

Like Machines in the Fields: Workers without Rights in American Agriculture



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ACKNOWLEDGEMENTS

Like Machines in the Fields: Workers without Rights in American Agriculture would not have occurred without the contributions of many hands. First of all, Dina Mesbah, a rural development specialist, coordinated the research and wrote a large part of the report. Oxfam America is extremely grateful for her dedication, insights and patience throughout this eight-month process.

Bruce Goldstein and James B. Leonard, of the Farmworker Justice Fund., Inc., (www.fwjjustice.org) provided original research that served as the basis for the Section IV on injustice in the law. At Oxfam America's requests, Phil Mattera and Mafruza Khan of the Corporate Research Project of Good Jobs First researched supply-chain dynamics in the fresh tomatoes and pickling cucumber sectors which is treated in Section III. A number of others made key contributions in research and/or writing. These people include: Beth Williamson, Ileana Matamoros, Simon Billenness, and Minor Sinclair. Others read portions of the draft and provided invaluable insights. These people are Greg Asbed, Baldemar Velásquez, Gilbert Apodaca, Bruce Goldstein, Bernadette Orr, Diego Low, Katherine Daniels, Chad Dobson, Judith Gillespie, Amy Shannon, Maria Julia Brunette, Laura Inouye, Larry Ludwig, Brian Payne, Beatriz Maya, Edward Kissam and Mary Sue Smiaroski. A particular word of thanks is due to Minor Sinclair who insists that rights for farmworkers is a core concern for a global development agency such as Oxfam America. And finally we are particularly grateful to three photographers—Andrew Miller, Davida Johns and Shiho Fukada—who graphically portrayed the reality of farmworkers in ways to which our words only aspired.

Five farmworker organizations with whom Oxfam America is proud to associate were our guiding beacon through this endeavor and entrusted us with interviews with their thirty-five of their members. They are Farmworker Association of Florida, *Organización en California de Líderes Campesinas*, Farm Workers Self-Help, Coalition of Immokalee Workers, and Farm Labor Organizing Committee.

While these contributions and others were many and much appreciated, Oxfam America assumes responsibility for the documentation, conclusions and recommendations. Oxfam America authorizes that this report may be reproduced or quoted extensively as long as credit is attributed to Oxfam America.

Like Machines in the Fields: Workers without Rights in American Agriculture

An Oxfam America Report

March 2004

This report serves as one of twelve national case studies for the Oxfam International report *Trading Away Our Rights: Women Working in Global Supply Chains*.

The OI report is available at www.maketradeair.com

“Behind the shiny, happy images promoted by the fast-food industry with its never-ending commercials, there is another reality...

This is the reality of farmworkers who contribute their sweat and blood so that enormous corporations can profit, all the while living in sub-poverty misery, without benefits, without the right to overtime or protection when we organize. Others are working by force, against their will, terrorized by violent employers, under the watch of armed guards, held in modern-day slavery. The right to a just wage, the right to work free of forced labor, the right to organize—three of the rights in the United Nations’ Universal Declaration of Human Rights—are routinely violated when it comes to farmworkers in the United States.”

—From the acceptance speech of Lucas Benítez, a member of the Coalition of Immokalee Workers, who, along with two colleagues, was awarded the Robert F. Kennedy Memorial Center for Human Rights prize for 2003. Benítez is a farmworker from Guerrero, Mexico who came to the U.S. when he was 17 years old.

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EXECUTIVE SUMMARY

David Sherrill is a vegetable grower in Ellerbe, North Carolina, who produces squash, cucumbers, cabbage, collards, and other crops. David's Produce, his family-owned operation, includes a greenhouse, a roadside stand and a promotional website. Sherrill prefers to hire only immigrant guest workers. They are like "a machine in the fields," he told the *Charlotte Observer* in 1999 (Ward, 1999). David Sherrill spoke an unfortunate truth that betrays the American dream of opportunity and freedom.

Like machines, nearly two million of workers in America's fields labor without rights, earn sub-living wages, and exist in dehumanizing circumstances.

At the other end of the production spectrum from David's Produce is the 9,500-acre operation run by Gargiulo Inc. and the 16,000-acre operation of Pacific Tomato Growers. They hire thousands of farmworkers, far outnumbering the handful hired by David's Produce. Still, all three growers seem to have made the same business calculation. In a tight market, facing competition from lower-cost imports and seeing profits curtailed with every sale, production costs must be cut. Unfortunately, that decision comes at the expense of those who toil at the bottom of the supply chain with little bargaining power and without familiarity with the system.

The persistence of inhumane conditions and poverty wages for farmworkers has long been a tragic chapter in the story of American agriculture. But, as this report documents, the erosion of farmworkers' economic, social, and political rights not only has continued but has actually accelerated. Relatively recent practices in the industry have only worsened the situation. A supply-chain model has tightened industry-wide profit margins and further reduced the tiny sliver of the pie left for workers. The history of farmworker exclusion in national and state labor laws and enforcement has left farmworkers with very few protections.

One of the more innovative and hopeful strategies for reform has been a series of campaigns led by farmworker organizations that target, not the growers, but the corporations that buy the produce picked by the workers. By generating consumer and investor pressure on the corporate drivers of the supply chain, farmworkers and their supporters hope to re-shape the supply chain. In pursuing this strategy, farmworkers are echoing tactics successfully used by workers in the garment and shoe industries to end the dehumanizing conditions of sweatshop production.

Two Oxfam America partners featured in this report, the Coalition of Immokalee Workers (CIW) and the Farm Labor Organizing Committee (FLOC), have successfully organized workers, addressed rights violations in the fields, and pressed for urgently needed changes. CIW, a relatively new organization, has organized more than 2,000 farmworkers in the Immokalee region of Florida and burst onto the national scene with its exposé of slavery practices. Recently, CIW urged Taco Bell and parent company, Yum Brands Inc., to pay a penny more per pound for tomatoes. Amazingly, the increase, if passed directly on to the workers, would effectively double their earnings.

FLOC became nationally known in the 1970s through its successful boycott of the Campbell Soup Company. FLOC may have been the first farmworker organization in the U.S. to recognize that change in the industry required leapfrogging growers and contractors, which pay workers' salaries. Instead they put direct pressure on the corporations, which set prices and dictate growing conditions. The Campbell boycott resulted in the first "tripartite agreement" between growers, workers, and a major food processing corporation, and led to improved pay and conditions for farmworkers in Ohio. Now FLOC is organizing cucumber pickers in North Carolina and training its sights on Mt. Olive Pickle Company, the second largest pickle company in the United States, urging it to pressure its suppliers to recognize the farmworkers' union.

In some ways labor-intensive agriculture in the United States has changed little over the past century. Certain crops, such as tomatoes and pickles that are studied in this report, as well as leafy vegetables and citrus, continue to be harvested by hand. The commercial side of the equation, however, has changed dramatically. Large-scale buyers and retailers, such as Wal-Mart, which sells 19% of all groceries in the United States, or Yum Brands Inc., the largest fast-food company in the world, which relies on one consolidated buyer for its fast-food chains, have used their market power to push prices down. In the process, suppliers, and growers have been squeezed; many have left the industry altogether.

Increased competition from imports has also been part of the story.¹ Cucumber imports increased sevenfold during the 1990s, competing directly with those domestically grown. Tomato imports from Mexico have posed an even greater threat to South Florida tomato growers who were the exclusive source of U.S. tomatoes during the winter months. Mexican producers' lower costs, including labor (which makes up a large percentage of the total production cost in these labor-intensive industries) have placed tremendous pressure on Florida's tomato farmers. If not for costs of shipping produce from Mexico and a side trade agreement between the United States and Mexico that set a floor price for imports, Florida's tomato production would have disappeared.

The competition is forcing out the small growers. Farms that have survived now operate at a much larger scale; some operations control production all along the Atlantic coast so as to be able to provide fresh produce nationally throughout the year. Farm gate prices, the prices paid to producers, have dropped significantly over the past 20 years—by 15% for cucumbers and 21% for tomatoes, in real terms. Growers industry-wide have chosen to cut back on their labor costs, paying less, employing fewer full-time and more temporary workers, and offloading their responsibilities as employers onto the backs of the workers and their families. Increasingly, growers resort to securing their workers through the services of farm-labor contractors, whose low profit margins compel them to ignore labor-law obligations. Manuel Gómez, a contractor operating in San Joaquin Valley, California, admitted: “Ninety-nine percent of all contractors work outside of the law. Not one, not two—all of us. You have to break the law. Breaking the law is the only way you can make decent money... Everyone knows we're doing this” (Rothenberg, 1998, p.97).

Even as wages stagnate and prices to producers plummet, consumer prices have risen significantly (for example, the tomato component of the consumer price index has increased by 50% for tomatoes since 1992). This translates to greater profits for buyers and retailers. Supply-chain management has become tight as a whip: Value is passed up the chain, while workers at the bottom pay the price.

Sweatshops in the Fields

The impact on farmworkers has been grave. Already, farmworkers are among the poorest—if not *the* poorest—laborers in the United States. Half of all individuals earn less than \$7,500 per year, and half of farmworker families earn less than \$10,000 per year², rates that are well below the U.S. poverty threshold. In fact, in 1998, three out of five farmworker families reported incomes below the federal poverty threshold (Department of Labor (DOL), 2000a). Distressingly, the piece rate for tomato pickers has barely risen in 20 years, and workers today are effectively paid 30% less than they were in 1980. Because of their poverty, the majority of these farmworkers live in severely overcrowded and substandard housing, often in labor camps that routinely violate federal regulations.

In addition to being one of the worst paid, farm labor is also one of the most dangerous jobs in America. At work, farmworkers suffer higher rate of toxic chemical injuries than workers in any

other sector of the U.S. economy, with an estimated 300,000 farmworkers suffering pesticide poisonings each year. They also suffer extremely high rates of workplace accidents, including accidents during transportation to the worksites in overcrowded, poorly maintained vehicles provided by the farm labor contractors.

The increasing precariousness of farmworkers' employment has taken other forms as well. Farmworkers are much more likely to have temporary jobs, a device used by employers to reduce costs and escape many provisions of already weak U.S. labor laws. Temporary or seasonal employment also means increased migrancy; 56% of all crop workers were migrants during the 1997-98 season, compared to only 32% in the 1989-90 season. Today, more farmworker families are separated than in the past. The use of farm labor contractors, known for their abusive practices, is also growing. Benefits, on the other hand, have steadily declined. Ninety-nine percent of farmworkers have no Social Security pension or disability insurance, (up from 90% in 1989-90, according to DOL figures) and 95% of all farmworkers have no health insurance for non-work-related injuries or illnesses. Children are paying the costs as well: A 1992 study found that 37% of adolescent farmworkers in the United States work full time.

Women farmworkers, in particular, face discrimination in securing access to the more desirable, skilled or semi-skilled jobs or supervisory positions that are better paid, more stable, or yield more days or hours of work. Additionally, they are under greater pressure with the piece-rate system of pay, often needing to work longer hours to earn the same income as men. Studies have proven that women are even more vulnerable than men to the unhealthy work conditions prevalent in agriculture, and are subjected to sexual harassment in the male-dominated agricultural workplace. Women, of course, continue to have primary responsibility for much of the childcare and most of the household chores.

The economic and social rights of farmworkers have deteriorated in part because this group has long been excluded from the majority of the country's basic labor laws. Farmworkers are denied the rights and protections necessary to organize and join unions, the right to overtime pay, protections for child labor, and in the case of farmworkers employed on small farms, even the right to minimum wage. While the California state legislature has passed laws to protect its farmworkers, the majority of states—including Florida, one of the largest users of agricultural labor—have failed to provide farmworkers the basic protections denied to them under U.S. federal law.

Not all growers see squeezing the supply chain as their only long-term and profitable option. Swanton Berry, an organic farm in Davenport, California, claims, "The dignity of farm labor was a founding principle of Swanton Berry Farm. We wanted to present our customers with a product, which was not produced at the expense of the workers' health or dignity. What would be the point of farming organically if the workers were underpaid, over-worked, or treated without respect?"³ Swanton Berry was the first strawberry farm in the United States to sign a contract with the United Farm Workers of America/AFL-CIO. The farmworkers' contract includes the highest pay scales in the industry, health care, vacation and holiday pay.

Nationwide 125 farmers belong to the Food Alliance, a non-profit organization that promotes sustainable agriculture by recognizing and rewarding farmers who adhere to environmentally-friendly and socially-responsible management practices, including fair pay and conditions for farmworkers. While this initiative and others may not represent widespread practice, they have shown that profitability and workers' rights are not incompatible. It is doubtful that core market producers will adopt the same practices without further prodding from government, suppliers, or consumer pressure.

One has to be exceedingly desperate to seek employment in the fields. More than half of farmworkers in the U.S. today are undocumented immigrants who have risked their lives and indebted their families to seek jobs in the U.S. Neither the dangers of a border crossing, the beefed-up enforcement of the U.S. Border Patrol, nor the tragic stories such as the 17 immigrants who suffocated in a trailer in south Texas in May 2003, seem sufficient to deter those seeking jobs in U.S. agriculture. As bad as the conditions are in the United States, most farmworkers come from conditions of even more grinding poverty in Mexico, Central America, and the Caribbean.

Farmworkers Pay the Price for Others' Gain

There are many who benefit from the desperate conditions of agricultural workers, some knowingly and some unwittingly. Nearly every player along the supply chain of farm products—including farm labor contractors, growers, processors, suppliers, buyers, retailers, consumers, and investors—take advantage of the desperation of farmworkers. Those who patronize fast-food restaurants and buy indiscriminately in grocery stores may well be consuming products produced under sweatshop conditions of exploitation. The responsibility for living wages and decent conditions for farmworkers is not the employers' alone. Consumer power and investor leverage open up new possibilities for reforming the supply chain to benefit workers. For example, the weakness of the fast-food industry is the fierce competition for consumers and its strength is the industry's power over its suppliers. As Eric Schlosser concludes in his book *Fast Food Nation*, "The right pressure applied to the fast-food industry in the right way could produce change faster than any act of Congress" (Schlosser, 2001, p.267).

An Agenda for Change

Oxfam America proposes a series of recommendations aimed at addressing, in a positive way, the rights of farmworkers in the United States.

1. Workers must be empowered to defend their rights and interests. Particularly, worker organizing must be supported, legal resources must be provided, and the vulnerability of undocumented workers must be reduced.
2. Worker rights in the supply chain must be respected. Employers are urged to ensure protection of core labor standards, living wages, and safe working conditions. To be able to do this, buyers and retailers must ensure that workers' rights throughout their supply chain are a corporate concern, backed by their codes of conduct and purchasing practices.
3. State and federal governments must guarantee basic rights and protections primarily by eliminating discrimination against farmworkers in labor legislation and regulatory agencies. This includes, but is not limited to the Fair Labor Standards Act, Occupational Safety and Health Act, the Environmental Protection Agency's Worker Protection Standards, and the Equal Employment Opportunity Act.
4. The core labor standards enshrined in the International Labor Organization need to be embodied in U.S. law and reflected in international trade agreements to which the United States is a signatory.

Methodology and Organization of the Paper

This paper explores two broad themes: (1) U.S. federal and state laws have a long history of excluding farmworkers from protections provided to workers in other industries; and (2) purchasing practices in the U.S. fresh produce supply chain encourage precarious employment conditions for farmworkers.

Research for this paper served as one of 12 case studies to the Oxfam International report *Trading Away Our Rights: Women Working in Global Supply Chains*, which examines the extent to which purchasing practices used in the garment and produce supply chains, together with the weak legal protection of workers' rights, have contributed to the highly precarious employment conditions of workers in these sectors. Studies in Bangladesh, China, Honduras, Kenya, Morocco, Sri Lanka, and Thailand looked at workers in the garment industry, while research in Chile, Colombia, South Africa, and the United States addressed workers in the fresh produce industry. Home workers in the United Kingdom were also studied.

This report is based on original research material commissioned by Oxfam America. Phil Mattera and Mafruz Khan of the Corporate Research Project of Good Jobs First researched supply-chain dynamics in the fresh tomatoes and pickling cucumber sectors, which is treated in Section III. Bruce Goldstein, co-executive director of the Farmworker Justice Fund, Inc., and James B. Leonard, a volunteer attorney with the Fund, researched and wrote about U.S. labor and immigration laws and their enforcement, which is discussed in Section IV. In addition, Oxfam America has conducted a review of precarious working and living conditions of farmworkers, particularly women, in the fresh produce industries. Oxfam America's research has relied on extensive secondary literature, published government statistics, as well as approximately 35 direct interviews with farmworkers conducted by five Oxfam America partner organizations. They are Farmworker Association of Florida, *Organización en California de Líderes Campesinas*, Farmworkers Self-Help, Coalition of Immokalee Workers, and Farm Labor Organizing Committee.

This report is organized as follows: Section I describes how farmworker organizations have worked to defend the interests of their members amid great obstacles. The focus is on the Farm Labor Organizing Committee and the Coalition of Immokalee Workers. Section II presents evidence on the increasingly precarious working and living conditions of U.S. farmworkers, focusing, where possible, on the plight of Florida's tomato and North Carolina's cucumber "pickers." Section III focuses on the purchasing practices of buyers (retailers, food service companies, and processing firms) in the tomato sector in Florida and in the pickling cucumber sector in North Carolina, and discusses their potential impact on growers in these sectors. Section IV details the weak labor and immigration laws that have made it possible for growers to pass on the costs and risks of doing business down the supply chain to the farmworkers. In Section V, the paper discusses farmworker strategies for supply-chain reform focusing again particularly on the Farm Labor Organizing Committee's campaign with Mt. Olive Pickle Company and the Coalition of Immokalee Workers' campaign with Taco Bell. And finally, Section VI concludes with recommendations for empowering workers to defend their rights and interests, for respecting worker rights in the supply chain, and for guaranteeing basic rights and protections in law.



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SECTION I

Farmworkers and Their Organizations

WHO WORKS IN U.S. FIELDS?

Regrettably, there is no precise headcount of farmworkers that can be considered reliable.⁴ Based on a number of different studies, the Commission on Agricultural Workers reported in 1992 that 2.5 million individuals were employed for wages on U.S. farms (Commission on Agricultural Workers, 1992, cited in DOL, 2000b). Of these, 1.8 million (or 72%) were employed on crop farms; the rest on livestock farms.⁵ In general, the rate of mechanization in the high-value fruit and vegetable commodities has been slow, leading fruit and vegetable growers to depend more than most farmers on farm labor—especially to hand pick their crops. Many, especially vegetable growers, also rely on farmworkers to transplant, stake, and prune plants throughout the production season. Thus, the majority of U.S. crop workers work in labor-intensive crops such as fruit and nuts (33%), vegetables (28%), and horticulture (14%) (DOL, 2000a).

Agricultural jobs are spread throughout the country, but more than half are concentrated in the states of California, Florida, Texas, North Carolina, and Washington (Runyan, 2000; www.ers.usda.gov/briefing/farmlabor/demographics). Not surprisingly, these states also account for a large percentage of the labor-intensive crops grown in the United States.

Just 14% of all workers in crop agriculture are employed full time in year-round positions, while fully 83% work on a seasonal basis (DOL, 2000a). These seasonal farmworkers either reside permanently in one location, or travel to find employment. The National Agricultural Workers Survey (NAWS) estimates that 56% of farmworkers in crop agriculture are migrant workers, traveling more than 75 miles to obtain a job (DOL, 2000a).⁶ Of these, 70% (or 39% of all crop workers) are “shuttle” migrants who travel between two primary locations: their home base and a location (far from their home base) where their farm jobs are clustered.

Thirty percent of migrant workers (or 17% of all crop workers) are characterized as “follow-the-crop” migrants, moving year-round like those portrayed in John Steinbeck’s *The Grapes of Wrath* (DOL, 2000a). These migrant farmworkers generally follow one of three migration streams: the eastern stream originates in Florida and extends up the East Coast; the Midwestern stream originates in Texas and extends to the Great Lakes and Great Plain states; the western stream originates in California and extends along the West Coast as far as Washington (HAC, 2000).

Most farmworkers are young (under 44), male, and Latino. Most also have very little formal education. Most are recent immigrants, many are undocumented.

Men account for approximately 80% of farmworkers in the United States, although many women also labor on farms (DOL, 2000b; Runyan, 2000). Women workers today, however, are more commonly hired in the packing houses and processing plants than they are in the agricultural fields.

Farmworkers are also young: 79% of farmworkers involved in crop production are between the ages of 18 and 44 and 50% are under the age of 29 (DOL, 2000a). This is as might be expected given the physically demanding nature of farm work and the decreased strength and stamina

that comes with aging. On the other hand, as physically demanding and hazardous as agricultural work is, 6% of farmworkers are between the ages of 14 and 17 (DOL, 2000a). Poor farmworkers depend on the contribution of their children's labor for the families' survival.

The vast majority (81%) of crop workers in the U.S. are foreign-born. While most (95%) are from Mexico (DOL, 2000a), others come from Central America (primarily, Guatemala and El Salvador) or the Caribbean (primarily, Haiti and Jamaica) (Rothenberg, 1998).

Farmworkers in general, and immigrant farmworkers in particular, have low levels of education (Runyan, 2000; DOL, 2000a). Their literacy and communication skills in English are especially limited (less than 5% of Latin American-born crop workers reported that they could read and speak English well) (DOL, 2000a).

