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An Agricultural Law Research Article

## **The Farm Worker: His Need for Legislation**

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# THE FARM WORKER: HIS NEED FOR LEGISLATION

Bowed by the weight of centuries he leans  
Upon his hoe and gazes on the ground.  
The emptiness of the ages in his face,  
And on his back, the burden of the world.  
Edwin Markam, "The Man with the Hoe"

It's a mighty hard row that my pore hands have hoed,  
My pore feet have traveled a hot dusty road.  
Woodrow Wilson Guthrie, "Pastures of Plenty"

## I. INTRODUCTION

Of America's ignored and invisible people, the farm worker is one of the most ignored and least visible. He is hidden by the crops as he works his way down the endless rows. Far from the cities where the laws are made and the issues of the day are debated, his voice is not heard. He is vitally necessary to this well-fed nation, and yet his needs are seldom considered.

The legislators have not ignored the industrial worker. They have provided him with laws insuring a minimum wage, workmen's compensation and other such benefits. The farm worker, however, is expressly excluded from coverage under most of the federal and state laws enacted for the benefit of other workers.

It is the purpose of this note to discuss the problems of the farm worker, to explore those federal and state laws which should include farm workers but do not, and to examine those very few laws written for the benefit of the farm worker and their effect. This note is in no way comprehensive; its focus is mainly on those problems and laws which affect the working conditions of the farm laborer. This note should make it clear that the farm worker has been uniquely discriminated against by both the federal and state legislatures and that the reasons for such discrimination have no validity today. It is time for the lawmakers to realize that the discrimination exists, that it is unjust, and that it must be brought to an end.

## II. THE PROBLEMS

### A. *The Farm Worker*

There are almost three million farm workers in the United States.<sup>1</sup> As a group they receive less annual income than any other occupational

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<sup>1</sup>ECONOMICS RESEARCH SERVICE, U.S. DEP'T OF AGRICULTURE, AGRICULTURAL

group.<sup>2</sup> Their low annual income is not only the result of the seasonal nature of their work, but it is also the result of the low wages they are paid during the season. In 1966, farm workers averaged \$1.23 an hour as compared to a factory worker's average hourly income of \$2.71.<sup>3</sup> Most farm workers' hourly earnings are less than the statutory minimum wage for other workers.<sup>4</sup> Low wages may be the farm worker's biggest problem, but it is far from being the only one. The other problems, however, all combine to either decrease what he now earns or keep him from making more.

One of the many problems results from the frequency of accidents and occupational diseases on farms. Farming is the third most dangerous occupation in the United States,<sup>5</sup> and in 1967 there were more fatal accidents in agriculture than in any other industry.<sup>6</sup> The increasing use of machinery and chemicals is making farming more dangerous all the time. Not all farm workers work with machinery, but almost all are exposed to harmful chemicals.<sup>7</sup> Yet, very few farm workers are protected from the costs of injury or illness resulting from their occupation. The already underpaid farm worker must bear these costs as few states include farm workers in their workmen's compensation laws. Although the farm worker could conceivably sue the farmer for negligence, in most states the farmer does not lose his common law defenses such as assumption of risk and contributory negligence for work-related injuries. Thus, it is unlikely that farm workers could win many negligence suits, and without workmen's compensation or other insurance, they alone must bear the costs of injury and illness.

The seasonal nature of the work is another problem which the farm

ECONOMIC REP. NO. 164, THE HIRED FARM WORKING FORCE OF 1968, at 1 (1969) [hereinafter cited as HFWF OF 1968].

<sup>2</sup> SENATE COMM. ON LABOR AND PUBLIC WELFARE, THE MIGRATORY LABOR PROBLEM IN THE UNITED STATES, S. REP. NO. 91-83, 91st Cong., 1st Sess. 51 (1969) [hereinafter cited as S. REP. NO. 91-83]; HOUSE COMM. ON EDUCATION AND LABOR, COVERAGE OF AGRICULTURAL EMPLOYEES UNDER THE NATIONAL LABOR RELATIONS ACT, H.R. REP. NO. 1274, 90th Cong., 2d Sess. 19 (1968) [hereinafter cited as H.R. REP. NO. 1274].

<sup>3</sup> The \$1.23 figure represents the average hourly wage when room and board were not provided by the farmer. When these are furnished by the farmer the average hourly wage is significantly lower. *Hearings on Migratory Labor Legislation Before the Subcomm. on Migratory Labor of the Senate Comm. on Labor and Public Welfare*, 90th Cong., 1st Sess., pt. 4, at 784 (1968) [hereinafter cited as *Hearings on Migratory Labor*].

<sup>4</sup> The minimum wage of workers (except farm workers) covered by the Fair Labor Standards Act, *as amended*, 29 U.S.C. § 206(a)(1) (Supp. II, 1966) is \$1.60 an hour. This is considerably higher than the average farm worker's wage. See H.R. REP. NO. 1274, at 19.

<sup>5</sup> NATIONAL SAFETY COUNCIL, ACCIDENT FACTS 27 (1967).

<sup>6</sup> S. REP. NO. 91-83, at 90.

<sup>7</sup> *Id.* at 91-92.

worker encounters. Crops are not cultivated and harvested all year long. The skills of the farm worker are generally needed only during the planting, growing and harvesting season, and more farm workers are required for harvesting than any other operation. Therefore, many farm workers must either suffer through long periods of unemployment or find other than farm jobs. Thirty-seven percent of all farm workers do some work in addition to farming,<sup>8</sup> but even for these workers there are periods of unemployment while they are seeking other jobs. It is unfortunate that in only one state farm workers are covered by unemployment compensation.<sup>9</sup>

As if these other problems were not enough, the American farm worker is also forced into competition with persons who have illegally entered this country. During a one year period ending June 30, 1968, the border patrol of the Immigration and Naturalization Service found and returned 41,425 Mexicans who had illegally entered this country and were working in agriculture.<sup>10</sup> These wetbacks enter the United States knowing they can find employment on farms at higher wages than the wages paid in Mexico. Although illegal entry is a crime,<sup>11</sup> prosecution is usually waived, and the illegal entrant is simply transported back to Mexico.<sup>12</sup> Farmers hire wetbacks because they work hard and are not likely to cause any trouble for fear of their illegal entrance coming to light. Although it is a crime to harbor an illegal entrant, employment does not constitute harboring.<sup>13</sup> Thus, the farmer takes little risk in hiring wetbacks.

