshoremen's and Warehousemen's Union to load grapes across the AWOC-NFWA picket lines, assistance from the Migrant Ministry of the California Council of Churches and national attention arising from a march on the State capital in 1966, the union arrived at an agreement with Schenley recognizing NFWA as the sole bargaining agent for its workers. This resulted in a contract providing for a \$1.75 an hour minimum, fringe benefits, and a union shop and hiring hall. 69/

Subsequently a consumer boycott aimed at DiGiorgio products was stepped up. The NFWA and the AWOC merged into the United Farm Workers Organizing Committee, obtaining a charter from the AFL-CIO, and won a representational election in the DiGiorgio fields late in August 1966. In April 1967, results of arbitration were announced, including substantial wage hikes, the establishment of a fund including health and welfare, dental, pension and insurance benefits. DiGiorgio agreed to pay an initial \$25,000 into the fund and contribute five cents an hour per employee. Other aspects of the contract covered vacations, holidays, unemployment insurance, hiring and leaves of absence. 70/

68/ Id. at 49.

69/ Id at 51.

70/ Id. at 53.

Union activity developed next in Starr County, Texas:

Starr County, in the lower Rio Grande Valley on the Mexican border, is the home base for thousands of migrants and one of the poorest counties in the United States. Average per capita income is \$1,568. Farm workers earn an estimated 50 to 85 cents an hour, and about 75 percent of the county population migrates in search of work. Since 90 percent of the people in the county are Mexican American, sympathy for the farm workers is almost universal. 71/

Owing to greater access of growers in this border area to Mexican strike breakers, organizing difficulties caused by the mass migration of workers, and the apparent alliance between the state law enforcement authorities and the growers, the strike in Starr County was not as successful as in Delano. One of the strike leaders stated the problem this way:

The strike doesn't put economic pressure on the company because 'greencarders' are available.... A law against mass pickets says that demonstrators must be separated by a distance of 50 feet. The farms are huge and a picket may not have much effect because it passes nearly unobserved....I never saw more Texas Rangers in one area in my life than there are in Roma. 72/

Allegations of harassment, physical violence and brutality, pro-grower conduct of state officials, arbitrary and illegal arrest, excessive bail and neglect in bringing to trial the more than 100 cases arising from the arrests of union organizers, clergymen, and sympathizers, have been made by union officials. Growers have alleged violence by union members including the sabotage of farm machinery and other equipment. The Texas State Advisory Committee to the United States Commission on Civil Rights, after closed meetings held in Starr County on May 25-26, 1967, found various denials of the strikers' legal rights, including physical and verbal abuse by Texas Rangers and local law officials, arrest without full investigation and holding of union organizers for many hours before they were released on bond, and the encouragement of farm workers by the Rangers to cross picket lines. The Committee also noted the harassment and intimidation by Rangers of UFWOC members, organizers and sympathizers "which gave the appearance of being in

71/ Id. at 53.

72/ Jesus Sales, quoted in Appleton (Wisconsin) Post-Crescent, Jan. 8, 1967. The term "greencarder" as used here is synonymous with "commuter".

sympathy with the growers and packers rather than the impartiality usually expected of law enforcement officers". 73/

The Committee went on to observe that:

The majority of the farm workers and members of the Farm Workers Organizing Committee are Mexican Americans. To many Mexicans, the Texas Rangers are a symbol of oppression; their appearance in Starr County only served to aggravate an already tense situation. While the Committee supports fair and objective law enforcement and recognizes the possible need of Starr County law enforcement agencies to seek outside assistance in this situation, it questions whether the Texas Rangers are the appropriate source for such assistance.

The Committee also collected information indicating that many Mexican Nationals who possess alien-resident receipt cards (Green Cards) but who are living in Mexico, are being utilized as a source of labor on farms which are being picketed. Several persons alleged that this practice constitutes a violation of the spirit, if not the letter, of Federal Immigration Law. 74/

The struggle in Delano and Starr County, including strikes, boycotts and violence, is similar to the industry strife which obstructed interstate commerce and led Congress to pass the National Labor Relations Act. "It is an inescapable conclusion that various elements of the agriculture industry are on a collision course similar to the course of industry in general in 1935." 75/ The need by farm workers for an orderly collective bargaining procedure has resulted in widespread demands that these workers be brought within the purview of the NLRA. This theme was elaborated by the attorney for the UFWOC, AFL-CIO, in a letter to legislators advocating inclusion of farm workers under the Act. Enclosing a copy of a temporary restraining order issued against the United Farm Workers Organizing Committee, AFL-CIO, imposing strict regulations upon the picketing activities of UFWOC, the attorney stated:

UFWOC is currently engaged in a strike with Giumarra Vineyards Corporation, Giumarra Farms, Inc. and Giumarra Bros. Fruit Co. UFWOC has obtained the

73/ Texas Advisory Committee to the United States Commission on Civil Rights, The Administration of Justice in Starr County, Texas 2 (1967).

74/ Id. at 3.

75/ See n. 1 at 42.

support of a majority of the Giumarra workers. However, since we are not under the regulations of the National Labor Relations Act, we cannot demand an election and thereby follow an easy and orderly procedure to assert our legitimate right to represent these workers. Our only weapon is the economic pressures we can exert on this employer. A crucial facet of this economic pressure is picketing

Even if our picketing activities were unrestricted, as you can see by the attached exhibit, they would have limited effect. The workers are often out of earshot; they are scattered over 25 fields including some 10,000 acres of land, and there are over 100 entrances to these fields. This injunction is only one of many similar injunctions which are issued as soon as UFWOC strikes an employer. It is essential that our union have more tools to rely upon than simply the exertion of economic pressure with simultaneous picketing. Unless we are covered under the NLRA as soon as possible, many farm workers who desire to organize are deprived of their right to organize. They cannot vote and, after an injunction is issued, they cannot picket effectively to assert their rights. As attorney for UFWOC, I have seen since the beginning of this strike how vital it is to obtain coverage for our union as soon as possible. 76/

As the Migratory Labor Subcommittee has pointed out, the express exclusion of farm workers from federal labor relations legislation is

76/ Letter from Jerome Cohen, Aug. 7, 1967.

"a most pernicious form of discrimination" 77/ leading to unnecessary strife and violence. "(T)he continued failure to remove the exclusion brings to the Federal Government a concrete share of the responsibility for the continuation of the struggle". 78/

77/ See n. 1 at 40. The exclusion of the farm workers from Federal benefits occurs in the context of vast Federal aid to growers in the area. The unprotected farm worker in the Rio Grande Valley may read that during the past year \$4,254,673 was paid to local growers for not planting crops. Valley Morning Star, July 24, 1968. The Delano farm worker may be told that when the water table level started to fall drastically, local grape growers were rescued by the Federal Bureau of Reclamation which provides a water supply worth \$700 per acre to growers at a cost of only \$123 per acre. The rest is born by tax payers. "The 160 acres-per-owner limitation on land irrigated by Federal water projects (which are supposed to benefit family owners, not giant corporations) has been so loosely enforced that DiGiorgio's acreage is still 4,600 and Schenley's 3,500." See n. 67 at 26.

78/ See n. 1 at 40.