Finally, yet perhaps most significantly, these immigrant workers typically lack work authorization: Slightly more than half (52%) of the estimated 1.8 million workers employed on crop farms in 1997-1998 were undocumented (DOL, 2000a). If anything, this trend has only accelerated in the intervening years. Given the vulnerabilities of their legal status, U.S. farmworkers tend to face widespread workplace and human rights abuses, and rarely are able to take the risk of challenging abuses when they occur.

FARMWORKERS' ORGANIZATIONS

Farmworker organizing in the United States has been defined by the lives of Cesar Chavez and Dolores Huerta, who in the early 1960s combined their fledgling organizations to form the United Farm Workers (UFW) or "La Causa" (the Cause) as it was known then. In 1965 Chavez, Huerta and others began organizing poorly-paid grape pickers near Delano, California. After a five-year struggle and the support of millions of Americans who boycotted table grapes, the strike was won. In doing so, UFW opened the path for a new type of movement that combined elements of civil rights and union organizing resulting in a widespread strike and a national boycott. UFW continues today as the largest and most powerful farmworker organization with its national headquarters in California and eleven other offices (seven in California and two in Washington, and one each in Texas and Florida).

Organizing a Secondary Boycott

Coming on the heels of UFW organizing on the West Coast was a daring initiative by a former farmworker Baldemar Velásquez, who started picking berries and tomatoes at the age of six. In 1967 Velásquez founded the Farm Labor Organizing Committee (FLOC) to defend the rights of tomato pickers in the Midwest. In 1979, FLOC was formally organized as a labor union of farmworkers, and its early defining moment was an eight-year campaign against the Campbell Soup Company in Ohio to press the company to force the growers to improve working conditions, pay higher wages, and accept farmworker unions. FLOC understood that large food processors are the most powerful economic force in the supply chain and are the key to changing conditions for farmworkers in this chain. As explained by Baldemar Velásquez:

I started to understand that it's the food processors and not the farmers who have economic control of the industry. The farmer contracts to grow a crop for a big company like the Campbell Soup Company or Heinz and it's the company that sets the price. Out of whatever the company pays, the farmer has to cover his overhead and pay his labor. So, we were negotiating with a party that didn't actually determine the price (Rothenberg, 1998, p.269-270).

The campaign was long and difficult. Velásquez recalls, “Everyone thought we were crazy—union folks, church folks and the company. How could we make Campbell Soup, which doesn’t employ farmworkers, negotiate with farmworkers?” (Oxfam America interview with Velásquez, 12/07/03).

In 1986, FLOC’s doubters had their answer and the victory set a crucial precedent: that farmworkers could successfully organize a secondary boycott⁷ against a corporate target that buys products harvested by farmworkers. FLOC brought Campbell Soup, the growers and farmworkers to a roundtable to negotiate a three-way agreement on union contracts, fair wages and decent conditions for farmworkers. Today, FLOC is best-known for this innovative “three-way bargaining” strategy.

FLOC contends that in Ohio, after the first few years of collective bargaining, growers have actually begun collaborating with FLOC in terms of strategy vis-à-vis the processing firms (Multinational Monitor, 1993). “Before the growers weren’t very supportive of the union,” said Juan Sarabia, a former organizer for FLOC. “That is a totally different ball game now. The growers are making an effort to work with the union. They understand we are here to help the worker and the grower. Since the grower isn’t making a huge profit—and the corporations are—the growers also benefit from this.”

Now a charter member of the AFL-CIO, FLOC has turned its attentions to organizing largely undocumented immigrant workers in southeastern United States, particularly in the cucumber fields in North Carolina. “It requires a whole new strategy,” Velásquez confesses. “You have to deal with the high turnover of workers, their lack of immigration status and the trade issues which threaten not only the workers but the industry.” For two years FLOC negotiated with the Mt. Olive Pickle Company with no success. In 1999 FLOC called for a boycott of Mt. Olive pickles, and, as Section V shows, this campaign, too, will be a difficult one.



Fighting the Most Horrific Violation of All

Julia Gabriel, an indigenous Guatemalan, came to the United States to make enough money to send home. Instead she was enslaved. In a farm labor camp in South Carolina, gunmen kept her and other workers under guard while they were forced to work 12-hour days, seven days a week for little pay. The slavery ring operated in Florida, South Carolina, and Georgia, and involved approximately 400 workers held against their will. According to reports, men were beaten and women were sexually abused. Julia and six co-workers escaped in the middle of the night and then did something few others dared to: She reported what had happened.

Her story found its way to members of the Coalition of Immokalee Workers (CIW), a farmworker organizing group based in Immokalee, Florida. CIW members worked with Julia and other slave victims to expose this slavery operation which led to other victims speaking out. During the past six years, there have been six federal prosecutions for slavery of farmworkers in Florida alone, five of them with the assistance of CIW. Currently, the U.S. Department of Justice is investigating 125 more slavery cases, many involving migrant workers. The slavery cases have drawn national attention; feature articles appeared recently in *The New Yorker* and the *National Geographic*, and in 2003 the Robert F. Kennedy Human Rights award was given to three CIW members, the first time the award has been presented to a U.S. organization.

More than two thousand members, mainly Latinos, Haitians and Mayan Indians who work in the tomato and citrus harvest, belong to the Coalition of Immokalee Workers. In the early 1990s, CIW organized the first major worker action in the history of Immokalee, Florida—a week-long general strike involving 3,000 workers to protest beatings in the fields. The beatings stopped and CIW's organizing spread. In late 1999, CIW also won the first raise in the tomato picking piece rate in over 20 years, a victory which affects thousands of workers in Florida and other parts along the East Coast. CIW was also instrumental in convincing state authorities to appropriate \$10 million for new farmworker housing in Immokalee and other farmworker communities in Florida.

These victories, while important have not fundamentally changed the bargaining power and lack of rights of farmworkers. Like FLOC, CIW believes that bargaining directly with growers is ineffectual given that buyers and retailers, not growers, control the supply chain. And like UFW, CIW believes that changing corporate practice can only be achieved by a mass movement uniting different groups around a single cause. As Section V details, their target is the fast-food industry.

CIW's efforts and the courage of the victims who have dared to speak out have exposed a systemic and engrained pattern of abuses throughout the industry—both illegal as well as legally sanctioned—that run far deeper than the handful of slavery cases. During the most recent slavery trial in Florida, the presiding judge strongly advised the prosecution not to dedicate most of its efforts to “the occasional case that we see from time to time that this case represents,” but to recognize that “others at a higher level of the fruit picking industry seem complicit in one way or another with how these activities occur” (Bowe, 2003). This is the story of workers without rights in America's fields, a reality of increasingly precarious working and living conditions, as Section II discusses.



CLARA RUBIN-SMITH/OXFAM AMERICA

SECTION II

Reality in the Fields: Increasingly Precarious Working and Living Conditions

Over the last two decades, the U.S. labor-intensive agricultural sector has experienced explosive growth in output and sales. Farmworkers, however, have not shared in the benefits of this growth. By many accounts, conditions have, in fact, worsened for the men, women and children who labor to produce our food. As consumers, we know very little about the plight of this class of laborers, perhaps the country's poorest and most vulnerable. Farmworkers “remain a hidden underpinning of the system that brings us the food we enjoy, without ever appearing on food labels” (Thompson, 2002, p.8).

This section reviews some of the evidence from a sizable body of research on the increasingly precarious conditions of U.S. farmworkers. This evidence is supplemented, where possible, with information from a small number of interviews conducted by Oxfam America and its partner organizations, the Coalition of Immokalee Workers in Florida, and the Farm Labor Organizing Committee in North Carolina.

PRECARIOUS CONDITIONS AT WORK

“That part of the agricultural industry that depends on hand-harvest labor has never completely adjusted to the adoption of the Thirteenth Amendment to the Constitution, the amendment that abolished slavery. Unlike other industries, many people who control hand harvest agriculture have not attempted to use modern labor management techniques to recruit and retain workers and have not felt it necessary to pay a living wage to their laborers” (Gary Geffert, 2002, p.113).

Real Wages Declining Over Time

Despite more than a decade of “boom” years in the U.S. fruit and vegetable industry, the agricultural sector continues to pay its workers extremely poorly. Between 1987 and 1997, market sales of U.S. fruits and vegetables nearly doubled (DOL, 2000b), yet at the end of that period workers employed on crop farms earned an average wage of only \$5.94, with slightly more than 10 % of all crop workers earning less than the federal minimum wage—set at \$5.15 since September 1, 1997 (DOL, 2000a).

The years from 1989 to 1998 also brought prosperity to the larger U.S. labor market, with average wages rising for most American workers. However, measured in constant 1998 dollars, wages paid to workers employed on crop farms fell by 10%, from \$6.89 to \$6.18 per hour, and actually lost ground relative to other workers’ wages in the production sector: the average wage earned by crop workers dropped from 54% of the hourly wage of production workers in the private, non-farm sector in 1989, to just 48% of that wage in 1998 (DOL, 2000a). A 1989-1990 survey of current residents in low-income neighborhoods in Immokalee, Florida, found that, at \$4.56 per hour, farmworkers earned considerably less than other private sector workers, even those who shared many of their demographic characteristics, such as unskilled workers in the construction and tourism industries, whose hourly wages averaged considerably higher at \$6.98 per hour (Griffith et al., 1995).

In agriculture, workers are paid either by the hour or by the piece (sometimes, a combination of both) while non-harvest work is almost always paid by the hour, harvest work is often paid by the piece. Both tomato pickers in Florida and cucumber pickers in North Carolina are almost universally paid a piece rate.

Stronger, faster, and more experienced workers harvesting certain crops on a piece-rate basis can earn more than the minimum wage. However, the rates are low enough that for many crops and in many regions workers often have to work very hard to earn relatively low wages. Agricultural employers must pay workers hired on a piece rate basis enough to bring their average hourly wage at least up to the minimum wage (see Section IV). However, many farmworker advocates report that hourly wages of farmworkers paid by piece rate, or a fixed lump-sum per day or week, are misleading. Typically an eight-hour workday is used to calculate the hourly wages reported to the government, when farmworkers are actually working much longer hours per day (Smith-Nonini, 1999). The following example is an illustration:

A worker employed by B&D Farms [a tomato grower in the Immokalee area in Florida] reportedly received \$0.40 a bucket and \$52 for picking 140 buckets in six hours. However, he was working, traveling to the fields or waiting for rain to end for a total of 12 hours” (*Rural Migration News*, 1998).

Until recently, tomato growers in Immokalee, Florida, paid workers as little as 40 cents for every 32-pound bucket of tomatoes they picked. A tomato picker thus had to harvest 125 buckets—

practically 2 tons—of tomatoes to earn just \$50 a day (Bowe, 2003). Moreover, the harvesting piece rate in the Immokalee area stayed stagnant so that, over time, tomato pickers had to fill more and more buckets just to keep earning the minimum wage. Whereas in 1980 a worker could earn minimum wage by filling 7.75 buckets of tomatoes; by 1997 he or she had to pick almost 13 buckets, nearly double the amount, just to earn the equivalent of minimum wage (CIW website, <http://www.ciw-online.org/8-stats.html>).⁸

Piece rates for tomato picking in Immokalee, Florida, have recently increased to 45 to 50 cents per 32-pound bucket of tomatoes. However, these rates remain far short of a living wage, *and* represent a drop in real wages from the rates paid two decades ago. To keep up with inflation since 1980, the piece rate for tomato picking should have been at least 73.5 cents per bucket in 1997 (CIW website, <http://www.ciw-online.org/8-stats.html>).

Growers contend that tomato plants nowadays produce more fruit, making picking easier than it was 20 years ago. If true, this is only applicable to the best, fastest and most experienced workers. Those workers who are weaker, slower, or less experienced generally earn an hourly wage considerably below minimum wage, even though this is technically illegal. “The best [tomato] pickers [in the Immokalee area] average 100 to 150 buckets a day for daily earnings of \$40 to \$60 [at \$0.40 a bucket], while women and older workers often pick 70 to 80 buckets, for about \$28 a day” (*Rural Migration News*, 1998).



DAVIDA JOHNS

Long Hours Required, But No Overtime Pay

Farmworkers put in very long hours of work at the peak of the production season. In interviews with Oxfam America, tomato pickers in Immokalee, Florida, report working 10 to 12 hours a day, 7 days a week, during the harvest. This overtime work is hardly voluntary, and is often required of the workers at very short notice. As Luisa Fernández, a tomato picker in Immokalee, Florida explains: “It is compulsory...because once you are in the field, you can’t get back to your house. The boss is the one who takes you to the field and brings you back home” (Oxfam America interview, 7/22/2003).

Unlike employers in other sectors, growers are not required by U.S. laws to pay any overtime to their employees (see Section IV). Farmworkers interviewed in Immokalee, Florida, reported being paid at the same piece rate no matter how many hours a day they work. According to Martín Pérez, a farm laborer in Immokalee, “contractors and growers don’t even know what the word [overtime] means” (Oxfam America interview, 8/1/2003). On the other hand, most workers also report that they work these extra hours because they depend on the income to make ends meet. Marcelo Sánchez is a farmworker whose wife and eight children live back in Mexico: “I’ve come a long way to work and earn money, not to waste time. My family has to eat and kids have to go to school, so I have to work all the hours possible. But what you earn here is not fair” (Oxfam America interview, 7/28/2003).

Not Enough Employment

Farmworkers’ low wages are compounded by their inability to find enough employment. Salvador Moreno, a cucumber picker in Clinton, North Carolina, explains:

There’s no security in farm work. Most jobs are temporary and often you can only find work during the harvest. When the harvest ends, the work stops. As the harvest is ending, you start wondering, “Now, what will I do? How will I find another job? Where should I go?” There are always people telling you about some town where another harvest is about to start. Sometimes there’s someone

who knows about a job in another state and they'll invite you to travel with them. Still, if you go, you never know what you'll be doing or what it will really be like. It makes you wonder, "Will there really be work there? Or, will I spend a month with no job and nowhere to live?" Many times you're afraid it might be worse, so you stay just where you are (Rothenberg, 1998, p.7-8).

The NAWS does not sample unemployed agricultural workers. However, the USDA estimates that between 11 and 13% of farmworkers were unemployed in the 1994-2000 period,⁹ that is at least twice the average unemployment rate in the nation over that period. And, while unemployment in the wage and salary labor force declined between 1994 and 2000 (dropping steadily from 6.1% to 4.0%), it stayed essentially the same for farmworkers (changing from 12.1% to 10.6%, with a high of 12.5% in 1995) (www.ers.usda.gov/Briefing/FarmLabor/Employment).¹⁰

Underemployment of farmworkers is also widespread. In 1997-1998, crop workers, on average, spent less than half the year working in agriculture.¹¹ The average number of weeks spent in farm work has, in fact, been dropping, from 26 weeks a year in FY 1990-1992 to 24 in FY 1996-1998 (DOL, 2000a). Many farmworkers are underemployed even during periods of the year in which the demand for labor peaks in U.S. agriculture. For example, the DOL reported that in 1997, only 56% of crop workers were engaged in farm work in the month of July, the height of the harvest across much of the U.S.

Other workers, even when they are employed in agricultural jobs, may not be working full-time, especially early or late in the season. Nearly a third of crop workers interviewed in 1997-1998 worked less than 30 hours a week (DOL, 2000a), and the hours worked can fluctuate enormously. "If there is a lot of work, I work 7 days a week, 10-11 hours a day," says Luisa Fernández, a tomato picker in Immokalee, Florida. "When there isn't much work, I only work 3-4 days a week for up to 4 hours a day" (Oxfam America interview, 7/22/2003).

Equal Pay, But Not Equal Opportunities, for Women Farmworkers

Women and men engaged in the same field tasks are likely to be paid at the same rate—especially when the work is piece rate.¹² However, women face discrimination in accessing the more desirable skilled or semi-skilled jobs, such as machinery operators, irrigators, or pesticide applicators, or being promoted to supervisory positions which are better paid, more stable, or yield more days or hours of work.

It is not surprising that the USDA reports that part-time crop and livestock workers—which it defines as being employed less than 35 hours per week—are more likely than full-time workers to be female (Runyan, 2000).¹³ What the USDA data does not show is whether part-time women workers work part-time "by choice" because of their child-care responsibilities, or because they are only able to find part-time work. Regardless of the reason, the part-time status helps to explain the USDA's 1998 finding that female farmworkers have lower median weekly earnings than their male counterparts (\$230 relative to \$270) (*ibid.*). Similarly, the National Agricultural Workers Survey for 1994-95 found that women farmworkers earned considerably less than men: Half of the women farmworkers interviewed in that survey earned less than \$2,500 in farmwork, and while 22% of the men earned more than \$10,000 in farm work, the same was true for only 10% of the women (DOL, 1997).

As Ed Kissam, a Senior Research Associate at Aguirre International explains, "The issue of access to 'jobs' in a labor market where there is much less variation in pay rates than in amounts of work done, is an important issue—since the real challenge of economic survival has to do with how much work a farmworker—male or female—can get" (Edward Kissam, personal communication, 8/28/2003).¹⁴

Of course, when women do find full-employment in agriculture, they still have primary responsibility for much of the household chores. Maria “Cuca” Carmona, of Pasadena, California, has worked in the fields her whole life.

Farm work is hard. After working in the fields, you come home exhausted. As a woman, when you get home, you don’t lay down and rest or turn on the television or drink a beer like the men do. You have to keep cleaning, sweeping, washing dishes, and cooking. Sometimes you have to keep on working until late at night. Then, you hardly have time to sleep before you have to wake up in the morning and do it all over again—making lunch for everyone, preparing things for the family, and going back to work. That’s the experience that thousands of farmworker women live through every day (Rothenberg, 1998, p.55).

Few Benefits

Benefits—access to health care, disability insurance, vacation or pension—are another example of where employment as a farmworker differs dramatically from the experience of most other workers in the U.S. Exceedingly few farmworkers have access to either fringe benefits from their employers, or access to contribution-based and needs-based services to supplement their meager incomes. The tiny percentage of those who do has actually been declining.

Despite low wages and very low annual income levels, farmworkers rarely access the safety net intended, according to the Federal government, “to cushion the blow of poverty for the working poor” (DOL, 2000b, p.16). Few have access to contribution-based services such as unemployment insurance, Social Security, or workers disability compensation that require the employer to make contributions on behalf of the worker. Despite the high seasonal unemployment that characterizes the industry, only 20% of those interviewed in 1997-1998 reported that they or someone in their family had received unemployment benefits within the previous two years (DOL, 2000a). Farmworkers’ access to Social Security pensions or disability insurance, never very common, has virtually disappeared: While 10% of workers could report access to such benefits in 1989-1990, that figure had dropped to only 1% in 1997-1998 (DOL, 1997 and 2000a). Additionally, farmworkers’ use of needs-based services is also exceptionally low. Only 13% of crop worker families had received Medicaid in 1997-1998, 10% received Food Stamps, and 10% received nutritional assistance from the Woman, Infants and Children (WIC) program (DOL, 2000a). These low percentages are explained, in part, by undocumented workers’ fear of deportation should their illegal status be detected if they applied for these benefits, and in part by the temporary and migratory nature of their employment which makes dealing with state and federal agencies quite difficult.

With regards to employer-provided benefits, the percentage of crop workers who received a cash bonus of any kind dropped from 25% in 1989-1990 to 15% in 1997-1998, and the percentage with paid vacations or holidays declined from 26% to 10% over the same period (DOL, 2000a and 2000b). The percentage of workers who are required to pay growers or labor contractors for rides to work has risen to almost a third of all farmworkers (DOL, 2000a and 2000b). Lastly, only 5% of crop workers interviewed in 1997-1998 were provided with health insurance for injuries or illnesses that are not work related; 83% reported that they were not covered, and as many as 12% did not know (DOL, 2000a). Given the highly dangerous nature of field work and the many injuries and disabling accidents that occur, the lack of access to health care is a heartless omission.



DAVIDA JOHNS

A Dangerous Occupation

Agriculture is routinely ranked as one of the most dangerous occupations in the country. The strain of labor, accidents, exposure to toxic substances and to the elements are some of the health risks farmworkers must confront daily in the fields.

The disability rate for U.S. farmworkers is three times higher than that for the general population (Wilk, 1986, cited in Austin, 2002). The most common work-related injuries include musculoskeletal conditions (e.g., chronic back injuries) and accidents involving heavy machinery, among many others. Transport to and from work in unsafe, overcrowded vehicles is an all-too-common source of danger for farmworkers, frequently resulting in accidents and, too often, deaths.

Farmworkers are routinely exposed to toxic pesticides by handling and spraying them, by working in fields recently sprayed, or through spray drift. In a study of North Carolina migrant farmworkers, half of the participants reported getting sprayed with pesticides or noticing a strong chemical smell in fields where they were working (Ciesielski et al., 1994, cited in Austin, 2002). An estimated 300,000 farmworkers suffer pesticide poisonings each year (Human Rights Watch, 2000a, citing GAO, 1992).

Immediate reactions to pesticide exposure include nausea, vomiting, dizziness, headaches, and rashes. Pregnant women and developing fetuses are particularly vulnerable to the harmful effects of pesticides: exposure to chemical pesticides may cause spontaneous abortion, growth retardation, structural birth defects, or functional deficits (Solomon, 2000). Long-term exposure to pesticides has been proven to cause skin disease, sterility, neurological damage, and cancer. A recent medical study has found elevated rates of leukemia and of other cancers linked to pesticide exposure among members of the United Farm Workers in California (Mills and Kwong, 2001).