Not only must farm workers compete with illegal entrants for jobs, but they must also compete with foreign workers legally working on farms in this country at the invitation of the federal government. Supposedly, foreign workers can be hired by farmers only after an elaborate set of requirements is met and after a determination has been made by the Department of Labor that a labor shortage exists.<sup>14</sup> Although foreign workers cannot be hired if their employment will "adversely affect . . . workers in the United States similarly employed,"<sup>15</sup> the regulations designed to protect United States workers are seldom followed.<sup>16</sup>

<sup>8</sup> HFWF of 1968, *supra* note 1, at 21.

<sup>9</sup> HAWAII REV. LAWS §§ 383-1(8), 383-2 (1968).

<sup>10</sup> S. REP. NO. 91-83, at 64.

<sup>11</sup> 8 U.S.C. §§ 1325-26 (1964).

<sup>12</sup> Greene, *Immigration Law and Rural Poverty—The Problems of the Illegal Entrant*, 1969 DUKE L.J. 475, 479-80.

<sup>13</sup> 8 U.S.C. § 1324(a) (1964).

<sup>14</sup> Immigration and Nationality Act, 8 U.S.C. §§ 1101 *et seq.* (1964); 8 C.F.R. § 214.2(h)(2)(ii) (1969); 20 C.F.R. §§ 602.10 *et seq.* (1969). For statistics of foreign farm workers in the United States see *Hearings on Migratory Labor*, *supra* note 3, pt. 4, at 777-82 and accompanying tables at 783-99.

<sup>15</sup> 8 U.S.C. § 1182(a)(14)(B) (1964).

<sup>16</sup> See McMillan & Siggers, *The Indian Farmworker in the Blueberry and Potato*

As a result, domestic farm workers are often adversely affected by the importation of foreign labor.

It would seem that many of the farm worker's problems could be dealt with, at least in part, by collective action. However, unionization is another problem of the farm worker. They are not covered by the National Labor Relations Act (NLRA) and are thereby denied the protections of the NLRA that have existed for other workers since 1935.<sup>17</sup> Although some farm workers have joined together to form unions and have negotiated collective bargaining agreements with farmers, it took years of deprivation, strikes, and suffering through harassment, beatings, and arrests by farmers and local police to achieve recognition and begin the negotiating process.<sup>18</sup> Other fledgling unions have yet to make it to the bargaining table, and their members are still experiencing arrests and harassment.<sup>19</sup> Many farm workers are afraid to organize because they know what will result. Without the orderly process of collective bargaining of the NLRA, the road to collective action is a very difficult one for the farm worker to travel.

Education is another chronic problem for the farm worker. His children usually work in the fields with him because the family needs the additional income and because child labor laws often exempt those employed in agriculture. The migrant child has the obvious problem created by transferring from school to school.<sup>20</sup> Even the nonmigrant farm worker changes his place of residence more often than the average American.<sup>21</sup>

Migrant farm workers<sup>22</sup> have all of the usual problems of the farm worker and many others caused by their migrant status. The migrant must find transportation to the regions where his skills are needed.<sup>23</sup> He must locate housing whether on the farm or in one of the many labor camps, and the housing he does find is frequently poor and inadequate.<sup>24</sup>

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Fields of Maine, Aug. 30, 1969 (unpublished paper on file at Pine Tree Legal Assistance, Inc., Portland, Maine).

<sup>17</sup> National Labor Relations Act (Taft-Hartley Act), 29 U.S.C. § 152(3) (1964).

<sup>18</sup> See generally J. DUNNE, DELANO—THE STORY OF THE CALIFORNIA GRAPE STRIKE (1967).

<sup>19</sup> H.R. REP. NO. 1274, at 21-25; *Hearings on Migratory Labor*, *supra* note 3, pt. 2, at 427-49.

<sup>20</sup> S. REP. NO. 91-83, at 65-76.

<sup>21</sup> *Id.* at 5.

<sup>22</sup> Migrant farm workers are persons who do farm work outside their home counties. They make up 10 percent of the farm labor force. HFWF OF 1968, *supra* note 1, at 3.

<sup>23</sup> A map showing the travel patterns of migrant farm workers can be found in S. REP. NO. 91-83, at 3.

<sup>24</sup> *Id.* at 33-40; Comment, *Migrant Farm Labor in Upstate New York*, 4 COLUM. J.L. & SOC. PROB. 1, 24-25 (1968).

The migrant is often treated with discrimination and harassed by local police.<sup>25</sup>

Farm workers, particularly migrants, have many problems with crew leaders. Crew leaders provide necessary services for the farm worker such as recruiting, finding jobs, and sometimes providing transportation. They are well paid for these services, often to the detriment of the farm worker. They withhold wages from the farm worker; they tell him that the farmer is paying a smaller amount than he actually is with the difference going into the crew leader's pocket.<sup>26</sup>

Other laborers in the United States have faced many of the same problems. However, these workers have found solutions to many of their problems through such legislation as minimum wage laws, workmen's compensation, unemployment compensation, and through collective bargaining protected by the NLRA. Surely it is not asking too much for the farm worker to receive the same benefits and protections which other workers receive from state and federal laws.

### B. *The Farmer*

There are two general classes of farmers in the United States, the small farmer and the large farmer. In 1954 there were approximately 4.8 million farms in the United States; in 1967 there were about 3.14 million farms.<sup>27</sup> Although the number of farms has dramatically decreased, the amount of farm land has not decreased in proportion.<sup>28</sup> Farms are becoming larger as more and more small farmers are giving up.

The great majority of farms in the United States are small family farms.<sup>29</sup> The small farmer, like the farm worker, has many problems, and in some ways he is in almost as bad a position as the farm worker. He cannot afford the big machinery to make his farm more efficient and productive. He has very little bargaining power and almost no control over the price he receives for his crops. Often he must sell his crops to the one big processor or broker in his area.<sup>30</sup> He employs few, if any, hired hands; he and his family do the work.

The large farmer, on the other hand, is often a corporation doing a volume business and running the farm on the same scale as the large industries. He has a large staff of agricultural experts, accountants, and

<sup>25</sup> See McMillan & Siggers, *supra* note 16.

<sup>26</sup> Chase, *The Migrant Farm Worker in Colorado—The Life and the Law*, 40 COLO. L. REV. 45, 58-59, 71 (1967).

<sup>27</sup> U.S. DEP'T OF AGRICULTURE, AGRICULTURAL STATISTICS 1968, at 480 (1968).

<sup>28</sup> *Id.* at 430.

<sup>29</sup> H.R. REP. NO. 1274, at 4.

<sup>30</sup> For example, the sugar beet farmer in northeastern Colorado cannot realistically sell his beets to anyone but the Great Western Sugar Corporation.

farm workers. He keeps payroll records on all his employees. Often he is his own broker, and sometimes he has his own processing plant. He is in a different world than the small farmer.