ANDREW MILLER/OXFAM AMERICA

Disturbingly, many farmworkers lack important, sometimes even legally-required, information regarding pesticides. Recent studies have found that 43% of California's farmworkers and 59% of Colorado's farmworkers have not received the pesticide safety training that agricultural employers must provide under the Environmental Protection Agency's worker safety provisions (California Institute for Rural Studies, 2000, p.29; Kimi Jackson, 2002, p.11).¹⁵ On the other hand, "[e]ven when educated about pesticides, farmworkers are forced to work quickly and have little or no time to take precautions. Many do not complain because they fear losing their jobs" (Austin, 2002, p.202).

The dangers of pesticide exposure are compounded by problems of field sanitation and poor work hygiene. In 1990, an independent survey conducted in North Carolina specifically, found that only 4% of hired farmworkers had access to drinking water, hand-washing and toilet facilities (Sweeney and Ciesieski, 1990, p.v), an outrageous example of how the most basic of human rights is routinely violated in the fields. The absence of adequate toilet facilities in the fields has been shown to have particularly negative impacts on women's health, especially those who are pregnant (OSHA Field Sanitation Standard, Preamble, 29 CFR Part 1928).

Lack of proper facilities, especially access to drinking water, is a particular source of danger to workers. Adolescent farmworkers interviewed by Human Rights Watch in Arizona reported buying sodas or even beer from supervisors who should have provided them with water. "People buy [beer] because they are thirsty, not because they want to drink alcohol," mentioned Sylvia, an

eighteen-year old farmworker from Arizona (Human Rights Watch, 2000a, p.27). Working in 90 degree weather, and high humidity, workers risk severe dehydration, heat stroke, even death.

Ultimately, the most acute health issue for farmworkers is lack of access to formal medical treatment (Austin, 2002). Dr. Ed Zuroweste, medical director of a community health center which serves migrant farmworkers in Pennsylvania, states:

The health care of farmworkers is an issue of human rights. We're exposing farmworkers to work-related health problems. We're exposing them to these dangers and then not providing them with access to health care to identify and solve their problems. The health of farmworkers is a moral issue (Rothenberg, 1998, p.229).

Very few farmworkers receive health insurance as part of their terms of employment. As previously mentioned, only 5% of crop workers interviewed by the DOL in 1997-1998 reported that their employers provided health insurance for non-work related injuries or illnesses, and only 28% reported that they would receive compensation if they got sick as a result of work (the percentage of "don't knows" were 12% and 17%, respectively) (DOL, 2000a).

Thus, poor farmworkers—especially migrant and foreign workers—rarely seek medical care except under the most desperate circumstances. Lacking health insurance, information about medical services, and transportation from their isolated labor camps, and facing language barriers and the often hostile attitude of employers to the reporting of workplace injuries and illnesses, farmworkers live with poor health rather than obtaining treatment. The case of Esperanza Martinez, a farmworker from North Carolina, is not atypical: "What I do is wait," she explains, "and if I don't feel really bad, then I keep going to work. And if I can't take the sickness any more, then I will have to stop working and go see a doctor. But that's when I REALLY don't feel well. That's the last step I take" (Hemmings, 1996, cited in Austin, 2002, p.199).



SHIHO FUKADA

Hiring the Most Disenfranchised: Recent Immigrants and Undocumented Workers

More and more, agricultural employers are choosing to employ the most marginalized workers—recent and undocumented immigrant workers—to labor in their fields. While the employers benefit from a weak and unorganized labor force, workers find themselves essentially marginalized, working for poverty wages under hazardous and difficult conditions.

The farm workforce increasingly consists of recent immigrants. In 1994-1995, 69% of all crop workers were foreign born; in 1997-1998, their share stood at 80%. This rise in the proportion of foreign-born workers is primarily due to a dramatic influx of Mexican farmworkers. The number of Mexican workers, always a major component of the U.S. farm labor force throughout the 20th century, rose throughout the 1990s and now stands at more than three quarters of the total (DOL, 2000a).

Typical is the story of Salvador Moreno, a cucumber picker from Mexico working in Clinton, North Carolina:

I arrived in the United States with dreams, illusions. These dreams came from others, friends in my hometown who returned from the United States with cars and trucks, telling stories about how good things are here—how in America you have lots of fun, travel, and earn plenty of money...

When you're in Mexico, you can't imagine what a sacrifice it is to come here. You suffer crossing the border. You suffer looking for work. You suffer while working, because the bosses mistreat you and you don't understand why. You suffer trying to make something of yourself. When you first arrive, there are so many things you don't understand. You're alone. You can't speak English. You have no papers, no transportation, and no one to help you. You arrive with no idea of what it takes to succeed. There's nothing in your head but the desire to come to the United States to work (Rothenberg, 1998, p.7-8).

Gradually, farmworkers born in Latin American countries have been replacing U.S.-born workers—there has been a distinct Latinization of the labor force (Rothenberg, 1998).

These recent immigrants are also more likely to be male. The NAWS of 1994-1995 found that only one in eight (12.5%) foreign-born farmworkers was a woman, compared to one in every three (33%) U.S.-born farmworkers. As immigrant male farmworkers increasingly replace domestic laborers, the participation of women in farmwork is declining. Women accounted for only 20% of crop workers in 1998, down from 25% in 1989-1990 (DOL, 1997 and 2000a). This points to a “de-feminization” of the farm labor force, which results in part from growers’ discrimination in hiring. The discrimination is not subtle as Julia Gabriel of the Coalition of Immokalee Workers recounts. “We are not hiring women,” said one boss, according to her account. Another told her, “Women are not strong enough.”

The share of women in the agricultural labor market is likely to decrease even more dramatically if the future of farm labor in the U.S. is bound up with guest worker programs that allow agricultural employers to recruit foreign workers on a temporary basis: there are virtually no women hired under the current H-2A guest worker program (Goldstein and Leonard, 2003).¹⁶

Finally, a significant proportion of the recent immigrants increasingly employed in U.S. agriculture are undocumented: in 1994-1995, 70% of workers employed in U.S. agriculture for the first time had no work authorization. The share of the undocumented workers in the farm labor force has in fact increased significantly, from 37% in 1994-1995 to 52% in 1997-1998 (DOL, 1997 and 2000a).

This rise in undocumented workers in the labor force is hardly accidental: Agricultural employers contend that they face a shortage of domestically available legal workers. Farmworkers and their supporters however, argue that employers prefer to hire undocumented workers because they have less bargaining power with regard to wages and working conditions than legal workers (Levine, 2001). Undocumented workers have the lowest income levels of all crop workers: their median income of between \$2,500 and \$5,000 (NAWS, 1994-95) was lower than that of green card holders, legal permanent residents, or people holding other work. Undocumented workers are typically willing to accept the meager wages and harsh conditions of farm work because there is little else available to them (either in the United States, or in the depressed economies of their home countries).

Recruitment: Temporary Hiring and Growing Use of Contractors

Two additional developments in farm labor employment practices are especially disturbing: the rise of temporary hiring and the increased reliance on farm labor contractors (FLCs).

The Rise in Temporary Hiring

The percentage of farmworkers employed on a temporary, rather than full-time, basis in U.S. crop production has increased from 64% in 1989-1990 to 83% in 1997-1998 (DOL, 2000a and 2000b).

These non-permanent workers include the H-2A agricultural “guest workers,” foreign workers who are recruited for seasonal agricultural employment on U.S. farms on temporary, non-immigrant work visas. The number of temporary workers imported under the H-2A program remains small, but it is increasing and, in certain regions of the country, it is already quite significant. In particular, H-2A hiring in North Carolina expanded from 168 in 1989 to 10,500 in 1998, making the state the largest user of H-2A guest workers (Ward, 1999).

The hiring of temporary workers enables growers to cut their labor costs by adjusting employment levels on their farms to the seasonal demands of production. It also enables growers to cut their costs because of small employer exemptions from certain labor protective laws (see Section IV). For example, agricultural employers are exempt from paying minimum wage if they used less than 500 man-days of farm labor during every calendar quarter of the previous year. In Florida, farmers that employ fewer than five full-time workers are not required to carry workers’ compensation coverage for their employees. In North Carolina, an agricultural employer is not required to provide workers’ compensation coverage unless it employs at least 10 non-seasonal employees. Such a large full-time, year-round work force is uncommon in agriculture.

Finally, as is the case of seasonal tomato pickers interviewed by Oxfam America in Immokalee, Florida, non-permanent workers often do not have written work contracts, making it more difficult for them to claim their rights (Oxfam America interviews, Immokalee, Florida, July-August 2003).

For farmworkers, on the other hand, the increasingly temporary and seasonal pattern of employment means a life of migrancy. These seasonal workers have to travel to find jobs: 56% of all crop workers in the United States in 1997-1998 were characterized as migrant laborers, up from 32% in 1989-1990 (DOL, 2000a and 2000b).



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This increase in migrancy, accompanying the shift to temporary hiring, adds even more to the farmworkers' burden, as described by Rothenberg (1998):

“In agriculture, the workers—the most vulnerable participants in the system—are forced to bear the burden of virtually all of the costs associated with the temporary, seasonal nature of farmwork. When workers find jobs far from home, they cover their own travel expenses, including transportation, lodging, and food. Once workers arrive at a particular job site, they often have to wait days or even weeks for work to begin, and again they are responsible for all the related costs...Farmworkers are almost never given extra compensation to cover the constant displacement and downtime that marks their lives” (Rothenberg, 1998, p.24-25).

Farm Labor Contractors: Perfect Control Over Labor

Another trend with very serious implications for farmworker rights is growers' increasing reliance on farm labor contractors (FLCs) to recruit, transport, pay and supervise farmworkers (DOL, 2000b). This has especially been the case in California, where an estimated 40% of seasonal farmworkers are hired through FLCs (Taylor et al., 1997, p.14). At the national level, one fifth of farmworkers employed on U.S. crop farms in 1997-1998 were hired by farm labor contractors.

The growing use of contractors is one of the most contentious aspects of the farm labor system because FLCs have a reputation and history of abusing farmworkers. Contractors regularly take advantage of the farmworkers' vulnerability—their desperate need for employment, their lack of alternative opportunities, especially given their often illegal status, their inability to speak English, etc. They pay less than growers would, offer workers no benefits, but charge them for food, rent, transportation and tools at inflated prices. They use a variety of ways to cheat workers out of part of their wages (a common scheme is to pocket the workers' wage deductions for Social Security or taxes), and in the most extreme cases, subject them to debt peonage (e.g., forcing illegal immigrants to work off smuggling debts). Farmworkers who work for FLCs tend to be poorer than those who work for growers directly (Rothenberg, 1998).

FLCs have tremendous leverage over migrant farmworkers because, in addition to the workers' job assignments, they frequently control their housing, transportation, and cash flow. On the other hand, the FLCs themselves are at the mercy of the growers who hire them. Ralph de Leon is a contractor operating in California: “Farm labor contracting exists for the growers' benefit... By using a contractor, a grower avoids having to deal with the labor laws. If I don't do the job the way he wants, he'll just call another contractor” (Rothenberg, 1998, p.94). When growers don't pay FLCs adequately, the latter “can only bear down harder on their workers. In the end, contractors remain small operators within a larger [farm labor] system” (Rothenberg, 1998, p.105).

Sexual Harassment

Sexual harassment at the male-dominated agricultural workplace continues to remain a serious problem for women farmworkers—despite some legal protections against it in federal and some state laws. Fear of job loss and social stigma deter women from reporting such behavior to family members or to government agencies. Farm labor contractors, in particular, wield enormous power over migrant women farmworkers because they control not only their access to employment, but also frequently their housing (typically at remote labor camps) and transportation.

Hazel Filoxian now works as an advocate for farmworkers' rights in Fort Pierce, Florida. For years before that, she worked on and off as a farmworker, traveling north on migrant crews. She describes her last trip "up the road":

The last time I went north was in 1984 when I went to Wilson, North Carolina, with a white Haitian crew leader. His entire crew was Haitian. Since I was the only single woman in the camp, I had some problems...

I left the Haitian crew and moved to another camp that was run by Irene Taylor...Taylor's camp was like a nightmare...

Taylor had a room that she would force women into. Whatever man earned the most money that week could choose which woman he wanted to sleep with. Taylor would force the women to do it. She'd lock them in the room and if anybody came to their aid, she'd warn them off with her gun. She'd say, 'If anyone intervenes, I'm going to kill 'em.' We all knew that she meant it (Rothenberg, 1998, p.163).

Maria "Cuca" Carmona, of Pasadena, California, has worked in the fields her whole life. She is one of the founding members of Líderes Campesinas, an organization comprising more than 500 farmworker women. She said:

A lot of times, the contractors and the mayordomos take advantage of women who work in the fields, especially single women, widows, and women without working papers. They tell them that if they don't have sex with them, they won't give them a job. Many women working in the fields are afraid. They're afraid to complain. They're worried that if they say anything, then they'll be fired. If they lost their job, then how would they support their children? (Rothenberg, 1998, p.55)



DAVIDA JOHNS

OFF THE FARM: THE EFFECTS OF PRECARIOUS EMPLOYMENT ON FARMWORKERS' FAMILIES

Beyond the workplace, the precarious conditions of farmworkers' employment have costs (often hidden and ignored) borne by the entire family.

Coming 'Home'

"Farmworkers are among the worst-housed groups in the United States," writes Christopher Holden, a former research associate with the Housing Assistance Council (HAC) in Washington, D.C., and project manager for a national survey of farmworker housing conditions (Holden, 2002, p.169). Because of their poverty, farmworkers suffer from the entire gamut of housing problems: low ownership rates, unaffordable housing costs, overcrowding, and substandard housing quality (HAC, 2000).

According to the National Agricultural Workers Survey, only 18% of crop workers owned their own homes in 1997-1998. Twenty eight percent of crop workers lived in housing provided by their employers (75% of these were free of charge),¹⁷ 47% rented from someone other than their employer, and the remaining 7% had various other arrangements (DOL, 2000a).



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A survey of farmworker housing in the Eastern migrant stream, conducted by HAC in 1997-1998, found that 60% of surveyed units were dormitories, barracks, and mobile homes in farm labor camps.¹⁸ The HAC survey found that overcrowding in farmworker housing units was both common and severe: 85% of the units were overcrowded; children lived in 50% of these units.¹⁹

HAC's survey also documented that conditions of farmworker housing units were often terrible: 7% of surveyed units lacked access to toilets in the units or elsewhere in the property, another 8% had broken toilets. In fact, 16% of all units surveyed had at least one major appliance or fixture broken—a toilet, a bathtub or shower, a stove, or a refrigerator. The HAC survey also found that one-third of the units surveyed had structural problems (e.g., sagging roofs, house frames or porches), holes in the roof, or both (Holden, 2002). These results corroborate the following description, which appeared in the *Naples Daily News*, of the bathroom and kitchen a Haitian farmworker in Immokalee, Florida, shared with the occupants of four other dormitory rooms:

The shower has filthy, crumbling concrete walls—the kind that won't come clean. There is a metal sink held by a rotting plywood counter, and the toilet often backs up, so the tiny room reeks of sewage. At six feet tall, Etienne nearly bumps against the sagging ceiling of the narrow community kitchen, where days before a leak had puddled more than an inch of water (Edwards, 1998, cited in Holden, 2002, p.175).

Overall, 38% of the units covered in HAC's eastern migrant stream survey would be identified as "severely inadequate," according to the criteria used in the American Housing Survey (AHS) conducted every two years by HUD and the U.S. Census Bureau. By comparison, only 2% of all housing units in the U.S. were classified as severely inadequate by the AHS in 1995 (Holden, 2002).

Finally, almost 40% of units surveyed by the HAC were directly adjacent to fields where pesticides are applied. This poses a serious health hazard to the farmworkers and their children given that many housing units lack working showers and that the majority lacked access to a laundry machine (Holden, 2002).

Nevertheless, farmworkers can still end up paying very high rents for even these substandard units because of the limited supply of decent but affordable housing available to them. “In Immokalee,” noted Christopher Holden, “farmworkers often pay more monthly rent for trailers than renters pay for condominiums in the nearby vacation resort of Naples, Florida” (Holden, 2002, p.178). Similarly, in an article in *The New Yorker*, John Bowe provided this description of the rental market in Immokalee:

The town’s largest landlord, a family named Blocker, owns several hundred old shacks and mobile homes, many rusting and mildew-stained, which can rent for upward of two hundred dollars a week, a square-footage rate approaching Manhattan’s. (Heat and phone service are not provided). It isn’t unusual for twelve workers to share a trailer (Bowe, 2003, p.106).

Costs for Children

Nearly half (45%) of all crop workers surveyed in 1997-1998 had children. However, a life of migrancy forces many farmworker parents (47%) to live away from their children while they work in agriculture. Fathers are much more likely to live away from their children than mothers (58% vs. 9%) (DOL, 2000a). Moreover, the proportion of parents who are separated from their children while doing farm work appears to be increasing in recent years: in 1997-1998, 58% of the male farmworkers who had children reported that their children lived in other locations, an increase from 49% in 1994-95 and 35% in 1989 (DOL, 1997 and 2000a). This rise is not surprising as increasingly precarious employment conditions—such as the rise in temporary and seasonal hiring—force more and more farmworkers to migrate for work.

Children who live with their farmworker parents often work alongside them in the fields because childcare is expensive, and because their families are poor and depend on the children’s incomes for their survival. Six percent of workers in crop agriculture are between the ages of 14 and 17 (DOL, 2000a). A 1992 study found that, at the national level, approximately 37% of adolescent farmworkers in the U.S. work full time (Human Rights Watch, 2000a, citing a 1992 Department of Agriculture Study).

Not surprisingly, the enrollment of migrant farmworkers’ children in schools is lower than that of any other population group in the U.S. (Arceo et al., 2002). The high school drop out rate for farmworker youth is 45% (Human Rights Watch, 2000a).

Several factors affect farmworker youths’ chances of succeeding in school. Their parents’ constant mobility forces migrant children to attend two, three, or more schools each year, often in different states, subjecting them to different curricula, textbooks, and educational standards with each move (Human Rights Watch, 2000a; Arceo et al., 2002). Poverty (poor housing conditions, lack of health, inadequate nutrition, inability to afford school supplies, etc.) is another major barrier to the educational achievement of farmworker children (ibid.). Also, the strain of long hours of work during the school year is another detrimental factor affecting children and adolescents at school. Even by the time they are 12, migrant children may be working 16 to 18 hours per week (Bell, Roach and Sheets, 1994, cited in Arceo et al., 2002). In the words of one Guatemalan youth in Morganton, North Carolina “If we don’t work, we don’t eat. That’s why we don’t go to school” (Hernandez, 1994, cited in Arceo et al., 2002, p.222).



DAVIDA JOHNS

Domestic Violence

Precarious conditions of employment contribute, at least indirectly, to the disproportionately high incidence of domestic violence among farmworker women and children. Women farmworkers and their children lack access to education concerning prevention, and confront barriers to assistance such as, the isolation of migrant labor camps, a lifestyle of migration, language and cultural barriers, and their dependence on farmers for housing (Austin, 2002). In interviews conducted with 520 farmworker women by the Migrant Clinicians Network (MCN) in 1995, 20% reported abuse within the past year from their husbands, boyfriends, or intimate partners (Austin, 2002, p.207, citing MCN, 1996).

An intern with Student Action with Farmworkers (SAF) describes the difficulties of trying to help Rita caught in an abusive relationship:

When I first found out about the abuse in the household, I immediately wanted to tell Rita to leave her husband. However, this might not be the best thing for Rita or her kids. There is nowhere for her to go if she does leave her husband. She might be able to stay in a shelter for a month, maybe two, but what is she going to do after that? She is not legal—that means she cannot qualify for any social services and she cannot get a job. She has already lost one job because she does not have any papers and she is afraid to find another one (Risteen, 1998, p.99 cited in Austin, 2002, p.208).

The economic and social rights of farmworkers have deteriorated in part because this group has long been excluded from the majority of the country's basic labor laws. Farmworkers are denied the rights and protections necessary to organize and join unions, the right to overtime pay, protections for child labor, and in the case of farmworkers employed on small farms, even the right to minimum wage.





SHIHO FUKADA

SECTION III

Supply-Chain Dynamics in Produce Markets: A Case Study of Tomatoes in Florida and Pickling Cucumbers in North Carolina

The U.S. produce market has been transformed since the 1980s. What was once a highly fragmented market has become increasingly consolidated, with tremendous market power flowing to the hands of a decreasing number of huge produce buyers. As recently as the 1980s, most sales occurred between produce suppliers and wholesalers based on fluctuating market prices and quality levels. In today's market, by contrast, large food retailers purchase directly from grower-shippers, bypassing produce wholesalers. "They do so under a standing agreement or contract specifying various conditions and terms, including marketing services provided by the grower-shipper, volume discounts, and other price adjustments and quality specifications" (Dimitri et al., 2003, p.7). These shifts in market organization and function, many of which have increased both the risk and cost of doing business as a grower, have increased downward pressure on wages and heightened worker insecurity at the bottom of the fresh produce production chain.

This report analyzes two particular examples of supply-chain dynamics: that of fresh, unprocessed tomatoes and pickling cucumbers, both of which rely on relatively large amounts of farm labor for their harvest. Specifically, the report focuses on the states of Florida and North Carolina; Florida, because it is the leading domestic source of fresh-market tomatoes, especially during the winter, and North Carolina, one of the country's most important states for the production of pickling cucumbers. Importantly, leading farmworker groups have targeted the tomato and cucumber sectors for corporate reform: the Coalition of Immokalee Workers organizes tomatoes pickers who are calling for institutional buyers, namely Taco Bell and its parent company, Yum Brands Inc., to pay a penny a pound more for their tomatoes, and the Farm Labor Organizing Committee organizes cucumber pickers in a campaign to pressure the pickle company Mt. Olive to support their union drive.

THE PRODUCE SUPPLY CHAIN AND HOW IT OPERATES

As with almost all fresh fruits and vegetables, the supply chains for fresh-market tomatoes and pickling cucumbers are organized in a manner that is distinctive to each specific product. Understanding the basics of each chain's organization is important to the analysis of where costs are generated, pressures created, and profits made in each industry.

Fresh-market Tomatoes

Tomatoes continue to ripen and change color after harvesting, making their marketing more complicated than for other fresh produce. The varieties of tomatoes developed for the Florida climate, in particular, are harvested at the mature green stage and are treated with ethylene gas to finish the ripening process. These field-grown mature green tomatoes are generally shipped from their production regions to "repackers," wholesalers who sort the tomatoes for uniform color, repack them, then sell in bulk to retailers or foodservice buyers. Florida tomatoes are rarely sold directly to the final users.²⁰

Pickling Cucumbers

Marketing options for most pickling cucumber farmers are rather limited. Seventy-five to eighty percent of all cucumbers grown for pickling is planted under annual contracts with pickle packers and processors (Mattera and Khan, 2003). The terms of these annual contracts usually specify what production and cultural practices are to be followed by growers, how prices paid to the growers will be determined at the time of the delivery, and how crop-quality discounts and premiums are to be paid to growers (www.ces.ncsu.edu/depts/hort/hil/ag552e.html). After harvest, the crop is delivered by growers to a local buying station, usually owned by large growers, to be graded, sized and evaluated for quality. The remaining 20 to 25% of pickling cucumbers not grown under contract are transacted on the spot markets, often through brokers.²¹ Some open market transactions are conducted through auctions. In recent years, growers have been selling a small proportion of their pickling cucumber output directly to the retail grocery stores. These "fresh-market pickling cucumbers" are sold to consumers who prefer the taste of these cucumbers.

Over the last two decades, several critical changes have revolutionized traditional market relationships in the U.S. fresh produce sector, some with significant impacts on these two products' supply chains.

- Wholesalers, who once played a critical middleman or brokering role, have become far less important as an increasing share of produce volume is sold directly from the suppliers to the retail supermarkets;

- Sales to the foodservice sector have increased relative to retail stores, as more and more food is consumed away from home;
- Retail supermarkets, the foodservice sector, the processing sector, and even the wholesalers and “middle men” have become increasingly consolidated, leaving fewer and fewer options for growers and suppliers looking for places to sell their product; and
- A rise in cheap imports of fresh produce has put tremendous downward pressure on prices and squeezed many players out of the market altogether.

ASCENDANCE OF LARGE SUPERMARKET STORES

In 1997, supermarkets, supercenters, or warehouse clubs²² captured 92% of retail produce sales in the U.S., amounting to \$31.5 billion. Despite their greater number, specialized produce stores (which include produce markets, butcher shops, bakeries, dairies, and health food stores), convenience stores and “other” retail foodstores accounted for a mere 8% (Kaufman et al., 2000).

Given this predominance in the market, supermarkets (including supercenters and warehouse clubs) can exercise considerable influence over produce suppliers, wholesalers, and other intermediaries. Their power is only increasing as waves of consolidation continue to impact the sector, eroding competition. Mergers and acquisitions among U.S. food retailers in the late 1990s have contributed to a sharp increase in the share of sales accounted for by the largest firms: the twenty largest food retailers’ share of grocery store sales reached 52.0% in 2000, up from 36.5% in 1987 (Dimitri et al., 2003).²³

A recent development in the U.S. retail food market is the phenomenal rise in the share of sales by mass merchandisers, including supercenters and warehouse club stores. As recently as 1987, mass merchandise retailers like Wal-Mart had not yet built their supercenter formats; warehouse clubs like Sam’s (a division of Wal-Mart’s) were emerging but carried little produce or other perishable foods. Supermarkets captured 89.1% of retail produce sales. By 1999, Wal-Mart was the fifth largest food retailer, accounting for \$15.7 billion of grocery store sales in its 721 supercenters (Kaufman et al., 2000). Today, Wal-Mart’s 1397 supercenters account for 19% of U.S. grocery sales (Greenhouse, 2003). With Wal-Mart planning another 1000 supercenters over the next five years, it is estimated that it will control 35% of the domestic retail food market by 2008 (Greenhouse, 2003).

EXPANSION OF THE FOOD SERVICE SECTOR

Supermarkets, supercenters and warehouse clubs may be growing, but their overall share of total fresh produce purchases is actually on the decline as consumers spend more of their food dollars in restaurants, fast-food outlets, college cafeterias, and other food service settings. The share of total fresh produce sold by foodservice establishments has increased dramatically—from 35% in 1987 to 50% in 1997, while retail stores’ share fell from 64% to 48% over the same period.²⁴ In 1997, produce sales by foodservice establishments surpassed retail stores in value, totaling \$35.4 billion, compared to \$34.3 billion in stores.

The trend towards greater sales to the foodservice industry is certainly the case for mature green tomatoes. Many hamburgers require a slice of tomato and foodservice buyers generally prefer the firmness of mature green tomatoes for slicing. By contrast, consumers’ preferences have been changing away from mature green tomatoes in favor of vine-ripe, roma, cherry and other specialty tomatoes. The result has been a decline in the share of Florida tomatoes going to the

retail sector, forcing Florida producers to sell to the foodservice market either directly or through wholesaler/repackers (Calvin et al., 2001). Robert Taylor, co-owner of the Florida-based grower Fulton & Taylor says “food service is my primary market; retail is a distant second” (Mattera and Khan, 2003, p.5).

In the case of cucumbers, information derived from a food consumption survey conducted by the USDA indicates that approximately 45% of pickled cucumbers are consumed away from home. In particular, one third of all pickled cucumbers are used in fast foods such as hamburgers and subs (USDA, 2000).

The foodservice industry is also consolidating. Yum Brands Inc., for example, is a Fortune 300 company, which operates A&W All-American Food, Kentucky Fried Chicken (KFC), Long John Silver’s, Pizza Hut, and Taco Bell worldwide. However, the foodservice industry as a whole still remains fragmented, with the fresh produce procured mainly via wholesalers and with the assistance of brokers (Calvin et al., 2001). Indeed, much of the volume moving through the wholesale channels is destined for the foodservice users.

One fairly recent phenomenon is the development of foodservice purchasing cooperatives. Restaurant chains centralize their procurement through these cooperatives, which then deal directly with growers or with brokers. In 1999, Yum Brands Inc., partnered with Unified Foodservice Purchasing Co-op (UFPC) to manage the supply chain for all corporate- and most franchise-owned A&W, KFC, Long John Silver’s, Pizza Hut and Taco Bell restaurant outlets in the U.S. The UFPC Fresh Produce Team is accountable for over \$210 million in annual purchases of fresh produce for these restaurants (www.ufpc.com). Taco Bell currently purchases all the fresh tomatoes for its corporate-owned and franchise restaurants (about 40 million pounds annually) through UFPC. In Florida, UFPC obtains its fresh tomatoes through a single broker who purchases directly from five or six different growers.²⁵

CONSOLIDATION AND ITS IMPACT

Fresh-market Tomatoes

Florida’s tomato growers have not been as affected by the consolidation of retailers or foodservice establishments as they would have been if the industry sold directly to the final users. In particular, it has been argued that the key role played by repackers in the Florida tomato industry has served to shield growers somewhat from some of the pressures that giant retail chains, in particular, have been able to exert in other commodity markets (Mattera and Khan, 2003). For example, tomato growers have not faced demands for slotting fees from retailers, as has happened with newer branded-produce items such as bagged salads.

Of course, just as retailers and the foodservice establishments have consolidated, so have the wholesalers and repackers that sell to them. Consolidation has been occurring rapidly among food wholesalers, particularly among general-line grocery wholesalers which serve foodstores and supermarkets, and among the general-line foodservice wholesalers which serve restaurants and institutional customers such as schools and hospitals (Kaufman et al., 2000). Consolidation at the wholesale level has, however, lagged behind retail (Calvin et al., 2000). Even more relevant in the case of fresh tomatoes, consolidation of the repackers has also lagged behind retail.

Repackers remain relatively fragmented, with many small, often family-run businesses (Mattera and Khan, 2003). Nevertheless, a number of larger companies have recently entered this field. In 1999, Performance Food Group (the country's third largest foodservice wholesaler) acquired Dixon Tom-A-Toe of Marietta, Georgia (which claimed to be the world's largest tomato repacker). Even more recently, in early 2003, Fresh Del Monte Produce Inc. acquired Standard Fruit and Vegetable Co. of Dallas, a \$300 million company involved in tomato repacking as well as other aspects of produce distribution. In the late 1990s, Fresh America Corp. acquired a series of regional repackers, but the company was not able to manage its debt load and liquidated its operations over the past year. Fresh America's produce operations were acquired by DiMare Fresh, a subsidiary of Florida's DiMare Homestead tomato-growing company (Fairbank, 2003).

A 1999 study of tomato grower-shippers in Florida conducted by the USDA's Economic Research Service gives an indication of the increasing consolidation among buyers. For the firms interviewed in that study, the share of total sales going to the top four buyers increased from 34% in 1994 to 45% in 1999; the share going to the top ten buyers increased from 48% to 59% over the same period (cited in Calvin et al., 2001).²⁶

Pickling Cucumbers

As with growers of mature green tomatoes, pickling cucumber growers are not directly affected by consolidation of the retail sector or foodservice sector because they sell most of their produce to processors/packers, and little to final users.

Dozens of firms across the country produce cucumber pickles and relish (USDA, 2000), but a few very large firms control a majority share of the market. These include Dean Foods, Pinnacle Foods (owner of the Vlasic brand of pickles), Kraft Foods (owners of the Claussen brand), Heinz, and Mt. Olive Pickle Company, a major regional producer based in North Carolina.



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Consistent with the general trend in the food processing industry, pickle-processing companies have been consolidating. Recent examples of consolidation among pickle packers include the expansion of Dean Foods' market share through a series of mergers and acquisitions over the last 12 years. The company's Specialty Foods division is currently one of the largest pickle processors and marketers in the United States. Similarly, Mt. Olive, a company based in North Carolina, has extended its reach all the way to the East Coast by expanding its distribution network (Mattera and Khan, 2003).

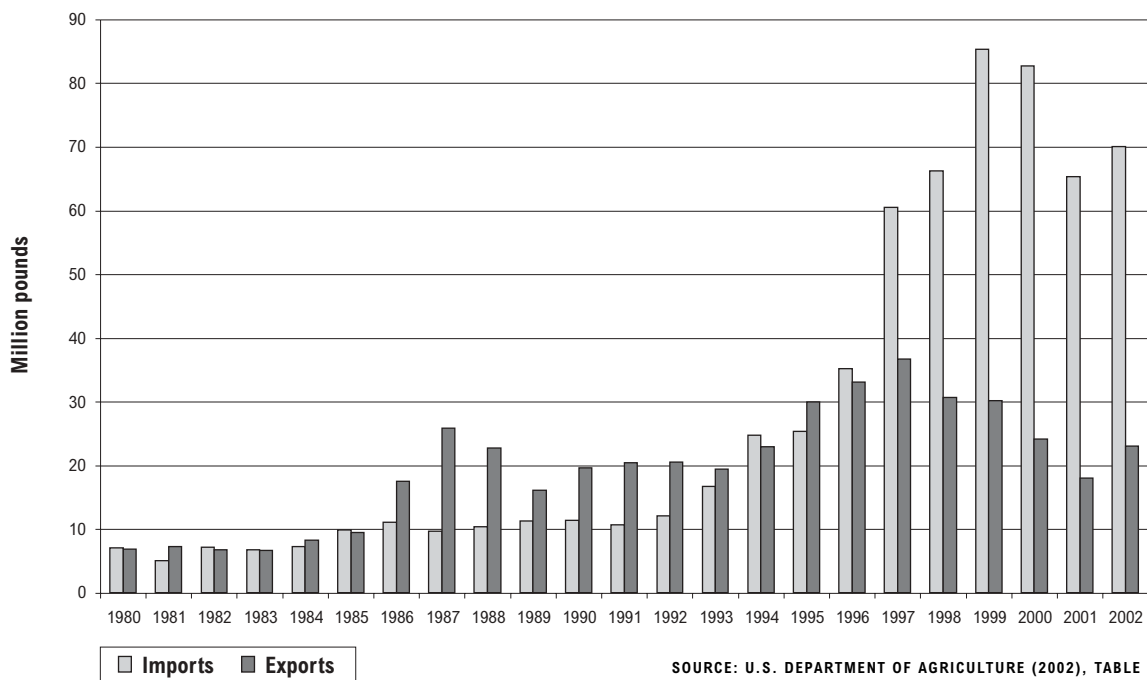
In October 2002 the Federal Trade Commission (FTC) blocked the proposed acquisition of the Claussen pickle brand from Kraft Foods by the private investment firm Hicks, Muse, Tate & Furst Equity Fund, owner of Vlasic Pickle Company. According to the FTC, the proposed transaction would have combined Claussen, the dominant firm for refrigerated pickles in the market, with Vlasic, its most significant competitor in refrigerated pickles and the largest national brand of shelf-stable pickles. The FTC alleged that the proposed merger would result in anticompetitive practices and increased prices (Federal Trade Commission, 2002).

In conclusion, as the retailers, fast-food chains, processors, and even wholesalers have grown and consolidated, they have become more powerful as produce buyers and have created myriad pressures for the growers that supply them.

COMPETITION FROM IMPORTS

At the same time that growers face the new realities of power in securing markets and good prices for their crops, they also have encountered increased competition from imports. Both the fresh tomato market and the pickling cucumber markets have become more international, putting intense pressure on growers to cut costs or get out of the sector altogether.

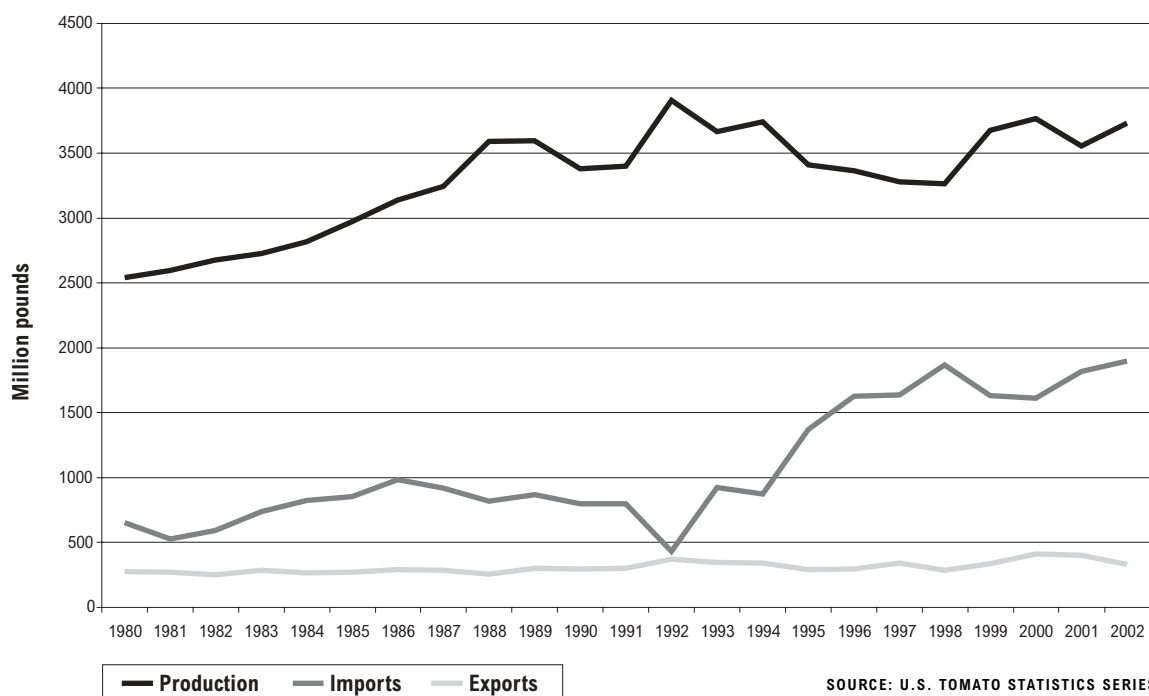
Figure 1: Pickling Cucumbers: Imports and Exports, 1980-2002



SOURCE: U.S. DEPARTMENT OF AGRICULTURE (2002), TABLE 1
 NOTE: ALL PRODUCT WEIGHT DATA WAS CONVERTED TO A FRESH WEIGHT BASIS USING A FACTOR OF 0.744,

Imports of cucumbers for pickles increased sevenfold during the 1990s (Figure 1). At their peak in 1999, imports accounted for nearly 7% of total U.S. production, up from 1% or less in the years prior to 1993 (USDA, 2002). Pickling cucumber imports were twice as high as exports in the late 1990s, and three times as high since the year 2000. Recent increases in imports of pickling cucumbers reflect both a rising volume of finished products (that is pickles ready for immediate consumption) from Canada and India, and growing quantities of bulk, unfinished pickles (that are in brine and require further processing) from Honduras and India (U.S. Department of Agriculture, 2000). Imports of bulk unfinished pickles totaled 50 million pounds in 1999, compared to only 7 million pounds in 1990 (U.S. Department of Agriculture, 2000). The Mt. Olive Pickle Company in North Carolina, the country's second largest processor of non-refrigerated pickles and pickle products, has purchased fresh pickling cucumbers from Mexico and Honduras, as well as brined cucumber from India, Sri Lanka and Greece.²⁷ Competition with lower-cost growers from countries like India is difficult for producers of the hand-harvested variety of pickling cucumbers grown in North Carolina, where labor costs represent 35% of total operating costs and 26% of total costs of production.²⁸

Figure 2: Fresh Tomatoes: Production, Import and Export Levels, 1980-2002



SOURCE: U.S. TOMATO STATISTICS SERIES
([HTTP://USDA.MANNLIB.CORNELL.EDU/DATA-SETS/SPECIALTY/92010](http://usda.mannlib.cornell.edu/data-sets/specialty/92010)),
TABLE 1 AND TABLE 77

Increased foreign competition has had an even greater impact on the domestic fresh-market tomato industry. In 2002, total U.S. fresh tomato imports were 19.0 million cwt, an amount equal to more than half of domestic output and more than five times the level of exports.²⁹ For every year since 1994, U.S. imports have outpaced exports by more than 1 billion pounds (Figure 2). Mexico is, by far, the largest source of tomato imports, accounting for some 84% of U.S. tomato imports in 2002 (by weight); Canada is a distant second, with about 12%.³⁰

Tomato imports from Mexico compete directly with tomatoes grown in South Florida, historically the only domestic source of field-grown tomatoes during the winter season (October through July). Over the last decade, Florida has seen its market share decline, as Mexico's share has been increasing. In part, retailers favor the vine-ripe variety of tomatoes grown in Mexico over the mature-green tomatoes grown in Florida. Also, lower labor costs, other operating and fixed costs, and regulatory costs, result in lower production costs for Mexican producers compared to Florida's tomato farmers.

The North American Free Trade Agreement (NAFTA), which brought a progressive reduction of tariffs on some Mexican imports, substantially increased Mexican growers' shipments of winter tomatoes to the U.S. Mexico's share of the U.S. tomato market jumped from 28% in the 1991 season to 42% in the 1997 season. On the other hand, Florida growers' share fell from 56% to 40% over the same period (de Pommereau, 1998).

Tomato growers (both large and small), as well as packing houses, were hit very hard by this new competition from Mexico. Harvested tomato acreage in South Florida declined by 22% between 1993/94 (just before the implementation of NAFTA) and 1998/99 (Calvin et al., 2001). Paul DiMare, farmer and owner of the DiMare Company in Florida City claimed to have lost 65% of his business. Interviewed in 1996, he explained:

In the wage base of Mexico in agriculture right today, they're paying \$3 a day for wages. We're paying those same people 60 and 70 dollars a day. You can't have that. How would we compete? I mean, there's no way to compete against somebody that pays twenty to thirty times less than you do (PBS, 1996).

The impact of Mexican imports was greatest on the tomato industry in Florida's Immokalee region, where tomato sales dropped 60 percent between the 1991 and 1997 seasons, from \$265 million to \$102 million. This was due both to a 31% decline in tomato acreage in the region and a drop in the average wholesale price from \$9.10 to \$7.39 for a 25-pound box of tomatoes, according to figures compiled by the Florida Department of Agriculture and Consumer Services (de Pommereau, 1998).

"We're getting crucified," Wayne Hawkins, the executive vice president of the Florida Tomato Exchange (an agricultural cooperative that represents tomato shippers in Central and South Florida) commented in 1996. "We'd be better off if we picked the tomatoes and threw them into the road" (UF/IFAS News, 1996).