Farmers, both large and small, have been effective in preventing legislation which would benefit the farm worker. In the past they have had a greater voice than they deserved in the rural-dominated legislatures. They still have a louder voice than farm workers, many of whom are denied participation in the political process because of residence requirements for voting.

Both the large and small farmers have been able to persuade the lawmakers that legislation for the benefit of farm workers will hurt the small farmer. The small farmer is precious to America's self-image; he represents hard work, enterprise, independence, and self-sufficiency. The lawmakers do not want to see this institution die.

However, the small farmer does not have to suffer in order for farm workers to be helped. Any additional costs resulting from legislation for farm workers such as minimum wage laws and workmen's compensation should and could be passed along to the consumer. Some opponents of farm labor legislation argue that the farmer cannot pass along these additional costs to the consumer, while others argue that such legislation will mean increased costs to the consumer. However, since labor costs account for only 7 percent of the retail price of food, it is generally agreed by the proponents of the legislation that these costs can be passed on to the consumer without a significant rise in retail prices.<sup>31</sup>

Most of the current and proposed legislation does not and would not affect small farmers. For example, an amendment to the NLRA to include farm workers would probably contain limitations to exempt small farmers and their employees.<sup>32</sup> The Fair Labor Standards Act does not begin to touch small farmers.<sup>33</sup>

We can no longer deny the farm worker a decent wage or any of the protections afforded other workers on the basis that the small farmer might suffer. Even if existing and proposed laws are extended to include employees of small farmers, the costs can be passed on to the consumer. Furthermore, small farmers employ so few farm workers that their fear is groundless;<sup>34</sup> the large majority of farm workers are employed by the large corporate farms.

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<sup>31</sup> H.R. REP. NO. 1274, at 31. This would mean that even if farm workers' wages were doubled, it would only result in increased costs to the consumer of 7 percent or less.

<sup>32</sup> See pp. 221-22 *infra*.

<sup>33</sup> The 500 man-day exemption effectively excludes employees of small farmers. 29 U.S.C. § 213(a)(6) (Supp. II, 1966). For a discussion of this exemption see pp. 223-25 *infra*.

<sup>34</sup> Only .9 percent of the farms in the United States employ more than 12

Large industries have survived and even profited from legislation benefiting industrial workers. They are required to pay minimum wages, provide workmen's compensation, and bargain with the representatives of the workers. There is no longer any valid reason why farmers should not have to provide the same protections for their workers.

Both large and small farmers can benefit from farm labor legislation. The National Farmers Union, supporting an amendment to include farm workers in the NLRA, stated: "The family farm will not earn favorable return on its own labor when hired labor is chronically cheap."<sup>35</sup> The National Farmers Organization, in support of the same amendment, said:

If cheap labor was not available to the corporate-type farming operation, we believe the family-type farmers could compete on a more favorable basis with the corporate operators.<sup>36</sup>

In the long run, cheap wages and deplorable working conditions do not benefit anyone. The time has not yet come when human labor on farms is obsolete. To enhance competition and to have a ready and willing farm labor force are desirable and necessary goals which can be achieved through farm labor legislation.

### III. FEDERAL LAWS

#### A. *National Labor Relations Act*

It is declared in the first section of the NLRA that the policy of the United States is to eliminate obstructions to commerce by encouraging collective bargaining.<sup>37</sup> However, the scope of this policy is substantially narrowed by the section which expressly excludes farm workers from coverage under the NLRA: "The term 'employee' . . . shall not include any individual employed as an agricultural laborer . . ." <sup>38</sup> This exclusion has been continued in force since the enactment of the NLRA in 1935.

The sponsors of the NLRA, feeling pressure from agricultural lobby-

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farm workers during a year. H.R. REP. NO. 1274, at 5. Of the farmers who do employ workers, 7 percent employ more than 60 percent of all farm workers. S. REP. NO. 91-83, at 58.

<sup>35</sup> H.R. REP. NO. 1274, at 29.

<sup>36</sup> *Id.* at 30.

<sup>37</sup> National Labor Relations Act (Taft-Hartley Act), 29 U.S.C. § 151 (1964).

<sup>38</sup> 29 U.S.C. § 152(3) (1964).

Although there have been some problems with the definition of "agricultural labor" and whether persons working in farm-related industries are included in the NLRA exclusion, the farm workers discussed in this note clearly come within the exclusion as they are workers actually engaged in farm cultivation and harvesting. For a discussion of the definitional problem see Rummel, *Current Developments in Farm Labor Law*, 19 HASTINGS L.J. 371, 374-77 (1968).

ists, were evidently afraid that the bill would not be passed at all if farm workers were included under its coverage. Therefore, the farm workers became sacrificial lambs for the benefit of other workers.<sup>39</sup> Representative Connery<sup>40</sup> stated in 1935: "If we can get this bill through and get it working properly, there will be opportunity later, and I hope soon, to take care of agricultural workers."<sup>41</sup> More than three decades later, Congress has still not found the "opportunity" to take care of farm workers.

If farm workers were included under the NLRA they would have

the right to self-organization, to form, join, or assist labor organizations, to bargain collectively . . . and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . .<sup>42</sup>

They would be protected from an employer engaging in unfair labor practices such as interfering with the employee's right to join a union or refusing to bargain with the representatives of employees.<sup>43</sup> Farmers would also receive protection from various activities of farm workers if they were included in the NLRA. Under the Act it is an unfair labor practice, and therefore prohibited activity, for a labor organization to engage in a secondary boycott and various kinds of strikes and picketing.<sup>44</sup>

Despite the exclusion of farm workers from the NLRA, farm workers are organizing. The best known union is the United Farm Workers Organizing Committee, AFL-CIO which Cesar Chavez and California grape pickers made famous.<sup>45</sup> Wisconsin farm workers have successfully organized an independent union.<sup>46</sup> The Teamsters and other unions

<sup>39</sup> Morris, *Agricultural Labor and National Labor Legislation*, 54 CALIF. L. REV. 1939, 1955-56 (1966).

<sup>40</sup> Representative Connery was one of the sponsors of the NLRA.

<sup>41</sup> H.R. REP. NO. 969, 74th Cong., 1st Sess. 3202 (1935).

<sup>42</sup> 29 U.S.C. § 157 (1964).

<sup>43</sup> 29 U.S.C. § 158(a) (1964).

<sup>44</sup> 29 U.S.C. § 158(b) (1964).

<sup>45</sup> For an interesting chronicle of the California grape strike and the rise of Cesar Chavez and the UFWOC see DUNNE, *supra* note 18. See also Koziara, *Collective Bargaining on the Farm*, 91 MONTHLY LABOR REV., June 1968, at 3, 7-8; Cohen, *La Huelga! Delano and After*, 91 MONTHLY LABOR REV., June 1968, at 13, 14.