In 1996, following the post-NAFTA tomato pricing crisis, Florida tomato growers filed a trade complaint against Mexican growers, charging that Mexico was "dumping" its tomatoes in the U.S. at less than their cost of production. The U.S. International Trade Commission ruled in their favor. However, market prices stabilized somewhat (and the U.S. Department of Commerce suspended its anti-dumping case) in October 1996 when Mexican growers reached a settlement with their Florida counterparts. The settlement set a price floor of \$0.21 per pound, or \$5.17 per box for Mexican tomatoes shipped to the US.³¹ While the trade situation with Mexico appears to have stabilized, continued opening of the domestic market to competition from other countries in the Americas under the auspices of new trade agreements with Central America, Chile, and possibly the entire hemisphere, will continue to pose serious threats to Florida's tomato growers.

PUSHING COSTS AND RISKS DOWN THE SUPPLY CHAIN

The impact of these changes is significant, with clear ramifications for farmworkers' workplace conditions, wages, and rights. The purchasing practices of consolidated buyers can put pressure on grower-shippers, passing risks and costs down the supply chain in order to increase their own profit margins. The following examples, from the fresh tomato industry in Florida and the pickling cucumber industry in North Carolina, illustrate the means by which such pressures are actually passed along.

Transferring Risks to Growers

Seventy-five to eighty percent of cucumbers grown for pickling in the United States are produced under annual contracts with processors that guarantee a certain price to the growers. Historically, processors usually contracted growers by the acre, irrespective of the ultimate output levels. Increasingly, processors are contracting with growers for a specified number of bushels. When growers produce more than the amount that they have contracted for, they can sell the additional quantity to brokers. This change has taken place gradually, over the last ten years, as production estimates have become more precise. However, this new contracting arrangement represents increased risks for growers who are now responsible for any excess supply or any supply shortfalls (Mattera and Khan, 2003).

Shifting Processing Functions to Suppliers

In addition to the switch away from contract by acreage to contract by bushels, pickle processors are also shifting away from certain operations such as salting and brine disposal. Many expanding processors have reached the limits of their infrastructure—for example, they cannot expand their sewage (process waste water) capacity any further, or additional land has become prohibitively expensive. Increasingly, their strategy is to demand that growers and shippers take over brining operations. These functions require increased capital investments in machinery by the growers (Mattera and Khan, 2003).

Another possible saving to buyers in the transfer of these processing functions to the growers is in labor costs. Under the current labor conditions, growers have more flexibility in hiring workers compared to processors. Processing plants may be unionized and do not usually employ migrant labor. Salting and disposal operations may be cheaper if performed by growers because low-wage migrant labor is used during the off-season for work that was previously done by processing plant workers who may have had more negotiating power (Mattera and Khan, 2003).

Squeezing Prices

By purchasing greater volumes, larger consolidated buyers can negotiate lower wholesale prices, thereby lowering the per-unit-cost of goods.

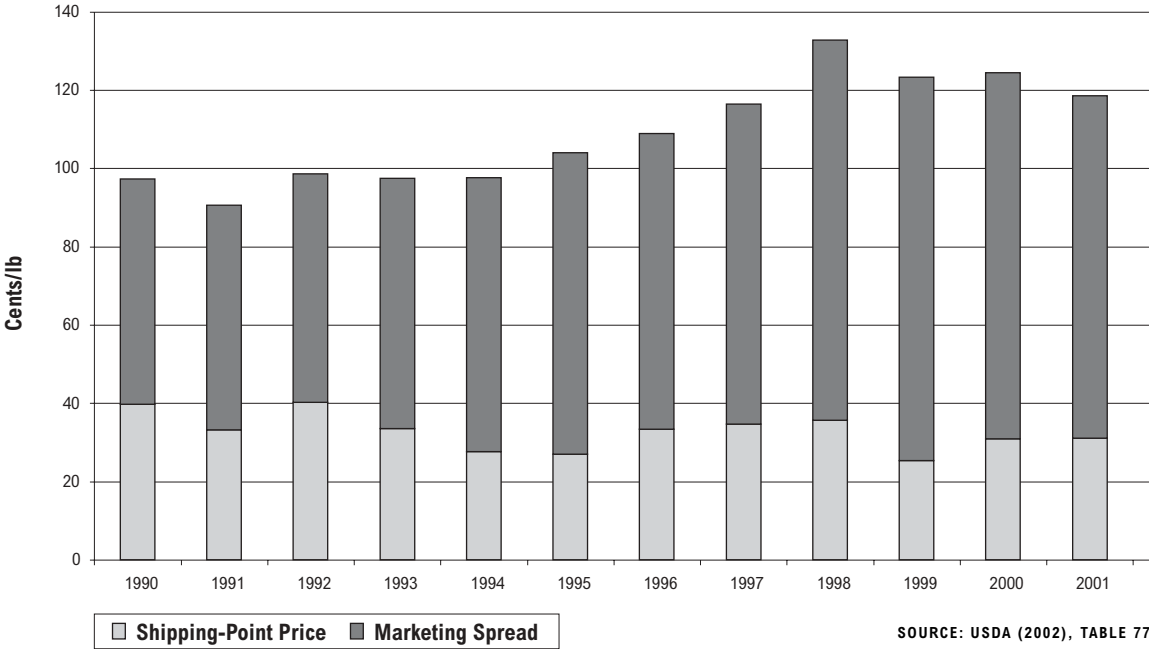
In the case of tomatoes, for example, the partnership between Yum Brands, Inc. and the Unified Foodservice Purchasing Co-op (UFPC) makes UFPC the largest purchasing cooperative of its kind in the quick-service restaurant industry. UFPC obtains lower prices by making volume purchase commitments. UFPC's mission statement is to "provide our members with an ensured supply of specified products at the *lowest cost*" (www.ufpc.com; emphasis added).

In the case of cucumbers, consolidation has increased the market and bargaining power of the pickle processing companies, according to Richard Hentschel, Executive Vice President of Pickle Packers International, Inc.³² Increasingly, these companies are adopting the purchasing practices of Wal-Mart, which is reputed to ask its suppliers to show their books so that they can estimate the suppliers' profit margins on products they supply to Wal-Mart (Mattera and Kahn, 2003).

And, prices have certainly been falling. Prices received by farmers for both fresh tomatoes and cucumbers for pickling, have been going down in real terms. The price of pickling cucumbers is, in real terms, approximately 15% lower in 2002 than in 1980. In the case of fresh tomatoes, average price between 1980 and 1992, calculated in 1996 dollars, never fell below \$30 per cwt (a unit of measure equal to 100 pounds). By contrast, for seven out of the ten years from 1992 to 2002, the price has been below \$30. The inflation-adjusted price of fresh tomatoes is approximately 21% lower in 2002 than it was in 1980.³³

The disparity between the retail price and the price received by the grower-shipper is known as the “marketing spread.” Figure 3 shows that for tomatoes, as is the case for many other crops, a significant and rising portion of the money spent by consumers on produce goes to retailers, wholesalers, and other middlemen, rather than to the growers. Whereas in 1990 grower-shippers received 41% of the retail price of tomatoes, by 2000 they were receiving barely one quarter. This has occurred even as inflation-adjusted average prices for fresh tomatoes at the retail level have increased significantly. Taking the 1982-84 U.S. city average equal to 100, the tomato price index (the tomato component of the consumer price index) reached a record 251.0 last year, nearly a 50% increase since 1992 (Mattera and Khan, 2003). Inflation-adjusted retail prices have been rising while prices received by farmers in real terms have been falling.

Figure 3: Contribution of Shipping-Point Prices and Marketing Spread to Retail Prices, The Case of Fresh Field-Grown Tomatoes, 1990-2001



The existence of such a substantial, and rising, marketing spread is evidence of the growing economic power exercised by retailers and (to a lesser extent) by wholesalers, relative to growers. The middlemen and buyers may not exercise this power through oppressive supply contracts, as in other agricultural commodities sectors, but they take advantage of the competitive pressures exerted on growers by foreign producers and other forces (Mattera and Khan, 2003).

IMPACT ON GROWERS

Confronted with these pressures, the number of farms and the total number of acres devoted to growing tomatoes in Florida or cucumbers in North Carolina have been declining.

According to the 1997 Census of Agriculture, there were 14,366 tomato farms in the United States, down from 15,501 found at the time of the previous agricultural census in 1992. In Florida, the number of tomato farms in 1997 was 192, down from 311 in the 1992 census (a decline of 38%). Total acreage of tomatoes harvested in Florida has also shrunk substantially during this five-year period (from 63,423 acres in 1992 to 39,900 acres in 1997). What the census data reveals is that smaller as well as larger operations are simply abandoning the tomato business, with the land being turned over to other uses. Those growers who do remain in the business tend to be larger: According to the most recent census data, in 1997 there were 22 farms of 500 acres or more, accounting for two-thirds of total acreage devoted to tomatoes.³⁴

The number of members of the Florida Tomato Committee, which consists of all significant growers and accounts for nearly all of Florida's output, is now less than 75—compared to about 300 a decade ago. "I'm down to the mean ones," said Reginald Brown, Manager of the Committee, in a telephone interview on May 22, 2003 (Mattera and Khan, 2003, p.10). Other sources put the number of significant growers at less than 20.³⁵ According to a study done by the USDA's Economic Research Service, the top 5 Florida grower-shippers account for 45% of the state's volume of tomatoes shipped; the top 10 account for 70% (Calvin et al., 2001, p.12).

In the case of cucumbers, the total number of farms in the U.S. went down from 7,871 to 6,821 from 1992 to 1997. Total acreage, however, increased from 138,639 acres to 144,606 acres over that period. In North Carolina, a state where cucumbers are primarily hand-harvested, the number of the farms growing cucumbers decreased from 776 in 1992 to 554 in 1997; total acreage also decreased from 15,987 to 14,420. Farms between 1.0 and 24.9 acres experienced the sharpest decline both in terms of number of farms (a 42% drop) and acreage harvested (a 38% drop). The largest farms were less impacted. In fact, farms of 100 acres or more declined in numbers, but increased their acreage: Farms of this size accounted for 46% of total acreage devoted to cucumbers and pickles in 1992, compared to 55% in 1997.³⁶

Squeezed by buyers of their produce, growers pass on the costs and risks imposed on them to those on the lowest rung of the supply chain: the farmworkers they employ. Many farmers view their labor expenses as the only area where they are able to make significant cuts.³⁷

What enables these employment practices are, in part, the weak laws protecting farmworkers and their even weaker enforcement, as detailed in the next section.





ANDREW MILLER/OXFAM AMERICA

SECTION IV

Injustice in the Fields, Injustice in the Law

“You only have the right to work, not to anything else.”

—Luisa Fernández, a tomato picker from Immokalee, Florida, with no work contract, no overtime pay, no maternity leave, and no paid vacation or sick leave (Oxfam America interview, Immokalee, Florida, 22 July 2003).

LABOR LAWS: ANYONE BUT FARMWORKERS

U.S. labor laws have a long history of excluding farmworkers from the protections afforded to workers in other sectors of the economy. Many of this nation’s basic labor laws protecting employees were enacted during the New Deal of the 1930s. These include the minimum wage, overtime and child labor provisions of the Fair Labor Standards Act; the union-organizing and collective-bargaining rights in the National Labor Relations Act; and the unemployment compensation system. The industrial workplace was dramatically transformed by the federal labor legislation of the New Deal period. The U.S. Congress, however, excluded farmworkers from these basic labor protections using, what the historian Cletus E. Daniel has described as, “the fiction...that farm employers were not really employers in the industrial sense...” (Daniel,

1981, p.282). Daniel further explains that the “powerlessness of agricultural wage earners” in the face of momentous policymaking based on such fiction, “was not a product of public ignorance, but of the political and economic power of organized agribusiness interests” (Daniel, 1981, p.284).

Racial prejudice has also played an important role in excluding farmworkers from the protections of labor laws. Like other manual laborers, farmworkers have often been ethnic minorities or immigrants. The migrant farmworker population was predominantly made up of African Americans before 1960 and, since then, is increasingly made up of recent immigrants and foreign guest workers from Latin America. The exclusion of farmworkers from most of the labor legislation of the New Deal has been traced to President Franklin Roosevelt’s need to maintain a Democratic Party coalition which included Southern white racists who sought to protect the plantation system that employed large numbers of African-Americans (Linder, 1992).³⁸

Excluded from the National Labor Relations Act (NLRA): No Right to Organize

The NLRA, originally enacted in 1935 and administered and enforced by the National Labor Relations Board, gives employees the right to engage in concerted activities for the purpose of mutual aid and protection. The NLRA forbids employers from firing a worker for joining, organizing, or supporting a labor union. The NLRA also establishes a structure for unions and employers to engage in collective bargaining, requiring each side to bargain in good faith to reach an agreement on job terms. However, since its enactment, the NLRA has specifically excluded agricultural workers from coverage, thus depriving them of the law’s protections. Consequently, under federal law, a farmworker may be fired for joining a labor union or engaging in collective action against an employer, and a farm labor union has no legal method of compelling an employer to negotiate the terms of employment. While the NLRA’s exclusion of farmworkers has contributed substantially to farmworkers’ poverty and political weakness, farmworker advocates have occasionally played such exclusion to their benefit by calling for secondary boycotts against higher profile and more vulnerable corporate targets, a practice which would be prohibited by the National Labor Relations Board.

The Fair Labor Standards Act (FLSA): Minimum Wage for Some, But No Overtime Pay

The FLSA, originally enacted in 1938, guarantees most workers a minimum wage for each hour worked (\$5.15 per hour since September 1, 1997), and also requires that most employees working more than 40 hours in a workweek be paid one-and-a-half times their regular rate of pay for each hour over forty. Until 1966, the law excluded farmworkers altogether. The FLSA now applies the minimum wage provisions to most agricultural workers.³⁹ However, it still excludes them from the right to overtime pay—farmworkers can work upwards of 60 hours per week and still only make their base wage rate, which is often close to the minimum wage. In fact, the many agricultural workers employed on smaller farms—any farm that employs fewer than roughly seven workers in a calendar quarter—are not even protected by the minimum wage provisions of the FLSA.

Child Farmworkers: The Ones the Law Forgot

The FLSA has child labor provisions that offer less protection to those working in agriculture than in other industries. For most jobs, the normal minimum age is 16 years (with few exceptions); in agriculture, it is 14 years (with many exceptions). There are no restrictions on agricultural work being done by children as young as 12 years old early in the morning or late into the night as long as they work alongside their parents or receive parental permission. Nor does the FLSA contain any restrictions on the number of hours young farmworkers can work per day or per week (except that they may not work during school hours).

Under the law, the minimum wage for tasks designated by the DOL as “hazardous” is 18 years for all industries except agriculture, where the minimum age for such tasks is 16, despite the fact that agriculture is one of the three most dangerous industries. The protections provided by the law against the hazards faced by students working in shopping malls are stronger than the protections offered to children working in agriculture where toxic pesticides, heavy machinery and other hazards are commonplace. In addition, agricultural employers’ ability to employ low-cost child labor (often “off the books”) helps to perpetuate adult farmworkers’ low rates of pay, which in turn prevents farmworkers from earning enough to afford child care or eliminate the need for their children’s income from agricultural work.

The Migrant and Seasonal Agricultural Worker Protection Act (AWPA): A Modest Attempt to Reform an Abusive System

The principal federal employment law for farmworkers is the Migrant and Seasonal Agricultural Worker Protection Act of 1983 (known as AWPA or MSPA). While the law does not grant farmworkers the right to join labor unions or engage in collective bargaining, it does contain some important protections. The AWPA requires agricultural employers to disclose terms of employment at the time of recruitment and to comply with those terms; it requires employers who use farm labor contractors (to recruit, transport or supervise farmworkers) to confirm that the contractors are registered with and licensed by the U.S. Department of Labor; it requires providers of housing to farmworkers to meet local and federal housing standards; and it requires transporters of farmworkers to use vehicles that meet basic federal safety standards and are insured. The law is administered and enforced by the DOL’s Wage and Hour Division, and through lawsuits in federal courts that may be filed by farmworkers. Like the FLSA, however, the AWPA does not apply to smaller employers.

Congress enacted the AWPA in 1983 to replace an earlier law, the Farm Labor Contractor Registration Act of 1963 (FLCRA), which itself was enacted in the wake of Edward R. Murrow’s shattering documentary film, *Harvest of Shame*, about farmworkers. The documentary, aired by CBS on Thanksgiving day in 1960, was the first time that most Americans were confronted with the shocking conditions under which migrant farmworkers—and especially migrant children—work and live. The FLCRA had focused exclusively on regulating farm labor contractors (FLCs), notorious for their abuses of migrant workers. In enacting the AWPA, the legislature also placed labor law obligations on the growers who employ farmworkers, even if the growers use the services of farm labor contractors. Congress understood the need to protect farmworkers against farmers who avoided compliance with labor laws (by claiming that the FLCs, and not the farmers actually “employ” farmworkers, or by claiming that farmworkers were not employees at all, but independent contractors). Congress therefore adopted a broad definition of employment relationships so that a farmworker is, in most cases, an “employee,” and a grower using the services of a FLC is responsible, as a “joint employer” with the FLC, for providing farmworkers with AWPA’s labor protections.

However, in recent years, agricultural employers have lobbied Congress to substantially weaken the AWPA’s protections and enforcement.⁴⁰ They have argued that compliance with AWPA is onerous, that the law “unfairly singles out agriculture,” that the enforcement of the law is heavy-handed, and that the AWPA puts U.S. employers at a competitive disadvantage in the global economy where many countries provide fewer protections for their workers.

Health and Safety Laws: Farmworkers Denied the Same Protections Against Workplace Hazards as Other Workers

The Occupational Safety and Health Act (OSH Act), originally enacted in 1970 and administered and enforced by the DOL’s Occupational Safety and Health Administration (OSHA), is the principal federal law designed to protect employees from hazards at the workplace.

The most serious safety and health hazards farmworkers face are: (1) lack of adequate drinking water and toilet facilities; (2) musculo-skeletal injuries caused by lengthy stooping, lifting, and cutting in harvesting crops; (3) farm machinery and equipment; and (4) exposure to pesticides. OSHA has haltingly, if at all, issued standards that apply to these hazards.⁴¹ Moreover, even where these standards exist, their effectiveness is limited because Congress has prohibited funds to be used for OSHA enforcement of the standards at farms with fewer than 11 employees (unless the farm maintains an active temporary labor camp).

OSHA's Field Sanitation Standard, issued in 1987, requires employers of eleven or more farmworkers to provide cool drinking water as well as one toilet and hand washing facility for every 20 employees.⁴² The health benefits of proper sanitation—especially in reducing the risk of heat stroke, pesticide poisoning, urinary tract infection, and parasitic disease—have long been recognized. Nevertheless, OSHA had for many years refused to issue any field sanitation standard. It was finally forced to do so by order of a federal court, which castigated OSHA's 14 years of "intractable...resistance" as a "disgraceful chapter of legal neglect."⁴³

There is no OSHA standard relating to musculo-skeletal injuries. In November 2000, following a ten-year battle between business and labor over rules designed to eliminate workplace musculo-skeletal disorders, OSHA issued an ergonomics standard. However, in March 2001 Congress repealed this OSHA standard.⁴⁴

There are OSHA standards that require some farm machinery to be equipped with safety guards and shields. The most important of these requirements is that all tractors manufactured after 1976 be equipped with a rollover bar or canopy or similar protective device. The use of these devices has helped reduce the large number of injuries from tractor accidents. However, there remain in use today many tractors that were built before 1976 and are therefore not required to be retrofitted with such safety devices.

OSHA has no power to regulate pesticides because it is prevented by the OSH Act from regulating working conditions once another federal agency—in this case the U.S. Environmental Protection Agency (EPA)—has exercised statutory authority to regulate occupational safety or health. This "preemption" provision in the OSH Act is a serious flaw because the pesticide safety provisions under the EPA's Worker Protection Standard (WPS) are generally weaker than OSHA's standards.⁴⁵ Moreover, the EPA's enforcement and inspection powers are much weaker than OSHA's. These powers are not directed at the farms but rather at the pesticide manufacturers' workplace. The EPA has therefore no power to fine a farmer who misuses pesticides.

The EPA has principal responsibility for approving, restricting and banning the use of agricultural pesticides, but the EPA's standards and decisions have been more responsive to the demands of pesticide manufacturers and growers than to the safety and health concerns of farmworkers and their families (Hettenbach and Wiles, 1999; Headen, 1999; Davis, 2003). Congress, in the Food Quality Protection Act of 1996, and the EPA, in its subsequent regulations, have responded to many concerns that consumers have expressed about toxic pesticides in the foods they purchase and eat at home. However, these additional protections have not extended to the farmworkers who produce these foods. Tens of thousands of poisonings of farmworkers occur annually. Yet, no federal system exists to track these incidents in order to determine their medical consequences or to evaluate existing protections.

IMMIGRATION POLICY UNDERMINES FARMWORKERS' BARGAINING POWER

The U.S. has, for much of its history, relied on the “importation” of a stable and reliable foreign workforce to work in agriculture. Immigration policy has, in fact, long been intertwined with the purported labor requirements of U.S. farmers (Levine, 2001). The laws that have regulated the flows of workers into the United States have depressed workers’ wages and worsened working conditions.

Most recently, in the 20th and 21st centuries, the U.S. government has, through the Immigration and Naturalization Service and the Department of Labor, implemented various agricultural guest worker programs that have allowed agricultural employers to recruit foreign workers on a temporary basis. These workers’ tenuous “nonimmigrant” status has deprived them of any economic bargaining power vis-à-vis their employers and of the political power needed to change the laws that discriminate against them.

The most notorious foreign-labor program in recent history was the Bracero Program. Created during World War II as an “emergency” program to address alleged temporary labor shortages, the program brought a total of about 4 million Mexican citizens to perform seasonal agricultural work on U.S. farms during its 22 years of operation. Congress ended the Bracero program in 1964, largely in response to outcries about the abuse of the foreign workers in the program and about the program’s undermining of wages and working conditions of U.S. citizens and permanent immigrants.

The H-2A Guest Worker Program

The present-day agricultural guest worker program is known as the H-2A program. Currently, employers gain approval from the Department of Labor to hire approximately 45,000 seasonal guest workers per year under this program.⁴⁶ Although there is no limit on the number of H-2A workers permitted to come to the U.S. each year, the program remains relatively small. The program has, however, more than doubled in size in the last decade and it is more widely used in certain regions of the country (DOL, 2002). About 10,000 H-2A workers are hired each year to labor in North Carolina’s tobacco, cucumber, and strawberry harvests. Others go to Kentucky, Tennessee, and Georgia. Apple growers hire many Jamaican H-2A workers in New York and New England. About 1,700 sheep herders are hired from Mexico and Peru for employment in the Western states.⁴⁷ Overall, even though H-2A workers account for only a small percentage (less than 2%) of the total farmworker population, the “program is significant because it signals a trend in the agricultural industry toward importing immigrant labor instead of increasing wages and benefits for domestic workers” (Thompson, 2002, p.4).⁴⁸

Growers participating in the H-2A program are required to comply with all federal and state labor-related laws, pay a special minimum wage that is set at the average regional wage earned by farmworkers, furnish their workers with free housing that meets the temporary labor camp standards prescribed by OSHA, provide workers’ compensation for job-related injuries and illnesses, and reimburse workers for the cost of transportation from their home country to the place of employment and back (upon completion of a specified portion of the work contract).⁴⁹ The principal purpose of these minimum standards is to ensure that the hiring of vulnerable temporary workers from poor countries would not have “adverse effects” on the employment opportunities, wages and working conditions of U.S. farmworkers (which include citizens and legal residents).⁵⁰

Farmworker advocates generally oppose the use of guest worker programs because the “nonimmigrant” status of the guest workers makes them very vulnerable to exploitation. Once in the U.S., the H-2A workers cannot switch employers. And as soon as their jobs (and therefore

visas) end, they must return to their home countries. As a group, guest workers, desperate for jobs, are willing to work very hard for very low pay in the hopes that their employers will hire them again and petition for a new visa for them in the following season.

H-2A regulations do not protect workers adequately because they allow employers to offer poor wages and working conditions. For example, in order to avoid undermining domestic-farmworkers' wage rates, H-2A regulations require employers to demonstrate that there is a shortage of qualified domestic workers willing to work at the "adverse effect wage rate" (AEWR). However, this wage rate, set at the average regional wage for field and livestock workers, is, by definition, lower than wages actually received by about half of the farmworkers in the area. It would be logical to think that employers purporting to face a labor shortage would be willing to offer higher wages than the regional average. However, under the H-2A regulations, a U.S. worker who requests a wage rate that is even slightly higher than the minimum AEWR is not considered as "available," and may be rejected by the H-2A employer in favor of guest workers who accept the H-2A wage. Therefore, in practice, the minimum wages and work terms that employers are required to provide become the maximum that workers can obtain.

The H-2A program falls under the Department of Labor's Alien Certification Unit. Consequently, the complaint system of the DOL and State Employment Agencies are not extended to these workers. The system, which was established in 1980, by court order, enables U.S. agricultural workers (citizens and residents) to contact the state of Federal Employment Service in a confidential manner to complain about their working conditions.

Farmworker advocates have had little success in their attempts to strengthen the H-2A labor protections and have in fact been forced to defend against employers' pressures on Congress for a new guest worker program or, at the very least, substantial weakening of the existing H-2A program and regulations.

On January 7, 2004, President Bush announced a new policy proposal aimed at expanding the guest worker program to allow millions of undocumented workers to register as legal guest workers for three years with the right to travel to their home countries. The proposal pointed did not establish a framework to allow guest workers to gain legal residency, a point widely criticized by farmworker advocates. At the very least, the initiative has ensured that the policy issue will gain more debate in the coming year than in any other year since passage of the major 1986 Immigration Reform and Control Act.



ANDREW MILLER/OXFAM AMERICA

Undocumented workers

As mentioned earlier, the vast majority of farmworkers in the U.S. are now immigrants. More than half are undocumented workers. However, the federal government has thus far not enforced the Immigration Reform and Control Act of 1986 that prohibits employers from knowingly hiring undocumented workers. To avoid liability for violating immigration, as well as labor laws, growers often claim that the undocumented workers who labor in their fields are really "employed" by the farm labor contractors who recruit, transport and/or supervise them.

Undocumented farmworkers are even more vulnerable to exploitation than farmworkers who possess legal immigration status or citizenship. Undocumented workers rightly fear that any attempts to join a labor union or to file lawsuits to enforce their rights would lead to their detection and deportation. At the same time, since public benefits and government insurance programs, such as unemployment compensation and housing subsidies, are generally not available to undocumented workers, a very large number of these poor farmworkers, and their families, are falling through the "safety net."⁵¹

Among undocumented workers, the subcategory of “documented illegals” (that is, illegal immigrants with false documents) are further discriminated against in terms of benefits and access to State and Federal programs. In particular, these workers’ paychecks are subject to withholding for federal and income tax, as well as for Social Security. Needless to say, the majority of these workers will never receive Social Security, and much less file for income tax refunds to which many of them would have been entitled on the basis of their low income brackets.

STATE LAWS, EXCEPT CALIFORNIA, PERPETUATE INEQUALITY

With the notable exception of California, the majority of states—including Florida and North Carolina, two of the largest users of agricultural labor—have failed to provide farmworkers with the basic protections denied to them under U.S. federal law (Edid, 1994). In fact, the minimum levels of protections set by state laws are often lower than those established under federal law, and state funds allotted for enforcement are generally inadequate. Moreover, programs operated by state governments often treat farmworkers less favorably than other workers. An example of discriminatory labor laws at the state level is the treatment of farmworkers under workers’ compensation laws.

None of this is, according to Schell (2002), surprising because agribusiness exercises enormous influence over state governments. “On the federal level, farm interests represent only one of thousands of organized groups trying to press their agendas on Congress...[By contrast, in] major farm states, agricultural groups have few peers in terms of influence” (Schell, 2002, p.152).

California Leads the Way But Farmworkers Still Remain Poor and Victimized

The first farm labor union, the United Farm Workers of America, AFL-CIO, was formed in California in 1962. Its founder, the charismatic Mexican-American Cesar Chavez (1927-1993) began a farmworkers’ movement of nationwide significance in the 1960s, which eventually achieved numerous collective bargaining agreements with major agricultural employers, and significant legislation aimed at improving farmworkers’ lives. The farmworker movement’s success at legislative reforms in California occurred with the support of a Democratic Governor, Jerry Brown, and numerous legislators who were embarrassed by the exploitative, often violent, mistreatment of farmworkers in the wealthy state’s fields (Ferriss and Sandoval, 1997). The economic and political power of California’s farmworkers in the late 1960s and the 1970s stemmed in part from a tightening of the farm labor supply that resulted from the termination of the Bracero guest worker program in 1964.

The most significant piece of legislation enacted in California to protect agricultural laborers was the Agricultural Labor Relations Act (ALRA) of 1975 which grants farmworkers the same basic rights enjoyed by most workers under the National Labor Relations Act. The ALRA protects farmworkers against retaliation by employers for joining or organizing a union, and establishes a system under which employees may vote in a secret-ballot election whether or not to be represented by a labor union. Collective bargaining between labor unions and agricultural employers is more extensive in California than in any other state. Farmworkers in California are therefore more likely than farmworkers anywhere else in the country to receive such benefits as paid sick leave, health insurance and pension plans. However, less than 10% of California’s farmworkers are covered by union contracts. Although the state has held over 1,000 ALRA elections—the large majority of which have resulted in votes favorable to union representation—many employers have avoided coming to a collective bargaining agreement with workers and

their representatives amid union allegation of bad-faith bargaining in violation of the law. Thus, the ALRA’s potential has not been fulfilled. A new amendment to the ALRA aimed at first-contract mediation could lead to meaningful enforcement of employers’ obligation to bargain in good faith, and to more union contracts (Alvarez, 2002; Maxwell, 2003).

California’s legislature has demonstrated more concerns about workers than the U.S. Congress in several other ways. The state minimum wage, currently at \$6.75 per hour, is significantly higher than the federal minimum wage of \$5.15 per hour. Moreover, unlike the federal law, California’s minimum wage law applies to small employers as well as large ones. The state’s farmworkers also are entitled to time-and-a-half premium pay for overtime work, defined in agriculture as working more than 10 hours in a day or 60 hours per week. Unemployment compensation benefits are available to California farmworkers on the same basis as employees in other occupations. In California, protections against exposure to toxic pesticides for farmworkers existed long before the federal standard was issued, and are more extensive. For example, workers who apply pesticides in California are required to be monitored for evidence of pesticide poisoning. To prevent the high rates of musculo-skeletal and cumulative trauma injuries suffered by farmworkers, California has adopted ergonomics standards for agricultural work, such as the elimination of the “short-handled hoe.” The state’s field sanitation standard, requiring toilets and water for hand-washing and drinking, applies to all farms, even to those with only one employee, unlike the federal standard which applies only to farms with eleven or more employees. California’s regulation of farm labor contractors is more comprehensive than the federal government’s, with special attention to eliminating unsafe vehicles used to transport farmworkers.

These laws have not been a panacea. Farmworkers’ bargaining power with their employers has declined as the farm labor supply grew with increased (authorized and unauthorized) immigration in the 1980s and 1990s. Other contributing factors include the inadequate enforcement of the state’s collective bargaining law. In the mid-1990s, farmworkers in California had, on average, lower take-home pay in real terms than they did in the 1960s (Taylor et al., 1997).



DAVIDA JOHNS

The future is uncertain in California. In California, as in other states, agribusiness remains a well-organized and powerful force. Farmworkers' quest for better labor laws has been aided in recent years by the increasing numbers and political influence of Latinos, many of whom have a history of farmwork or have family members who have been farmworkers. Further progress may be possible (del Olmo, 2003). On the other hand, though aided by significant support from the Latino voters, Arnold Schwarzenegger was recently elected governor of California where his first act was to sign the repeal of the law that allowed illegal immigrants to get drivers licenses.

Florida and North Carolina: No Broad Trend to Improve Weak Farmworker Protective Laws

Florida's labor laws are quite weak generally, and farmworkers certainly do not fare any better than those in other occupations. There is no state minimum wage law applicable to farmworkers, leaving farmworkers subject to the federal minimum wage standards. The state operates its own system of licensing FLCs and monitoring their activities—supplementing the federal program—but it is not an effective tool to protect farmworkers from abuse. Florida's state constitution grants workers, including those in agriculture, the right to collective bargaining, and state legislation grants the right of self-organization and civil remedies for anti-union discrimination. While these rights are indeed important, there are no legislatively created mechanisms (such as those provided for industrial workers in the federal NLRA or for farmworkers in California's ALRA) to provide farmworkers with a union-representation election or to require that employers engage in collective bargaining. Very few farm labor union contracts exist in Florida. Unlike many other states, Florida does provide a legal right of access to migrant labor camps and other migrant housing for invited guests. Government officials, health services, legal services, and religious workers can have access to these sights without invitation. Such access is important for outreach to farmworkers who often live in isolated rural areas, lack transportation, and do not know whom to contact to seek help for legal, medical or other problems. Finally, Florida state law partially fills a gap in the federal Field Sanitation Standard by requiring toilets, hand-washing facilities and drinking water at farms that employ five to ten farmworkers.

Farmworkers fare even worse in North Carolina. North Carolina maintains a state minimum wage, equivalent to the federal minimum wage. However, agricultural employers are exempted from its coverage, leaving the federal law to cover farmworkers. No protections for union organizing or collective bargaining exist in the state, impeding ongoing union organizing in the state's cucumber fields. North Carolina's field sanitation standard contains the same broad exemption for smaller growers as the federal standard.

State Laws on Workers' Compensation Discriminate Against Injured Farmworkers

Through a system of insurance, worker's compensation, which is a matter of state law, provides workers who experience work-related injuries and illnesses with medical care, wage-loss benefits, rehabilitation, compensation for permanent injuries, etc. This can be especially important for low-wage workers because they often lack health insurance. Most states discriminate in some way against farmworkers in their workers' compensation coverage. California is one of only 12 states that require agricultural employers to provide the same compensation coverage to farmworkers as is required for workers in other occupations. In the remaining states, coverage of farmworkers is either entirely voluntary, or as is the case in both Florida and North Carolina, the laws have provisions exempting some farmworkers from coverage. As with other benefits, undocumented workers who are injured on the job face special obstacles in obtaining workers' compensation benefits.

ENFORCEMENT OF LABOR LAWS: FAILING FARMWORKERS AGAIN

The government rarely enforces laws adequately in agriculture and farmworkers lack the tools needed to enforce the laws themselves. The absence of a credible threat of enforcement and the low penalties for violations promote unscrupulous employers to risk violating labor laws for financial gain at the expense of their employees. Weak enforcement can even compel law-abiding companies to engage in similar violations to lower their labor costs and compete for business.

Inadequate Enforcement by Federal Agencies

The level of labor law enforcement by federal agencies has declined considerably in recent years. The decline in enforcement by federal agencies can be gauged in several ways. In the case of FLSA violations, between 1938 and 1990, 50 to 80 percent of all court cases each year were brought by the DOL (rather than through a worker's private action in court); since 1990, that percentage has dwindled markedly to about 10 to 20 percent of all cases.⁵² As recently as fiscal year 1990, the DOL's Wage and Hour Division devoted 11% of its investigator hours to child labor; this figure had gradually declined to 7% by fiscal year 2001 (GAO, 2002).

DOL actions devoted to AWPAs enforcement have also declined drastically. In 1982, Congress noted with dismay the declining resources devoted to enforcement of the FLCRA (the AWPAs predecessor), from the equivalent of 58 full-time investigators in 1979 to only 40 in 1981.⁵³ By 2001, the number of hours devoted to AWPAs enforcement had shrunk to the equivalent of 23-24 full-time investigators. The number of investigations per year has also decreased from 5,708 in 1979 to only 2,038 in 2001.⁵⁴

That greater enforcement is needed is painfully obvious. Violations of farmworkers' rights are rampant. In 2001, 48% of the DOL's 2,038 AWPAs investigations found violations.⁵⁵ A DOL study of California's grape pruning workers in 1998 found that 51 of the 66 vineyards inspected (or 77%) violated at least one provision of AWPAs or FLSA (DOL, 1999a). More than half of the FLCs used by these grape growers underpaid their workers. A 1999 study by the DOL during its "Salad Bowl Initiative" found that 51% of cucumber growers and 58% of onion growers were violating federal labor laws, and that high rates of violations persisted even after employers were investigated and found to be in violation (DOL, 1999b). Such evidence confirms the view of many farmworker advocates that the remedies and penalties for labor law violations are so minimal that they do not discourage, and may even encourage, employers' recidivism.

Employers paying workers on a piece-rate basis can falsify their records by reducing the number of hours worked to make it seem as if the workers' daily earnings yielded the federal minimum wage per hour. Billy Earle, a farm labor contractor in Arcadia, Florida, explains how this works:

If you work eight hours a day at four twenty-five an hour [the minimum wage from 1991 to 1996], that's thirty-four dollars a day you're supposed to make. If you only earned twenty-five, the contractor turns around and writes down that you worked six hours. If your workers can't make minimum wage, you've got to lie on your payroll (Rothenberg, 1998, p.103, comment added).

One critical factor affecting the effectiveness of labor law enforcement is the substantial presence of undocumented farmworkers and guest workers. Economic desperation, the threat of deportation and the widespread practice of blacklisting workers who speak out or complain about problems on farms deter many of these workers from challenging illegal or unfair conduct, a fact that makes them attractive to many employers (Yoeman, 2001).

Another important development affecting labor law enforcement is the substantial increase in growers' use of farm labor contractors to recruit, hire, transport, pay and supervise farmworkers. FLCs have a history of labor law violations. Manuel Gomez is a contractor operating in San Joaquin Valley, California: "Ninety-nine percent of all contractors work outside of the law. Not one, not two—all of us. You have to break the law. Breaking the law is the only way you can make decent money...Everyone knows we're doing this" (Rothenberg, 1998, p.97). Because of their low profit margins, FLCs often cannot afford to comply with labor laws obligations or pay damages from lawsuits.

Growers argue against compliance with labor laws regulating "employers" by claiming that FLCs (not the growers) actually "employ" the farmworkers who labor in their fields. In general, the courts have recognized Congress's concept of "joint employment" which (except in unusual circumstances) holds employers jointly responsible with the FLCs for complying with the AWPA. The law is intended to give growers an incentive to pay FLCs enough to be able to afford complying with the law and to only engage in business relationships with law-abiding FLCs. In a few cases, growers have succeeded in persuading the courts that they are not the employers because they allegedly maintain a completely "hands off" approach with the farmworkers supervised by FLCs in their fields. While such decisions are in the minority, they have created sufficient ambiguity to encourage some growers to argue against compliance with the AWPA or the FLSA.⁵⁶

To clarify the meaning of the law, in 1997, the DOL updated its regulatory definition of "employ" under the AWPA to replace the 1983 definition that narrowly concentrated on the direct supervision of farmworkers and to explain the concept of "joint employment." However, much of the Labor Department's enforcement efforts remain against the FLCs, not the growers. The majority of enforcement actions directed at farmers who use FLCs have come through private lawsuits on behalf of individual workers, rather than in lawsuits brought by the Department of Labor (Schell, 2002).

Of course, FLCs develop their own ways of evading the labor protective law. For example, to avoid the insurance mandated by the AWPA for all vehicles transporting workers, many FLCs pay other farmworkers—commonly known as raiteros, a Spanish adaptation of the word "ride"—to drive their co-workers to and from the fields (Schell, 2002; Rothenberg, 1998). They insist, however, that the raitero system is not under their control or supervision.

In recent years there have been egregious cases in which courts have convicted FLCs of subjecting farmworkers to violence, debt peonage and slavery, including several cases in Florida (Barton, 2002; Bove, 2003). Rarely, if ever, have the federal prosecutors sought to punish the



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farm operators who have used these labor contractors to supervise the farmworkers in their fields. Such growers should be prosecuted because they either know what is happening on their farms or look the other way to keep their labor costs low.

Enforcement of the OSH Act in agriculture has been sharply criticized by Congress's watchdog agency, the U.S. General Accounting Office (GAO). In 1990, violations of the OSHA Field Sanitation Standard were found in 69% of all federal field investigations involving agricultural employers (GAO, 1992). Yet, during the period from 1993 to 1998, less than three percent of OSHA's inspections occurred in agriculture (GAO, 1998). Similarly, routine worker protection inspections by the EPA are infrequent, due largely to resource constraints. According to the GAO, in 1998, 5 states reported conducting no inspections at all, and another 11 other states reported conducting fewer than 10 routine inspections each (U.S. General Accounting Office, 2000). When violations are investigated, the penalties are insufficient to deter future infractions.

Employers also violate H-2A regulations, sometimes with little interference from the DOL. In a congressional investigation, H-2A employers in North Carolina claimed that, in 1996, 1,763 H-2A guest workers (or almost 40% of the H-2A workers then employed in the state) had left their jobs prior to the end of the season and had consequently been denied the legally mandated end-of-season reimbursement for their cost of traveling back to Mexico (GAO, 1997). Although the report of the investigation recognized that denial of a major H-2A program benefit to such a large number of people was suspicious, the DOL has done nothing to stop such abuses.

Limited Legal Recourse

Some labor protective laws grant victimized workers a "private right of action," that is the right to bring suit in court on their own behalf and possibly on behalf of other co-workers. Thus, the AWPAs has a private right of action; the FLSA has a private right of action for wage violations, but not for child labor violations. However, neither the OSH Act nor the EPA Worker Protection Standard offer a private right of action.

To encourage private attorneys to take the cases of low-wage workers whose legal costs may exceed the amount of back pay recovered, the FLSA entitles a successful plaintiff in a lawsuit to an award of attorneys' fees paid by the losing employer. The AWPAs, however, does not allow for attorney' fee awards. Few private attorneys accept farmworker cases.

Publicly-funded legal aid offices, whose mission is to serve indigent clients like farmworkers, often have personnel that possess the knowledge, commitment and bilingual skills to serve farmworkers, but lack the adequate resources to mount a credible threat of industry-wide enforcement. In addition, Congress has prohibited federally-funded legal services programs from representing undocumented workers, who comprise more than half of the farm labor force,⁵⁷ or from bringing class-action lawsuits. Without the possibility of class action, violators of the AWPAs and of the FLSA only face the claims of individual farmworkers who can bring suit themselves. These and other restrictions result in the denial of equal representation to the majority of farmworkers.