For existing agreements made by the UFWOC with various growers see *Hearings on Migratory Labor*, *supra* note 3, at 833-905.

<sup>46</sup> The independent union of farm workers, Obreros Unidos, organized largely by Jesus Salas, has over 650 members and has been certified by the Wisconsin Employment Relations Commission as the exclusive bargaining representative of field workers for Libby, McNeil & Libby, Inc. Erenburg, *Obreros Unidos in Wisconsin*, 91 MONTHLY LABOR REV., June 1968, at 17, 20-28.

are also organizing farm workers.<sup>47</sup> Needless to say, the farm workers in their attempts at organization have been strongly opposed by farmers.

The farm worker exclusion must be eliminated before he can enjoy the benefits of collective bargaining. It is conceivable, but very unlikely, that the farm worker exclusion could be ruled unconstitutional by the courts. Various arguments such as a denial of equal protection have been suggested.<sup>48</sup> However, because the courts are reluctant to legislate and because of the many arguments for the constitutionality of the exclusion, realistically any change must come from Congress.

It is possible that Congress will act to reduce this exclusion in the near future. Unfortunately, any amendment to the NLRA to cover farm workers will not, in all probability, cover all farm workers. A bill introduced during the 90th Congress<sup>49</sup> in the House would have excluded all farm workers

employed by an employer who at no time during the preceding calendar year employed more than 12 employees or who during the preceding calendar year had direct wage costs of less than \$10,000 . . . .<sup>50</sup>

It was estimated that the \$10,000 exemption alone would have left the bill covering only 1.4 percent of all farms and 60 percent of all farm workers.<sup>51</sup> The additional 12 employees exemption would have lowered these percentages even more. The reason for these limitations was to make sure that the small farmer would not be affected.

Even if an amendment to the NLRA did not contain these or similar limitations, the jurisdictional standards of the National Labor Relations Board would work to exclude the employees of small farms. The current jurisdictional standards of the NLRB require nonretail operations to have an annual outflow or inflow across state lines of \$50,000 before the Board will assert jurisdiction.<sup>52</sup> Although the NLRB might designate a standard applicable to agriculture if an amendment to the NLRA

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<sup>47</sup> Koziara, *Collective Bargaining on the Farm*, *supra* note 45, at 6; H.R. REP. No. 1274, at 27.

The Amalgamated Food & Allied Workers Union, AFL-CIO have also represented farm workers. For an agreement between this union and a grower see *Hearings on Migratory Labor*, *supra* note 3, pt. 4 at 822-33. For a summary of other unions involved with farm workers see Glass, *Organization in Salinas*, 91 MONTHLY LABOR REV., June 1968, at 24.

<sup>48</sup> See Comment, *The Constitutionality of the NLRA Farm Labor Exemption*, 19 HASTINGS L.J. 384, 386 (1968); Givens, *Legal Disadvantages of Migratory Workers*, 16 LABOR L.J. 584 (1965).

<sup>49</sup> H.R. 4769, 90th Cong., 1st Sess. (1967). This bill was amended and a clean bill incorporating these amendments was introduced. H.R. 16014, 90th Cong., 2d Sess. (1968).

<sup>50</sup> H.R. REP. No. 1274, at 4.

<sup>51</sup> *Id.* at 5.

<sup>52</sup> Siemons Mailing Serv., 122 N.L.R.B. 81 (1958).

should be enacted, it is expected that it would be \$50,000.<sup>53</sup> It is estimated that only 3.5 percent of all farms would fall under this \$50,000 standard.<sup>54</sup> Thus, it can be seen that an amendment to the NLRA to include farm workers will probably not include the employees of small farmers.

Most farmers do not want the NLRA amended to include farm workers.<sup>55</sup> Aside from the usual objections to any legislation benefiting the farm worker, such as increased costs and harm to the small farmer, more specific objections to a NLRA amendment have been made. One is that farm workers should not be allowed to unionize since the farmer deals with a perishable product and would therefore be forced to grant any union demands in order to save his crop and get it to market. Farmers are afraid of strikes during the harvesting season.<sup>56</sup> However, packing house employees and food processing workers who also work with seasonal and perishable products and who are included under the NLRA are unionized, and yet there are few work stoppages.<sup>57</sup> Not only has the food processing industry been highly unionized with no ill results,<sup>58</sup> but farm workers in Hawaii have been represented by unions for over 20 years with little harm to farmers.<sup>59</sup>

Another argument against the inclusion of farm workers in the NLRA is that agricultural workers would ultimately be harmed because higher labor costs would force more farmers to mechanize making fewer jobs available. However, mechanization is increasing and the demand for farm workers is decreasing anyway. Farm workers would be more capable of dealing with these problems collectively.<sup>60</sup>

These objections to amending the NLRA are slight when compared to the immense benefits which the farm worker would receive if included in the NLRA. Collective bargaining could not only increase wages but also affect other working conditions. Collective bargaining agreements could provide for health and safety standards on the farm, transportation,

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<sup>53</sup> S. REP. NO. 91-83, at 22.

<sup>54</sup> *Id.*

<sup>55</sup> Interestingly, some farmers are in support of an amendment. Both the National Farmers Union and the National Farmers Organization supported H.R. 4769. H.R. REP. NO. 1274, at 29-30.

<sup>56</sup> *Id.* at 32; Morris, *supra* note 39, at 1971-72; DUNNE, *supra* note 18, at 101-02.

<sup>57</sup> H.R. REP. NO. 1274, at 27. This report cites Labor Department statistics which show that although food processing workers make up 9 percent of all workers in manufacturing, they accounted for less than 1 percent of manufacturing strikers from 1960-1966.

<sup>58</sup> Morris, *supra* note 39, at 1985.

<sup>59</sup> Farm workers in Hawaii are covered by the Hawaii Employment Relations Act, HAWAII REV. LAWS § 377-1(3) (1968). For a history of this act and unions in Hawaii see *Hearings on Migratory Labor*, *supra* note 3, pt. 4, at 931-42.

<sup>60</sup> H.R. REP. NO. 1274, at 33.

insurance, and (when the farmer provides housing for his employees) more adequate housing.<sup>61</sup>

Both farmers and farm workers would benefit from the orderly process of collective bargaining assured by the NLRA. The resources and energy expended by both parties in the current struggle should be channeled into orderly negotiations and fair elections. Until the farm worker is included in the NLRA the present wasteful struggle will continue.