With respect to guest workers, federally-funded legal services programs can represent H-2A program guest workers, but the legal representation is limited to their employment contracts.⁵⁸ Another obstacle confronting foreign H-2A workers seeking legal assistance is the fact that they are not covered by the AWPAs. Thus, for example, an H-2A worker who does not receive the wages and benefits that he or she was promised, cannot file a lawsuit in federal court under the AWPAs. Instead, H-2A workers are relegated to state courts where—facing a jury of local citizens—they are often at a disadvantage compared to the local growers they are suing. Moreover, they can only sue under the state law of contract, which is often not as advantageous as the AWPAs.⁵⁹

Employers often threaten farmworkers with retaliation for communicating with lawyers for the purpose of enforcing their rights. The North Carolina Growers Association, a business that brings in about 10,000 H-2A guest workers to work on numerous farms, is quite blatant about it. As reported in the *Charlotte Observer*:

The growers' message—don't complain, don't seek legal help—is hammered home when workers arrive for orientation inside the [growers] association's warehouse in Vass in Moore County. From a balcony above the recruits, association employee Jay Hill forbids them from associating with Legal Services of North Carolina, whose farmworker unit provides free legal advice.

The price of disobedience: "He's telling us we will be sent back to Mexico," said Luis, 33, an H-2A worker who speaks some English (Ward, 1999, p.1).

WOMEN FARMWORKERS



Women farmworkers are of course subjected to the same discrimination under labor laws as are men, but they also face other difficulties.

Sex discrimination in hiring and sexual harassment are common in farm work, as mentioned in Section II. The Equal Employment Opportunity Act outlaws sexual harassment and discrimination in job assignments at larger employers. Some state laws provide similar protections to workers employed in smaller companies. Poor farmworker women are too dependent on their employers for income, and often even for their housing, to complain about discrimination and harassment by their employers from fear of losing their jobs. Israel Gómez, a 20 year-old orange picker and member of the Farm Labor Organizing Committee, recalls in an Oxfam America interview, "My boss comes and tells me that if I stir up trouble, he will take my house and force me to live elsewhere." Consequently, enforcement is not common, but it has occurred.⁶⁰

Finally, the health and safety laws provide less adequate protection for female than for male farmworkers. Pregnant women (and developing fetuses), for instance, are very vulnerable to the harmful effects of pesticides (Solomon, 2000). Yet, current health and safety standards for U.S. agricultural workers take as their model the adult male body. "The Environmental Protection Agency's (EPA) pesticide reentry intervals (REIs) for example—which set the minimum period of time that workers must be kept out of a field after pesticides have been applied—are determined using the model of a 154-pound male" (Human Rights Watch, 2000a, p.16, citing GAO, 2000).

INADEQUATE LABOR PROTECTIONS IN INTERNATIONAL TRADE AGREEMENTS

With the dramatic increase in international trade in high value and processed foods, U.S. growers of many fruit and vegetables have greatly benefited from large increases in sales of their produce abroad. Others, like the Florida tomato growers or the North Carolina cucumber growers, whose case was highlighted in Section III, suffered losses due to competition from growers in nations with lower production (and, in particular, labor) costs. Even in these cases, growers have often responded by switching production to new crops (as has occurred with some tomato producers in Florida), or by mechanizing the harvesting process (as in the case of cucumber growers in some states) (Mattera and Khan, 2003).

In no case, however, have farmworkers benefited from increased production or trade except possibly that their jobs have been preserved. During the 1990s, when U.S. exports of fruits and vegetables increased so significantly, wages paid to crop workers actually fell in real terms. While most agricultural employers are very supportive of enhanced trade through the removal of tariffs and other barriers, they also contend that the terms and conditions of employment for farmworkers can not be improved in the face of competition from growers in countries where wages are substantially lower and government labor standards less stringent. Therefore, unless protections of workers' rights are strengthened, their wages and other terms of employment are likely to continue to deteriorate or stagnate as trade competition increases.

The increase in international agricultural trade has been accompanied and accelerated by international trade agreements, most notably the North American Free Trade Agreement (NAFTA). Agribusiness has significant influence into the negotiations that result in trade agreements, mainly because the official advisory committee structure to the U.S. Trade Representative's office is stacked with strong representation from industry. In contrast, civil society organizations have relatively fewer seats on these committees, and it is no surprise that farmworkers have virtually no representation.

Past trade agreements have included labor provisions, but these were woefully inadequate and systematically excluded most farmworkers from any benefits. The best known example is the North American Agreement on Labor Cooperation (NAALC), also known as the "labor side agreement" to the North American Free Trade Agreement (NAFTA). NAFTA provided for limited trade adjustment assistance, such as unemployment and retraining benefits, to employees of firms that were negatively impacted by trade-related international competition. Trade adjustment programs do not help displaced undocumented workers (including most farmworkers) as they are ineligible for such benefits. After a decade of NAFTA and NAALC, it has become increasingly clear that the enforcement mechanisms are very weak: they primarily involve government-to-government consultations, with few incentives for the governments to take strong action on behalf of workers. In fact, the efforts under the NAALC by non-agricultural labor unions have not resulted in a single success during the ten years that the agreement has existed.

Congress has grudgingly recognized that trade agreements should be accompanied by certain types of labor protections that apply to farmworkers. In 2002, Congress granted the Administration Trade Promotion Authority (TPA), which included weak language requiring that labor standards be considered during trade negotiations. However, TPA did not require negotiators to ensure that ILO core labor standards are included in trade agreements, but rather instructs that countries should enforce their existing labor laws, regardless of how weak those laws may be. Moreover, TPA did not specify any course of action in cases where labor rights violations occur. In general, labor disputes are subject to much weaker dispute settlement provisions than those provided for commercial disputes in most U.S. trade agreements, including those already concluded with Chile and Singapore, as well as newer agreements with Central America, and the Southern African Customs Union. In the absence of stronger protections than exist in the NAALC, the prospect for effective labor law enforcement under new trade agreements looks bleak.

Congress has also requested (but did not require) that the President include in new trade agreements adherence to the ILO's "core labor standards," which were issued in the *ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-Up* (1998). The ILO is a United Nations agency that is directed by a tripartite governing board made up of government officials and representatives of labor and management. As a member of the ILO, the U.S. is bound by the Declaration. Farmworkers' exclusion from the National Labor Relations Act (NLRA) violates the U.S. obligation under the Declaration to extend "the freedom of association and the effective recognition of the right to collective bargaining" to all workers (Human Rights Watch, 2000b, p.15 and 29).

The ILO's labor standards are in the form of "Conventions." The U.S. lags behind the international community in its labor laws regarding farmworkers, as evidenced by its failure to adopt a number of ILO labor standards that have become widely accepted in other countries and would benefit farmworkers in the United States if followed. For example, the U.S. has declined to ratify Convention No. 87 on Freedom of Association and Protection of the Right to Organize (1948), and Convention No. 98 on the Right to Organize and Collective Bargaining (1949) which 153 nations have ratified. Nor has it ratified Conventions No. 100 & 101 on Equal Remuneration and Discrimination in Employment & Occupation. Of the ILO's eight "fundamental" Conventions, ninety-five nations have ratified all eight while the U.S. has ratified only two (No. 105 on Forced Labor and No. 182 on the Worst Forms of Child Labor) (www.ilo.org/public/db/standards). Even though the United States has not ratified most of the fundamental conventions, the core labor standards are still binding to the United States since the U.S. is a member of the ILO.

The ILO's members (including the U.S.) recently approved Convention No. 184 on Safety and Health in Agriculture (2001), which would lead to significant improvements for farmworkers if ratified and implemented in the United States. This Convention contains a set of recommended standards, some of which the U.S. violates. One such standard is equal treatment of agricultural workers in a nation's workers' compensation laws. Working for the ratification of this Convention by the U.S. is likely to be a difficult but worthwhile effort. In the absence of actually ratifying the ILO Conventions, American farmworkers could still benefit by the U.S. consulting with the ILO and implementing at least some of its recommendations. If in fact, the ILO begins to have a greater influence on U.S. labor policy as a result of international trade agreements, farmworkers are even more likely to benefit.

Trade negotiations about the movement of goods and money across borders generally lead to discussions on the movement of people as well. While immigration issues formed only a limited part of the U.S.-Mexico-Canada discussions under NAFTA, there are controversial immigration provisions included in new trade agreements with Chile and Singapore (Dewar, 2003). More controversy over immigration is also likely in the discussions around the Central American Free Trade Agreement (CAFTA). Agricultural employers in the U.S. already employ significant numbers of immigrants or guest workers from Central American nations, such as Honduras and Guatemala. Greater interest, among both growers and workers, in the employment of Central American laborers, could have an impact on the trade negotiation. Approval of trade agreements that lack labor protections but allow large influxes of agricultural "guest workers" will undermine U.S. farmworkers' efforts in obtaining better wages and benefits and organizing labor unions.⁶¹



DAVIDA JOHNS

SECTION V

Using Buyers' Market Power to Secure Farmworker Rights

In Florida, since 2001, the Coalition of Immokalee Workers (CIW), a non-union, grassroots farmworker organization, has called a nationwide boycott of the Taco Bell fast-food chain as part of a campaign to improve the living conditions of its members, immigrant tomato pickers. As a subsidiary of Yum Brands, Taco Bell is part of the largest fast-food chain in the world, with over 30,000 restaurants worldwide. “With power,” the Coalition asserts, “comes responsibility.” The Coalition’s goal is to force Taco Bell to adopt what they believe are moral trading practices. CIW’s members are asking Taco Bell to double the piece rate paid to tomato pickers by paying just one more cent per pound for the tomatoes it buys from Florida growers.

Buyers have readily accepted other costs passed along by the growers: To cover their costs of phasing out the widely-used pesticide, methyl bromide, the Florida Tomato Growers Exchange voted in 2002 for an environmental surcharge of 25 cents a carton (precisely, one cent per pound) on shipments for the following season. The phase-out is required by the 1999 Montreal protocol. According to Reginald Brown of the Florida Tomato Committee, there has been no significant resistance among buyers to the price increase, which, he said, is “an accepted cost of doing business” (Mattera and Khan, 2003, citing Roselle, 2002).

In North Carolina, since March 1999, the Farm Labor Organizing Committee (FLOC)—a labor union representing farm laborers—has called a national boycott of Mt. Olive Pickle Company products to try to improve the low wages and poor working conditions for the migrant farmworkers who pick the cucumbers used to make the company’s pickles. Mt. Olive is the country’s largest independent pickle producer and the second largest processor of pickles and related products.

In the Midwest, where FLOC has been organizing farmworkers since the late 1990s, contracts negotiated by FLOC raised wages for its members working in the Midwestern pickle industry by 100% between 1986 and 1996. According to information provided by FLOC, cucumber pickers in Ohio earn approximately \$2.10 per 33 pound bucket of cucumbers they pick. By contrast, North Carolina farmworkers hired to harvest the cucumbers in Mt. Olive pickles, earn approximately 65 cents per 33 pound bucket (Beatriz Maya, personal communication, August 16, 2003).⁶² FLOC asserts that Mt. Olive Pickle Company must assume responsibility for farmworkers’ wages and working conditions by supporting three-way contracts that get the workers their fair share without “burdening already struggling farmers” (www.floc.com).

Both Mt. Olive and Taco Bell assert that they are the wrong targets for these boycotts. Mt. Olive argues that it is not responsible for the conditions of cucumber pickers “because it doesn’t operate farms and doesn’t hire farmworkers” (www.mtolivepickles.com). Its position is that “the decision regarding union representation on the farm is one for the farmer and his employees. This is a decision that should be respected but not dictated by the farmer’s eventual customers” (www.mtolivepickles.com). Mt. Olive commits to “doing whatever it can within its sphere of influence,” according to a company spokesperson.

FLOC’s position is that while Mt. Olive does not directly employ the farmworkers, it does exercise controlling influence over the production process since its contracts with growers dictate the types of seed and pesticide that they can use, and sets the price growers will receive for their crops. Based on that price, workers are hired to pick the crops (www.floc.com). FLOC also argues that, while Mt. Olive does not hire farmworkers itself, the company has supported the H-2A agricultural guest worker program (FLOC, n.d). Until recently, Mt. Olive was a member of the North Carolina Growers’ Association which administers the state’s H-2A program and which has been lobbying to ease the restriction on bringing in more foreign workers (Oxfam America telephone interview with Beatriz Maya of FLOC, 14 August 2003).

Taco Bell similarly denies responsibility for the conditions of farmworkers working for its suppliers, in this case large Florida tomato growers. Eric Schlosser has been a supporter of the tomato pickers’ struggle in Florida. In his book, *Fast Food Nation*, he argues that fast-food chains are both accountable for, and key to changing their suppliers’ employment practices.

Schlosser notes that the principal weakness of branded food companies, such as the fast-food giants, is their fierce competition for consumers.

The wealth and power of the major chains make them seem impossible to defeat. And yet those companies must obey the demands of one group—consumers—whom they eagerly flatter and pursue... The slightest drop in a chain’s market share can cause a large decline in the value of its stock (Schlosser, 2001, p.267).

Moreover, food companies are also vulnerable to pressure from the growing number of investors that press corporations to address issues of corporate responsibility. For instance, the three largest American fast-food companies—McDonald’s, Wendy’s and Yum Brands—have been the focus of shareholder dialogue and resolutions at their annual meetings on subjects ranging from smoke-free restaurants to their environmental and labor policies.

Ten years ago, anti-sweatshop campaigners started to use media, consumer and shareholder pressure to successfully require well-known brand-name toy, apparel and footwear companies to police the workplace conditions of their suppliers in Asia. Concerned that negative publicity regarding the abusive labor conditions of workers employed by their suppliers might affect their sales, many of these corporations adopted codes of conduct that set the labor standards that they require of their contractors. The same tactics are increasingly being used to help workers employed on farms and processing plants in the U.S. improve their conditions.

Large brand-name food processing, foodservice or retailing firms in the U.S. often highlight labor standards that they follow in the case of their own employees; few have adopted similar labor standards for their suppliers. When large brand-name food processing, foodservice, or retailing firms have adopted codes of conduct for their contractors, these codes have tended to cover issues such as food quality and safety, farm animal welfare, and environmental responsibility. This is despite the fact that the supply chains of supermarkets, processing firms, and fast-food companies include farmworkers and meat-packers who often work in appalling conditions for very low pay.

Yum Brands Inc., owner of the five well-known restaurants brands, A&W All-American Food, Kentucky Fried Chicken (KFC), Long John Silver’s, Pizza Hut, and Taco Bell, has a Worldwide Code of Conduct that outlines its commitment to the health and safety of its own employees and to environmentally responsible business practices.

Yum Brands is committed to providing safe and healthy work environments and to being an environmentally-responsible corporate citizen. It is our policy to **comply with all applicable environmental, safety and health laws and regulations**. We are dedicated to designing, constructing, maintaining and operating facilities that **protect our people and physical resources** (extracted from Yum Brands’ Worldwide Code of Conduct, www.yum.com/community/environment.htm, emphases added).

Nowhere in this code of conduct are the stated commitments to standards for its own “people and physical resources” extended to their suppliers, and specifically to the workers of their suppliers. Buyers in the food supply chain (food retailing, food processing, and foodservice firms) commonly argue that they cannot bear any responsibility for, or influence, the welfare of their suppliers’ workers as they do not actually employ the farmworkers directly. However, according to a statement on the Yum Brands’ company website:

Yum Brands is the owner of restaurant companies and, as such, does not own, raise, or transport animals. However, as a major purchaser of food products, **we have the opportunity, and responsibility, to influence the way animals supplied to us are treated**. We take that responsibility very seriously, and we are monitoring our suppliers on an ongoing basis to determine whether our suppliers are using humane procedures for caring for and handling animals they supply to us. As a consequence, it is our goal to only deal with suppliers who promise to maintain our high standards and share our commitment to animal welfare (extracted from Yum Brands’ Animal Welfare Program, <http://www.yum.com/community/animalwelfare.htm>, emphases added).⁶³

“Taco Bell [subsidiary of Yum Brands] has a policy that it will not buy food from contractors that mistreat animals,” says Lucas Benitez of CIW. “All we are asking is that they have the same policy for humans” (www.ciw-online.org).

As for the privately-held Mt. Olive Pickle Company, it has a limited supplier code of conduct entitled the “Grower Statement of Compliance,” which its suppliers and growers must sign. Under this statement, the company requires its suppliers and their growers to provide terms of employment, working conditions, and housing (for those growers that do offer housing) that all meet federal and state laws. But with federal and state laws that are so weak, the Statement of Compliance offers no mechanisms to effectively improve the rights of farmworkers. The Statement, for example, does not address farmworkers’ right to engage in collective bargaining or their right to earn living wages.

The Yum Brands and Mt. Olive examples illustrate that, even where they exist, company-level codes of conduct do not yet set adequate standards for the protection of American farmworkers. Moreover, neither company has taken effective steps to use their power over their contractors to help resolve labor disputes that have moved up their supply chains and resulted in boycotts of both Yum Brands and Mt. Olive. However, it is clear that both companies have felt the impact of these well-organized campaigns.

In Florida, CIW and its allies have helped lead a vigorous campaign focused on Taco Bell ranging from numerous colorful demonstrations outside Taco Bell restaurants to endorsements by leading religious and political figures. In a level of support almost unprecedented for a resolution of its kind, in May, 2003, 39% of Yum Brands shareholders voted in favor of a resolution asking the company to take responsibility for working conditions and wages of its suppliers’ workers. While Yum Brands has yet to reach an agreement with the tomato pickers represented by CIW, it is clear that the company is feeling the growing pressure.

The implications are huge. Connecting the fast-food industry’s weakness, its dependence on its brand image as it appeals to consumers, with the industry’s power over its suppliers, Eric Schlosser concludes:

The right pressure applied to the fast-food industry in the right way could produce change faster than any act of Congress... Small increases in the cost of beef, chicken, and potatoes would raise fast-food menu prices by a few pennies, if at all. The fast-food chains insist that suppliers follow strict specifications regarding the sugar content, fat content, size, shape, taste, and texture of their products. The chains could just as easily enforce a strict code of conduct governing the treatment of workers, ranchers, and farmers (Schlosser, 2001, p.267-8).

The supply chains of brand-name food retailers, processing firms and fast-food companies include farmworkers who are routinely denied their rights and who toil under appalling conditions for pitiful wages. These new campaigns, joining farmworkers with allies ranging from religious institutions to students activists and concerned investors, may well prove to be just the lever that causes shifts throughout the agricultural produce supply chain.



SHIHO FUKADA

SECTION VI

Conclusion and Recommendations

The wage levels, working environment and social conditions for farmworkers in America's fields remain virtually unchanged from where they stood close to 50 years ago, and in some areas have clearly deteriorated. A 19th century model of plantation-style agriculture that relied primarily on field hands, rudimentary equipment, and long working hours still dominates the fresh produce industry today. The system by which food is produced in the U.S. today is inhumane and anachronistic, and cries out for reform.

In the United States, 21st century agriculture requires production that is competitive and ensures high quality at an affordable price, but it must also respect fundamental worker rights. Increased pressure from imports in the global economy is only the most recent rationale to excuse discrimination against farmworkers in U.S. labor laws. Exploiting farm labor to greater and greater degrees has been a quick-fix solution to reduce costs, but has created long term structural distortions at an unjustifiably high human cost. Reforming the industry, however, does not mean simply replacing workers with machines or exporting jobs overseas or importing more guest workers. (Those trends, already present in the industry, are likely to continue with a mixed impact on U.S. workers). Reform must be based on innovation, modernization and increased productivity, which are the cornerstones of competitiveness in a global economy and allow for living wages and decent conditions.

Oxfam International's report *Trading Away Our Rights: Women Working in Global Supply Chains* demonstrates that today's globalized economy is characterized across a wide range of industries by increasingly powerful corporations at the top of their product supply chains. These massive, highly consolidated and vertically-integrated corporations are able to extract value from the supply chain by squeezing costs and offloading responsibilities onto those below them—their shippers and suppliers. Similarly, suppliers extract greater value from producers, and producers, with little other variable costs to cut, squeeze their labor force. Without an effective system of laws and enforcement to protect their rights, workers face declining wages, deteriorating conditions and increasingly precarious lives, often in tragic ways. This, unfortunately, is as true for farmworkers in the United States as it is for garment workers in Thailand, flower pickers in Colombia and grape pickers in South Africa.

When workers have few political rights to begin with, when they lack any reasonable bargaining power on the job, when they are singled out for second-class treatment by the law, when they compose a small minority of the population, are largely foreign-born, and are generally very poor migrant and seasonal workers with uncertain or illegal immigration status, they face a daunting struggle to improve their economic and political conditions.

As Bruce Goldstein, co-executive director of the Farmworker Justice Fund, Inc., concluded, “The political and legal struggle to improve the lot of farmworkers is a critically important one; it is also a moral obligation to attain the humane treatment that is the birthright of every person. The deprivations suffered by farmworkers stain the history of this nation as a nation of laws, fairness and freedom, and diminish us all.” (Goldstein and Leonard, 2003).

Respecting Fundamental Labor Rights

The core labor standards as set out by the fundamental conventions of the United Nation's International Labor Organization are:

- freedom of association;
- the right to bargain collectively;
- equal pay and non-discrimination in employment;
- prohibition of forced labor; and
- elimination of child labor.

While the United States has ratified only two of the eight conventions, the core labor standards are still binding on the United States since the U.S. is a member of the ILO. Enforcement of these core labor standards is the heart of a system which treats workers as human beings with rights rather than as machines.