### B. Fair Labor Standards Act

The Fair Labor Standards Act of 1938 (FLSA) contains provisions designed to maintain a minimum standard of living and general well-being for workers employed by industries engaged in commerce.<sup>62</sup> In 1966, it was amended to include farm workers.<sup>63</sup> However, the Act contains limitations applicable to farm workers which effectively exclude the majority of them.

One limitation in the FLSA manages to exclude 98 percent of the farms and 65 percent of all farm workers from coverage of the minimum wage and maximum hour provisions of the Act.<sup>64</sup> This is the 500 man-day limitation. The FLSA covers only those farm workers who are employees on a farm that used more than 500 man-days of agricultural labor during any calendar quarter of the preceding year.<sup>65</sup> A farmer employing about seven workers during a full calendar quarter would use more than 500 man-days of agricultural labor.<sup>66</sup>

The FLSA does not apply at all to farm workers who (1) are employed as hand harvest laborers and paid at a piece rate in an operation which is generally paid at a piece rate, *and* (2) commute daily from their permanent residences to the farm, *and* (3) were employed in agriculture less than 13 weeks during the previous year.<sup>67</sup> This limitation probably excludes all school children who work during harvest time.<sup>68</sup> It would be difficult to estimate how many farm workers actually do fall within this limitation.

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<sup>61</sup> The collective bargaining agreements between the UFWOC and various growers include provisions relating to safety, housing, etc. *Hearings on Migratory Labor*, *supra* note 3, pt. 4, at 833-905.

<sup>62</sup> Fair Labor Standards Act, 52 Stat. 1060 (1938), 29 U.S.C. §§ 201-19 (1964), *as amended*, §§ 203, 206-07, 213 (Supp. II, 1966).

<sup>63</sup> Fair Labor Standards Amendments of 1966, Pub. L. No. 89-601, 80 Stat. 830 (1966) (*codified* at 29 U.S.C. § 203(e) (Supp. II, 1966)).

<sup>64</sup> S. REP. No. 91-83, at 56.

<sup>65</sup> 29 U.S.C. § 213(a)(6) (Supp. II, 1966).

<sup>66</sup> S. REP. No. 91-83, at 56.

<sup>67</sup> 29 U.S.C. § 203(e)(2) (Supp. II, 1966).

<sup>68</sup> The chief activity of 34 percent of all farm workers is attending school. HFWF OF 1968, *supra* note 1, at 21.

The 35 percent of farm workers who are covered by the minimum wage provisions of the FLSA are to be paid no less than \$1.30 an hour.<sup>69</sup> However, it should be noted that most other workers covered by the Act are entitled to no less than \$1.60 an hour.<sup>70</sup>

Another inadequacy of the FLSA with regard to farm workers is its exclusion of them from the overtime provisions.<sup>71</sup> Although it can be argued that it would be a hardship for farmers to have to pay time and a half for overtime to farm workers during the peak growing and harvesting seasons, there are industries which have analogous seasonal characteristics and special overtime provisions of the Act apply to such industries. There is no reason why these provisions could not apply to agriculture. These provisions, in part, allow for overtime pay for time worked in excess of 10 hours a day or 48 to 50 hours a week.<sup>72</sup>

The FLSA also excludes agriculture from its child labor provisions.<sup>73</sup> These sections generally prohibit employers from employing a child under the age of 16.<sup>74</sup> However, children employed in agriculture can be employed at any age as long as they do not work during school hours. This is practically meaningless since most school children working in agriculture are not even considered employees under the Act and, therefore, the prohibition against working during school hours does not even apply to them.<sup>75</sup>

The FLSA as applied to farm workers is, in many ways, ineffective. Not only do the limitations severely narrow the number of farm workers covered, but also its applicability to those farm workers covered is impractical. A great many farm workers are paid at piece rates: by the acre for thinning sugar beets, by the sack for picking potatoes, by the bushel for other crops, and sometimes by the row. This, added to the fact that farm workers often work irregular hours, having to stop when it rains or when they come to the end of a field, makes it difficult for any farm worker to translate his piece rate wage into an hourly rate. Moreover, many farm workers do not know whether or not they are covered under the Act.

There is no doubt that since the FLSA amendment extending the Act to farm workers became effective in 1967 many farm workers have benefited.<sup>76</sup> However, significant changes must still be made in the Act so that it can cover more farm workers. The 500 man-day exemption should be dropped. It should not just be reduced since even a 100 man-

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<sup>69</sup> 29 U.S.C. § 206(a)(5) (Supp. II, 1966).

<sup>70</sup> 29 U.S.C. § 206(a)(1) (Supp. II, 1966).

<sup>71</sup> 29 U.S.C. § 213(b)(12) (Supp. II, 1966).

<sup>72</sup> 29 U.S.C. § 207(c), (d) (Supp. II, 1966).

<sup>73</sup> 29 U.S.C. § 213(c)(1) (Supp. II, 1966).

<sup>74</sup> 29 U.S.C. § 212 (1964); 29 U.S.C. § 203(1) (Supp. II, 1966).

<sup>75</sup> 29 U.S.C. § 203(e)(2) (Supp. II, 1966).

<sup>76</sup> S. REP. NO. 91-83, at 56.

day requirement would still exclude 40 percent of all farm workers.<sup>77</sup> The lengthier limitation excluding part-time, commuting and piece rate paid workers should also be eliminated.

One means of possibly narrowing the effect of the 500 man-day limitation and thereby extending coverage of the FLSA by the courts, instead of through Congressional change, would be to argue that certain processors come within the definition of employer in the Act. An employer is defined as "any person acting directly or indirectly in the interest of an employer in relation to an employee . . . ." <sup>78</sup> Most processors are large corporations buying crops from many different farmers and would not be affected by the 500 man-day limitation. Some of these large processors actually do the recruiting of the farm employees, furnish or loan the farm worker his transportation costs to the farming region, pay for his insurance while traveling, and pay him a bonus or his transportation costs back to his home if he stays for the entire season.<sup>79</sup> There may even be an agreement between the farmer and the processor for the farmer to use a certain number of farm workers for the season if the processor recruits and, in effect, hires the farm workers. Those processors who do most of the above, it would seem, fall under the Act's broad definition of employer. It has been established that under the Act the traditional definitions of the employer-employee relationship are not controlling, and that the courts will look to other factors.<sup>80</sup>

Since even the judicial change suggested above would not extend the FLSA to all farm workers because not all farm workers have a close enough connection with processors, the better solution, by far, would be an amendment of the Act erasing the 500 man-day requirement.

Those desiring to amend the wage provisions of the Act as they relate to farm workers should consider the current practice of paying farm workers at a piece rate. Perhaps schedules of piece rates could be established such as those under the Sugar Act for different types of work which would be equivalent to the minimum hourly rate.<sup>81</sup> Although farmers generally prefer the piece rate method because they feel it provides incentive for the workers, farm workers would probably rather

<sup>77</sup> *Id.* at 58.

<sup>78</sup> 29 U.S.C. § 203(d) (Supp. II, 1966).

<sup>79</sup> One example of this type of activity is the Great Western Sugar Corp. in northeastern Colorado. It recruits migrant farm workers in Texas during the winter, loans the worker and his family money to go to Colorado, and finds a sugar beet farmer for whom he can work. There is often an agreement made between the corporation and the farmer whereby the farmer becomes a surety for the money loaned by the corporation to the worker.

<sup>80</sup> See, e.g., *Rutherford Food Corp. v. McComb*, 331 U.S. 722 (1947).

<sup>81</sup> For a discussion of the rates established pursuant to the Sugar Act see pp. 230-01 *infra*.

see the Act amended to *require* farmers to pay them at an hourly rate.<sup>82</sup> Regardless of which method of payment is better, the hourly wage or its equivalent in piece rates should be raised to be the same as that guaranteed for other workers.

C. *The Farm Labor Contractor Registration Act and the Wagner-Peyser Act*

Labor contractors, or crew leaders as they are better known, are notorious for exploiting farm workers, particularly migrant farm workers. However, crew leaders perform necessary functions for the farm workers, such as recruiting, contacting farmers and finding jobs, sometimes providing transportation. When a farm worker works for a crew leader, the farmer will usually pay the crew leader the workers' wages and the crew leader will then pay the workers. For his services, the crew leader may keep a portion of the workers' wages or receive a fee from the farmer or both. He often acts as the spokesman for his crew and sometimes loans his workers money when they are in need. Crews are sometimes extended family groups, and in that case the crew leader is related in some way to most of his crew.<sup>83</sup>

Because of the dependence of the crew members on the leader, the crew leader is in a position to extract large fees from his workers often without the workers' knowledge. Crew leaders frequently withhold more wages from the workers than they will admit to the workers; they lie about the amount of wages that the farmer is paying.<sup>84</sup> They loan money to workers at extremely high interest rates, and sell them food, alcohol, and drugs at higher prices than they would have to pay in a store.<sup>85</sup> It is not surprising that some crew leaders have become quite wealthy as a result of their occupation.<sup>86</sup>

Farm workers are not the only ones hurt by crew leaders. The farmer is short-changed when the crew leader keeps a portion of the workers' wages for himself without disclosing this to either the worker or the farmer. The farmer may think that he is paying a good wage and should

<sup>82</sup> See 34 Fed. Reg. 5907 (1969) which indicates that workers would rather have a guaranteed hourly wage than a piece rate wage.

<sup>83</sup> See UNIVERSITY OF COLORADO CENTER FOR ACTION RESEARCH, LICENSING AND REGULATION OF LABOR CONTRACTORS AND CREW LEADERS 1-2 (April 15, 1969) (prepared for the Colo. Migrant Council) [hereinafter cited as LICENSING AND REGULATION OF LABOR CONTRACTORS].

For a sociological look at crew leaders and crews in the eastern migrant streams see Friedland, *Migrant Labor as a Form of Intermittent Social Organization and as a Channel of Geographical Mobility*, printed in *Hearings on Migratory Labor*, *supra* note 3, pt. 4, at 965-91.

<sup>84</sup> Chase, *The Migrant Farm Worker in Colorado*, *supra* note 26, at 58-59, 71.

<sup>85</sup> LICENSING AND REGULATION OF LABOR CONTRACTORS, *supra* note 83, at 2.

<sup>86</sup> Comment, *Migrant Farm Labor in Upstate New York*, *supra* note 24, at 7.

receive a good day's work for it. Instead, the worker thinks that he is being cheated by being paid a low wage and does not work as hard as he would for a good wage.

In an attempt to correct these abuses and the exploitation of farm workers by crew leaders, Congress passed the Farm Labor Contractor Registration Act of 1963 (FLCRA).<sup>87</sup> This law applies to crew leaders involved in interstate commerce, *i.e.*, crew leaders who recruit workers in one state to work in another state.<sup>88</sup> It requires these crew leaders to obtain a certificate of registration which can be denied, revoked, or suspended if the crew leader fails to comply with provisions of the FLCRA.<sup>89</sup> The FLCRA also requires crew leaders to furnish information to his workers at the time of recruitment, such as the wages the worker will earn, the charges made by the crew leader, and the area where the worker will be employed; the Act also requires that he keep payroll records and give each worker a statement of the sums paid to him showing all amounts withheld.<sup>90</sup> A willful and knowing violation of these provisions may result in a fine up to \$500.<sup>91</sup>

Although the statute may sound good on paper, it is ineffective for several reasons. First, many crew leaders simply do not register; the Department of Labor estimates there are 8,000 to 12,000 crew leaders who are not registered.<sup>92</sup> This is a result, in part, of the meager field staff charged with the responsibility of enforcing the registration provisions<sup>93</sup> and the failure of persons to report crew leaders who are not registered. Secondly, violations of the FLCRA occur every day, but crew leaders have such a hold on their workers that the workers do not report violations even when they are aware of them. Crew members are highly dependent on their leaders and cannot afford the consequences that may result from filing a complaint.<sup>94</sup> Thirdly, the Bureau of Employment Security of the Department of Labor, the agency responsible for enforcing the Act, does not take action until a complaint has been filed.<sup>95</sup>

The ineffectiveness of the FLCRA can be seen by the statistics of the Department of Labor which show that in 1968, only one crew leader was denied a certificate of registration and only 358 investigations

<sup>87</sup> 7 U.S.C. §§ 2041 *et seq.* (1964).

<sup>88</sup> 7 U.S.C. § 2042(b) (1964); 29 C.F.R. § 41.3 (1969).

<sup>89</sup> 7 U.S.C. §§ 2043(a), 2044(b) (1964).

<sup>90</sup> 7 U.S.C. § 2045 (1964).

<sup>91</sup> 7 U.S.C. § 2048 (1964).

<sup>92</sup> S. REP. NO. 91-83, at 82.

<sup>93</sup> In 1968 the field staff of the Farm Labor Contractor Registration Section of the Department of Labor was limited to five professional employees. S. REP. NO. 91-83, at 82.

<sup>94</sup> LICENSING AND REGULATION OF LABOR CONTRACTORS, *supra* note 83, at 5.