It is unlikely that meaningful reform can occur solely through a single action, such as via newly re-vitalized workplace organizing, or by changing a single law without addressing more fundamental problems. Rather, urgently needed reforms must occur simultaneously at different levels: in the workplace, throughout supply chains, and through the passage, implementation, and enforcement of major laws to protect all workers in the U.S., including farmworkers.

1 Empowering Workers to Defend Their Rights and Interests

Farmworkers and their representative organizations need to actively assert and defend their rights. They need support from local community interests, public and private funding bodies, media, religious groups and other civil society groups. The Farm Labor Organizing Committee and the Coalition of Immokalee Workers highlighted here are national figures in the farmworker movement and have shown their effectiveness in mobilizing support and delivering outcomes. Other farmworker groups too deserve support. Such support is key to reducing the vulnerability of farmworkers resulting from their poverty, uncertain documentation status, unfamiliarity with legal protections and lack of legal recourse.

To achieve this, farmworkers must:

1. Be supported more strongly, through funding support, volunteering, providing services, promoting community awareness, media attention and through other means;
2. Gain expanded legal recourses, including publicly-funded legal support for undocumented workers, the right to seek class action law suits and the entitlement of attorney fees for successful plaintiffs;
3. Be encouraged to report abuse through a more robust labor inspection system which protects whistleblowers, including undocumented workers and guest workers, against retaliation;
4. Gain greater representation on the relevant consultative body of the International Labor Organization.

Guest workers must be provided with protections that would ensure that they have the right to leave one employer and seek another and the right to organize.

Undocumented workers must be ensured access to basic services such as health and protection services, children's education, registration for driver licenses and bank accounts.

2 Respecting Worker Rights in the Supply Chain

The business model predominant in today's global marketplace drives labor costs to the ground in an effort to ensure competitiveness and to retain profit margins. The model survives in part by eroding labor protections for workers in the U.S. and abroad. Oxfam and other civil society organizations strongly believe that corporate practices must change to ensure that all workers can freely organize and bargain collectively, receive living wages, and have decent conditions.

To achieve this, Oxfam recommends the following:

- I. **Employers**, both growers and farm labor contractors, must:
 - a. Promote core labor standards, living wages and safe working conditions.
 - b. Undertake roundtable negotiations involving buyers, growers and farmworkers wherever possible to ensure that premiums in pricing are passed through to farmworkers.

2. **Buyers and retailers must:**
 - a. Make respect for workers' rights throughout their supply chain an integral part of their companies' vision;
 - b. Integrate that commitment fully into their purchasing practices;
 - c. Design and implement codes of conduct that ensure the right of association, payment of living wages, and safe working conditions for their employees and the employees of their suppliers;
 - d. Fund and ensure operation of independent monitoring systems to ensure compliance with codes of conduct throughout supply chains.

3. **Consumers must:**
 - a. Demand that retail companies ensure the protection of labor standards, living wages, and safe working conditions throughout their supply chains;
 - b. Demand that companies adopt and enforce codes of conduct to ensure these practices;
 - c. Buy products that are produced under fair labor conditions, and challenge companies that violate labor rights through their purchasing choices.⁶⁴

4. **Investors must:**
 - a. Become informed about their fiduciary responsibility to demand good corporate practices including protection of worker rights throughout supply chains.
 - b. Be aware of how failure to respect labor rights negatively impacts a company's brand equity, such as the incursion of negative publicity and consumer actions, and press corporate officers to protect their brand image by pro-actively addressing worker rights problems in the supply chain.

3 **Guaranteeing Basic Rights and Protections in Law**

Multiple changes are also required in law at state and federal levels. Just as importantly, implementation of laws through regulation, monitoring, and enforcement must be thorough and unbiased. The federal government must take the lead in eliminating the blatant discrimination against farmworkers in U.S. labor laws. States, however, should pro-actively address the gaps in federal legislation, by setting higher standards, as California has done.

To eliminate the discrimination in current national labor legislation that does not ensure protections for agricultural workers, the US government must:⁶⁵

1. Ensure that the right to organize and bargain collectively is extended to farmworkers, and provide for sanctions for growers and farm labor contractors that intimidate, threaten, fire or otherwise abuse workers who organize;
2. Reform the Fair Labor Standards Act to eliminate discriminatory exclusions of farmworkers from its protections and ensure that all farmworkers are covered by the federal minimum wage, that farmworkers, like workers in other sectors, are paid time and a half for more than 40 hours per week, and that children in agriculture are not exempted from protections in the law;

3. Reform the Occupational Safety and Health Act and EPA's Worker Protection Standards to ensure provisions covering adequate drinking and toilet facilities, work place injuries, machinery protection standards and pesticide controls;
4. More adequately enforce the Migrant and Seasonal Agricultural Worker Protection Act to reform the farm labor contractor system;
5. Improve enforcement of the Equal Employment Opportunity Act to improve policies on sexual harassment, health and safety at work and maternity and childcare provisions to reflect the specific needs of women workers;
6. Strengthen the complaint system to encourage farmworkers to report violations under the guarantee of confidentiality and non-retaliation. Grant legal status to undocumented and guest workers who report illegal actions in order to encourage them to testify;
7. Increase training and resources for the Civil Rights Division of the Justice Department for agents investigating farm labor slavery; enable the criminal prosecution of those who profit knowingly from, or have reason to know about the labor of workers in involuntary servitude;
8. Include strong protections for ILO core labor standards in international trade agreements to ensure that global competition does not lead to a downward competition for worker rights and standards in the U.S. and overseas.

Finally, immigration policy and farmworker rights are inherently intertwined given that the vast majority of farmworkers are immigrants. Guest workers and undocumented workers need a reasonable and formal process to convert to a true immigration status, a measure which favors employers as well as workers and their families. When workers hold the status of legal immigrants, employers are protected from government sanction and the rights of workers are more easily defended. Fair criteria for achieving immigration status should be adopted, such as requirements that workers demonstrate steady employment, pay taxes and be law-abiding.



NOTES

EXECUTIVE SUMMARY

- 1 The other side of the story has been that rapidly expanding trade has been a boon to the industry. U.S. exports of fruits, vegetables, flowers, wine, and other labor-intensive horticultural products have exploded to \$11.27 billion in 2002 from \$4.5 billion in 1989, creating new opportunities for growers, suppliers, and traders. Undoubtedly, the export sales helped preserve farmworker jobs but have not generated other benefits. Over the same period, however, real wages of crop pickers declined by 10%.
- 2 These figures for 1997-98, based on the National Agricultural Workers Survey (NAWS), likely underestimate farmworker poverty because the NAWS only collects data on active farmworkers, and does not consider currently inactive or unemployed workers, or retired farmworkers (DOL, 2000a).
- 3 <http://www.swantonberry.com/farmtour.html>

SECTION I

- 4 Information on farmworkers as a distinct population is not available through the U.S. Census.
- 5 These estimates were derived by dividing farm labor expenditures (from the 1997 Census of Agriculture) by the hourly earnings of field workers and of livestock workers (from the USDA-NASS Farm Labor Survey) to estimate the number of work hours on crop farms and livestock farms. Seventy-two percent of the total work hours were carried out on crop farms (DOL, 2000b). The 1997-1998 National Agricultural Workers Survey (NAWS) did not estimate the total number of crop workers. However, the 1994-1995 NAWS estimated that there were about 1.6 million crop workers (DOL, 1997).
- 6 Note, however, that this figure likely underestimates the ratio of migrant to non-migrant workers because the population sampled by NAWS did not include temporary guest workers working in the U.S. under the auspices of the H-2A visa program (see Section II).
- 7 A primary boycott would boycott the employer directly or boycott the sale of the employer's goods or services. A secondary boycott targets the economic interests of a third party who in turn would pressure the employer for resolution of the dispute.

SECTION II

- 8 The federal minimum wage was \$3.10 per hour in 1980. It has been set at \$5.15 per hour since 1997.
- 9 The USDA defines unemployed farmworkers as those people who reported on the Current Population Survey (CPS) that their last primary job was hired farm work and that they are "unemployed on layoff" or are "unemployed and looking for employment".
- 10 It is also important to note that agricultural areas exhibit unemployment rates that are much higher than those reported for the rest of the country (Levine, 2001).
- 11 The remainder of their time was spent in non-farm work (8% of their time), living in the U.S. but not working (19%), or abroad (24%) (DOL, 2000a).

- 12 Unfortunately, because the farm labor force is disproportionately made up of men, studies often do not generate sub-samples of women that would be large enough to permit separate analysis (Edward Kissam, personal communication, 8/28/2003).
- 13 Twenty-eight percent of part-time farmworkers were women compared to fourteen percent of full-time farmworkers (Runyan, 2000).
- 14 See also, Griffith and Kissam, 1995.
- 15 The worker safety provisions of the EPA's Worker Protection Standard are discussed in Section IV.
- 16 See Section IV for details on this program.
- 17 Citing high costs of maintenance and the difficulties of complying with state and federal regulations, some growers who used to provide housing to their workers are no longer doing so (Holden, 2002).
- 18 The HAC, a non-profit corporation, conducted the survey with funding from the U.S. Department of Housing and Urban Development (HUD) and the Rural Housing Service at the U.S. Department of Agriculture. The states included in the survey were Florida, Connecticut, Kentucky, Massachusetts, Maryland, North Carolina, New Jersey, New York, South Carolina and Virginia. For a review of the key findings from this survey, see Holden (2002).
- 19 HUD defines an overcrowded housing unit as one with an average of more than one person per room.

SECTION III

- 20 A 1999 USDA Economic Research Service study of six major tomato growers in Florida found that 67% of their crop was sold to wholesalers and distributors (a category which included repackers), while only 3% of the sales were marketed directly to grocery retailers. By contrast, interviews conducted with small numbers of grower-shippers in four other produce markets in other states (grapes, oranges, grapefruit, lettuce/bagged salads) showed that direct sales to grocery retailers were the most important domestic marketing channel, ranging from 37% in the case of grapefruit to 61% for lettuce/bagged salads (Calvin et al., 2001).
- 21 Brokers can either negotiate a transaction between a grower and a buyer that specifies the price and quantity that will be supplied by the grower (a regular broker), or buy the produce from the grower and then sell it to a shipper or a packer (a buying broker). The regular broker gets a fixed amount of the profits based on his arrangements with the grower; buying brokers, as owners of the merchandise, can increase their profit margins by playing the market.
- 22 A supercenter is a "large general merchandise store that also includes a self-contained supermarket within it" and a warehouse club is a "hybrid wholesale-retail establishment selling food, grocery, appliances, hardware, office supplies, and similar products to consumers and small business members" (Kaufman et al., 2000, p.viii).
- 23 These percentages include the grocery sales of Wal-Mart supercenters but no other mass merchandisers.

- 24 Direct sales of fresh produce from the producer to the consumer (e.g., in farmers' markets, pick-your-own operations or roadside stands or mail-order sales) accounted for 2% of total fresh produce sales in both 1987 and 1997 (Kaufman et al., 2000).
- 25 Interview conducted with spokesperson for Taco Bell, June 20, 2003 (Mattera and Khan, 2003, p.14).
- 26 The figures correspond to sales of all products by these shippers, not just tomatoes. The results, which are based on a limited number of observations, should be interpreted with caution.
- 27 About one-third of the 100 million pounds of fresh cucumbers used by Mt. Olive Pickle Company is purchased from independent growers in North Carolina. The company also purchases fresh cucumbers, where and when they are in season, in ten other states (Florida, Texas, Georgia, Alabama, Virginia, Maryland, Ohio, Indiana, Michigan, Wisconsin) (www.mtolivepickles.com/MtOlive/Today.html).
- 28 Pickling cucumber budget developed by the Department of Agriculture and Resource Economics, North Carolina State University, available on-line at www.ag-econ.ncsu.edu/AgBudgets/vegetable.htm.
- 29 U.S. Department of Agriculture, U.S. Tomato Statistics series (<http://usda.mannlib.cornell.edu/datasets/specialty/92010>), Table 1 and Table 77.
- 30 U.S. Department of Agriculture, U.S. Tomato Statistics series (<http://usda.mannlib.cornell.edu/datasets/specialty/92010>), Table 100.
- 31 Mexican producers withdrew from the pact in June 2002, but a new agreement with similar terms was reached four months later.
- 32 May 27, 2003 interview (Mattera and Khan, 2003).
- 33 For time series data on the season-average prices of fresh tomatoes for the period 1980-2002, see U.S. Department of Agriculture, U.S. Tomato Statistics series (<http://usda.mannlib.cornell.edu/datasets/specialty/92010>), Table 77. Note that these prices are for field-grown tomatoes, mainly of the mature green variety. The USDA does not collect price information on greenhouse or vine-ripe tomatoes. For time series data on the season-average prices of cucumbers for pickles see U.S. Department of Agriculture (2002), Table 71, for the period 1980-1999, and www.ers.usda.gov/data/sdp/view.asp?f=specialty/89011, Table 71, for the period 2000-2002.
- 34 The information in this paragraph is from the 1997 Census of Agriculture, Volume 1, National-Level Data, Table 42, available online at http://www.nass.usda.gov/census/census97/volume1/us-51/us1_42.pdf, and Florida State-Level Data, Table 42, available online at http://www.nass.usda.gov/census/census97/volume1/fl-9/fl1_42.pdf.
- 35 Telephone interview with D. Brent Clement, Managing Editor of *The Tomato Magazine*, June 23, 2003 (Mattera and Khan, 2003).
- 36 The information in this paragraph is from the 1997 Census of Agriculture, Volume 1, National-Level Data, Table 42, available online at http://www.nass.usda.gov/census/census97/volume1/us-51/us1_42.pdf, and North Carolina State-Level Data, Table 42, available online at http://www.nass.usda.gov/census/census97/volume1/nc-33/nc1_42.pdf.
- 37 Based on data from the 1997 Census of Agriculture, hired and contract labor accounted for more than 30% of farm production expenses in the case of vegetable and melon farms, and more than 40% in the case of fruit and nut farms (Runyan, 2000).

SECTION IV

- 38 In particular, see chapter 4, "The Statutory Origins of Agricultural Exceptionalism."
- 39 Exemptions from the minimum wage requirements include (1) farmworkers whose employers did not use more than 500 man-days of farm labor during any calendar quarter of the preceding year; (2) hand-harvest laborers who are paid on a piece-rate basis and were employed in agriculture for less than thirteen weeks the previous year; and (3) farmworkers who are 16 or younger and are employed at the same farm as their parent and who are hand-harvest laborers paid on a piece-rate basis (Runyan, 2000).
- 40 The employers generally lobby through trade associations, such as the National Council of Agricultural Employers, the American Farm Bureau Federation, state Farm Bureaus, the California Grape and Tree Fruit League and other commodity-based organizations.
- 41 The OSH Act requires that employers comply with OSHA standards and regulations for workplace safety. In cases where OSHA has not issued any regulations to set standards, violations of workplace safety are much more difficult to prove. In these cases, the so-called "general duty clause" of the OSH Act comes into play. This provision requires each covered employer to provide a workplace "free from recognized hazards" that are likely to cause death or serious physical harm to employees. However, the DOL must demonstrate that (a) a workplace condition or activity presented a hazard, (b) the condition or hazard was known to the employer or industry (c) it was likely to cause serious physical harm, and (d) a feasible and useful means of abatement existed by which to materially reduce or eliminate it.
- 42 These basic sanitation amenities must be provided without cost to the employees, and be located within a quarter mile of the worksite.
- 43 *Farmworker Justice Fund, Inc. v. Brock*, 811 F.2d 613, 614 (D.C.Cir. 1987).
- 44 Consequently, the DOL is forced to rely on the OSH Act's general duty clause—with its more difficult burden of proof—to protect workers against musculo-skeletal injuries.

- 45 For example, under the EPA’s weaker Worker Protection Standard (WPS), farmworkers receive only general pesticide information, and no information about the specific health effects associated with the pesticides they come in contact with. By contrast, the OSHA Hazard Communication Standard’s “right-to-know” protection entitles most non-agricultural workers to specific training about the short- and long-term health effects associated with the chemicals used in their workplaces.
- 46 Of the total jobs approved by the DOL, the number of workers actually hired by employers under the H-2A program has generally been about 40 to 60 percent of the approved application.
- 47 The H-2A growers vary in size, but generally achieve economies of scale in their foreign-worker recruitment by relying on large labor contractors that specialize in the program.
- 48 On the other hand, it should be noted that, if there is a trend here, it is not a recent one. Rather, U.S. employers have been using temporary nonimmigrant agricultural guest workers since World War I, and at times in much larger numbers than the H-2A program (e.g., the hundreds of thousands of workers under the Bracero program).
- 49 For a more detailed description of the H-2A contract and regulation terms, see Geffert (2002).
- 50 Therefore, to participate in the H-2A program, an employer must obtain a “labor certification” from the DOL that: (1) the job’s wages and other work terms will not adversely affect U.S. workers, and (2) U.S. workers are not available to fill the employer’s labor needs. With this certification, the employer can then apply for temporary H-2A work visas for foreign workers hired abroad.
- 51 In 2002, the applicability of labor laws to undocumented workers was called into doubt by a troubling decision of the United States Supreme Court, *Hoffman Plastic Compounds v. National Labor Relations Board*. The Court held that undocumented workers who are illegally fired by their employers for organizing a labor union generally are not eligible for reinstatement to their job or even for back pay for their lost work. Thus, for undocumented workers there is little reason to risk deportation by challenging illegal conduct. For employers, the ruling encourages the hiring of undocumented workers who can be threatened with retaliation for union organizing. Ironically, the case does not directly affect farmworkers because they are excluded from the NLRA. Nonetheless, the Hoffman Plastic decision contributes to the climate of fear experienced by undocumented farmworkers.
- 52 Office of Public Affairs, Administrative Office of the United States Courts, *Judicial Business of the United States Courts*, Table C-2 (1941-1998).
- 53 House of Representatives Report No. 97-885 Vol. 4, U.S. Code Cong. & Admin. News, 1982, p.4550.
- 54 U.S. Department of Labor response to Freedom of Information Act request by Farmworker Justice Fund, Inc.
- 55 U.S. Department of Labor response to Freedom of Information Act request by Farmworker Justice Fund, Inc.
- 56 Compare, for example, the adverse decision in *Aimable v. Long & Scott Farms*, 20 F.3d 434 (11th Cir. 1994) to the favorable decision by the same appellate court in *Antenor v. D & S Farms*, 88 F.3d 925 (11th Cir. 1996).
- 57 Congress has even prohibited these programs from using funds from sources other than the federal government to represent undocumented workers.
- 58 However, they are prohibited entirely from representing guest workers under the H-2B (“non-agricultural”) visa program, including those who are employed in forestry, landscaping, seafood and poultry processing, and other agriculture-related jobs. Employers often attempt to try and have the jobs for which they are recruiting guest workers be classified as H-2B (non-agricultural) rather than H-2A, in order to take advantage of the less restrictive provisions of the H-2B program.
- 59 As weak as the protections provided to guest workers under the H-2A program are, it should be noted that the employment contracts for H-2A workers are quite comprehensive, spelling out in detail, provisions relating to type of work, work implements, housing, safety, sanitation, transportation, wages, etc.
- 60 The federal Equal Employment Opportunity Commission brought an important case against Tanimura & Antle, a large multi-state vegetable grower on the West Coast. The case began on behalf of Blanca Alfaro, a farmworker who alleged that she was sexually harassed by her supervisors and that both she and her partner (who had supported her) were fired after she had complained to the company. The case ultimately became a class action on behalf of many victims of discrimination and retaliation, and was settled for \$1.855 million.
- 61 Trade liberalization under NAFTA does have an important link to the immigration issue; cheap U.S. agricultural imports allowed under NAFTA provoked a crisis in Mexico’s countryside fueling the displacement of millions of rural Mexicans many of whom have sought jobs in the United States.

SECTION V

- 62 In response, Mt. Olive has told Oxfam America that the Ohio cucumber crop includes a much higher percentage of small cucumbers which would tend to equalize wages per hour between Ohio and North Carolina.
- 63 PETA’s campaigning efforts had previously led McDonalds, Burger King, and Wendy’s to adopt comprehensive supplier standards for the ethical treatment of animals.

SECTION VI

- 64 An excellent information resource is Responsible Shopper, an initiative of Co-op America (www.responsibleshopper.org).
- 65 These recommendations are by no means exhaustive, but rather reflect the outcomes of this study. For further information, the Farmworker Justice Fund, Inc., a Washington, D.C.-based policy organization and a contributor to this report, is a valuable source of documentation and guidance on policy issues. See www.fwjjustice.org.

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Unified Food Purchasing Cooperative (UFPC): www.ufpc.com

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Yum, Inc.: www.yum.com



SHIHO FUKADA



**MAKE
TRADE
FAIR**

The persistence of inhumane conditions and poverty wages for farmworkers has long been a tragic chapter in the story of American agriculture. Like machines, nearly two million workers in America's fields labor without rights, earn sub-living wages, and exist in dehumanizing circumstances. Relatively recent practices in the industry have only worsened the situation. A supply-chain model for the fresh produce industry has tightened profit margins along the chain and further reduced the tiny sliver of the pie left for workers. Discrimination in national and state labor laws has left farmworkers with very few protections.

Treating farmworkers fairly can be done. Consumer power and investor leverage open up new possibilities for reforming corporate practices in the produce supply chain to benefit workers. By ending the exclusion of farmworkers in labor laws, the government can protect those whose rights have been long abridged.



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