<sup>95</sup> *Id.*; Chase, *supra* note 26, at 61, 71.

were made.<sup>96</sup> Clearly, for this Act to be effective the Department of Labor must have a much larger staff so that it can carry on many more investigations.

Probably the best way to handle the crew leader problem is to eliminate the need for crew leaders, and the simplest way to accomplish this is for the state employment agencies to provide the services of the crew leader to the farm worker.<sup>97</sup> The Wagner-Peyser Act, enacted in 1933, created the United States Employment Service in order to establish a nationwide system of public employment services.<sup>98</sup> One of the functions of the United States Employment Service in conjunction with the state employment agencies is to maintain a farm placement service.<sup>99</sup> Basically this farm placement service provides a system for the interstate recruitment of farm workers. Migrant workers cannot be recruited through the service until it has been ascertained that there is a need for them.<sup>100</sup> The state agency must also determine that the conditions of employment for the migrants are not less favorable than the terms of employment of domestic farm workers in the area. These conditions include wages and housing.<sup>101</sup> Although the farm placement service at present cannot furnish all of the services that the crew leader does, such as loaning money, it can find jobs, recruit, and see that the worker has adequate housing and is receiving the going wage rate in the area.

No new laws or regulations need be promulgated for the state employment agencies to furnish many of the services now furnished by the crew leader. The present laws and regulations, however, must be utilized and enforced. Some type of educational campaign could be undertaken by the state agencies so that workers would know they do not have to depend upon crew leaders but can use the farm placement service. The regulations should also be more strictly enforced so the housing will meet the required standards.<sup>102</sup> Furthermore, state agencies should refuse to deal with crew leaders.

It should also be noted that a recent and important case, *Gomez v. Florida State Employment Service*,<sup>103</sup> gives workers recruited through the farm placement service a cause of action against the state agency for failure to comply with the regulations. In *Gomez* farm workers, recruited from Texas to work in Florida, discovered upon arrival in Florida that the wages were lower than promised and the housing did not meet

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<sup>96</sup> S. REP. NO. 91-83, at 82.

<sup>97</sup> See Chase, *supra* note 26, at 71-72.

<sup>98</sup> 29 U.S.C. §§ 49 *et seq.* (1964).

<sup>99</sup> 29 U.S.C. § 49 (1964).

<sup>100</sup> 20 C.F.R. § 602.9(a) (1969).

<sup>101</sup> 20 C.F.R. § 602.9(d), (f) (1969).

<sup>102</sup> 20 C.F.R. §§ 620.1 *et seq.* (1969).

<sup>103</sup> No. 26719 (5th Cir., Oct. 9, 1969) (opinion printed in full in 2 CCH POVERTY L. REP. 11,376-84).

the federal standards. The court also decided that the workers had a cause of action against the employer for intentionally misleading state officials. This decision will aid migrant farm workers recruited through the state agencies in enforcing their rights under the regulations. In so doing, it may, in the long run, help to eliminate crew leaders.

#### D. Social Security

Another federal act that does include farm workers is the Social Security Act.<sup>104</sup> However, like all of the laws which do provide coverage of agricultural laborers, it contains limitations and defects which work to exclude many farm workers.

Only those farm workers paid more than \$150 in a calendar year or who work for an employer 20 days or more when paid on a time basis are included under the Act.<sup>105</sup> It is difficult to estimate how many workers this provision excludes, but in 1968, 44 percent of all farm workers worked less than 25 days and the average wage of these workers was \$8.50 a day.<sup>106</sup> Probably a significant portion of this 44 percent neither earned \$150 nor worked 20 days at time basis rates. Since most farm workers are paid on a piece rate basis the \$150 exclusion is more important than the 20 day exclusion.

A major defect in the Social Security Act is that the farm worker is considered an employee of the crew leader rather than the farmer.<sup>107</sup> As discussed earlier, crew leaders are notorious for their exploitation of the farm worker. Crew leaders often withhold the social security deduction from the farm worker's pay but never report it. Thus, a farm worker may think that he has been paying for social security while the crew leader is pocketing the money. Many crew leaders are not registered and are difficult to find at a later date, and seldom do they keep the necessary records.<sup>108</sup> If the \$150 and 20 day exemptions were eliminated from the Act, there would not be any rationale for defining the crew leader as an employer. It was originally thought that this definition would allow more farm workers to come within the coverage of the Act despite the exemptions. Farm workers are more likely to work for one crew leader on several different farms than for one farmer.<sup>109</sup>

Social security coverage giving income to the farm worker in his old age or when he is disabled, and to his survivors, is important to the farm worker. Without it he will have no income when he can no longer work. The American taxpayers likewise gain when more farm workers

<sup>104</sup> Social Security Act, as amended, 42 U.S.C. §§ 301 *et seq.* (1964).

<sup>105</sup> 42 U.S.C. § 409(h)(2) (1964).

<sup>106</sup> HFWF OF 1968, *supra* note 1, at 14, 15.

<sup>107</sup> 42 U.S.C. § 410(n) (1964).

<sup>108</sup> S. REP. No. 91-83, at 93-94.

<sup>109</sup> *Id.* at 93.

are covered by social security and do not have to depend on public assistance.

### E. Laws Relating to Particular Crops

Through the authority given to him by the Sugar Act,<sup>110</sup> the Secretary of Agriculture is empowered to establish minimum wages to be paid to farm laborers working on sugar crops.<sup>111</sup> An example of this is the wage rates established for sugar beet workers.<sup>112</sup> These rates are set by the Secretary after public hearings have been held in various parts of the country at which both farmers and workers have been given an opportunity to speak on the subject.<sup>113</sup> The sugar beet regulations take into consideration the various operations used in the cultivation of sugar beets, and different rates are established for the different operations. Sugar beet workers are traditionally paid on a piece rate basis, and since farmers seem to think this method of payment is best, piece-work rates are used in the regulations.<sup>114</sup> These will generally give a competent worker more than the minimum wage required by the FLSA.<sup>115</sup> The sugar beet regulations also cover more sugar beet workers than does the FLSA.<sup>116</sup>

The Sugar Act regulations not only give minimum wages, but they also contain prohibitions against child labor, wage assignments, and setoffs.<sup>117</sup> The regulations are enforced by the local Agricultural Stabilization and Conservation Service (ASCS) committees who can withhold a farmer's sugar payment if he does not comply with the regulations.<sup>118</sup>

Although these regulations furnish more protection and security to the sugar beet farm worker than do any other federal or state laws,

<sup>110</sup> Sugar Act of 1938, 7 U.S.C. §§ 1100 *et seq.* (1964).

<sup>111</sup> 7 U.S.C. § 1131 (1964).

<sup>112</sup> 34 Fed. Reg. 5904-07 (1969).

<sup>113</sup> 7 U.S.C. § 1131(c)(1) (1964); 34 Fed. Reg. 5906-07 (1969). Although workers are supposedly heard, it is doubtful that they have much representation as compared to the sugar growers and processors. Sugar beet workers are not organized and do not have the resources to attend these meetings. Chase, *supra* note 26, at 64-65.

<sup>114</sup> 34 Fed. Reg. 5904 (1969).

<sup>115</sup> 34 Fed. Reg. 5907 (1969). For hand operations not specified in the regulations, a worker is to receive piece rates which amount to not less than \$1.65 an hour. 34 Fed. Reg. 5904 (1969).

If workers were fairly represented at the hearings, it is quite possible they would ask that the piece rates be changed to hourly rates.

<sup>116</sup> Many sugar beet workers would not be covered under the FLSA because of the 500 man-day requirement since many work for small farmers. See p. 223 *supra*.

<sup>117</sup> 34 Fed. Reg. 5905-06 (1969).

<sup>118</sup> 7 U.S.C. § 1131 (1964); 34 Fed. Reg. 5905 (1969).

they are not perfect. One major defect in the regulations is the use of the ASCS committees for enforcement. All wage claims by sugar beet workers are handled by the ASCS committees who make the determination as to whether the farmer has complied with the regulations. This committee, pursuant to statute, is made up entirely of farmers.<sup>119</sup> A suit has been filed in federal district court in Colorado challenging the constitutionality of this procedure.<sup>120</sup>

Another defect in the regulations allows the farmer to pay the crew leader the wages earned by the worker rather than paying the worker directly.<sup>121</sup> This provision is directly contrary to the statute which states that all workers are to be paid in full.<sup>122</sup> This is also being challenged in federal district court in Colorado.<sup>123</sup>

In spite of these and other defects in the regulations, similar federal statutes and regulations controlling the cultivation of various crops should be enacted with provisions that will benefit the farm worker. Anytime a subsidy or payment is given to a farmer for growing a particular crop, this subsidy should be conditioned on the payment of minimum wages to his workers and on other such conditions protecting the farm worker. The Sugar Act regulations without the defects could serve as a model for such legislation.

#### IV. STATE LAWS

Like the federal government, the legislatures of the 50 states have enacted very few laws for the benefit of the farm worker. Many states have minimum wage laws; yet most exclude the farm worker from coverage. The same is true with workmen's and unemployment compensation, with labor relations and child labor laws. The other workers are benefited by these laws, but the farm worker is left behind. Until the states begin enacting legislation to protect the farm worker, rural poverty cannot be alleviated and the migration to the already crowded cities will continue. It is time for the rural-dominated state legislatures to realize that the farmer will not be hurt by laws protecting farm workers, and that he will in the long run be benefited by having a ready and willing labor force to cultivate and harvest his crops.

##### A. *Minimum Wage*

Only seven states have statutes which provide for a minimum wage for farm workers, and all of these statutes contain peculiarities or exceptions which either limit the number of farm workers covered or deny

<sup>119</sup> 16 U.S.C. § 590h(b) (1964).

<sup>120</sup> *Salazar v. Hardin*, No. C-1616 (D. Colo., filed July 30, 1969).

<sup>121</sup> 34 Fed. Reg. 5905 (1969).

<sup>122</sup> 7 U.S.C. § 1131(c)(1) (1964).

<sup>123</sup> *Salazar v. Hardin*, No. C-1617 (D. Colo., filed July 30, 1969).

to farm workers the same minimum wage given to industrial workers. Arkansas' statute has such limited effect that it actually excludes farm workers although it expressly includes them.<sup>124</sup> New Jersey's statute covers only farm workers over 18,<sup>125</sup> Oregon's does not apply to piece rate workers,<sup>126</sup> the others are similarly limited. The following table lists the seven states, the people covered, the minimum wage, and the exceptions and limitations:<sup>127</sup>

State	Men	Women	Minors	Wage	Exceptions
Arkansas				\$1.00	See footnote 124.
Hawaii <sup>128</sup>	x	x		\$1.25	Must work for an employer having 20 or more employees.
Massachusetts <sup>129</sup>	x	x		\$1.50	None <sup>130</sup>
New Jersey	x	x		\$1.50	None
New Mexico <sup>131</sup>	x	x		\$1.30	Contains the same limitations as the FLSA, and the farm worker must work for an employer having 4 or more employees.
Oregon	x	x	x	\$1.25	Does not apply to piece rate workers.
Michigan <sup>132</sup>	x	x		\$1.25	Must work for an employer having 4 or more employees, and does not cover those covered by the FLSA.

California and Wisconsin have wage orders which give a minimum wage of \$1.30 to women and \$1.10 to minors employed in agriculture.<sup>133</sup> Colorado, North Dakota, Utah, and Washington could have similar wage orders since the laws in those states do not exclude farm workers, but as yet they do not.<sup>134</sup>

<sup>124</sup> S. REP. NO. 91-83, at 60. This law, which was effective in January of 1969, excludes all farm workers covered by the FLSA and at the same time contains the same limitations as does the FLSA.

<sup>125</sup> N.J. REV. STAT. § 34:11-4.1(b) (Supp. 1968).

<sup>126</sup> ORE. REV. STAT. § 653.020(1) (1967).

<sup>127</sup> A similar table can be found in S. REP. NO. 91-83, at 60.

<sup>128</sup> HAWAII REV. LAWS § 387-1(2) (1968).

<sup>129</sup> MASS. GEN. LAW. ch. 151, § 2A (Supp. 1969).

<sup>130</sup> Other workers receive \$1.60 an hour. MASS. GEN. LAWS ch. 151, § 7 (Supp. 1969).

<sup>131</sup> N.M. STAT. ANN. §§ 59-3-21(D), 59-3-22(C) (Supp. 1969).

<sup>132</sup> MICH. COMP. LAWS ANN. §§ 408.381 *et seq.* (West 1967).

<sup>133</sup> CALIF. LABOR CODE §§ 1171 *et seq.* (West 1955); WIS. STAT. ANN. § 104.01 (2) (1957).

<sup>134</sup> COLO. REV. STAT. ANN. §§ 80-7-1 *et seq.* (1963); Chase, *supra* note 26, at

Thus, it can be seen that in only nine of the 50 states are farm workers included in the minimum wage laws and even those states limit the number of farm workers covered. It is also interesting to note that only three of these states are concerned with a minimum wage for minors, especially considering the fact that almost one-third of all farm workers are between the ages of 14 and 17.<sup>135</sup>

Only one state, Hawaii, provides for overtime compensation to farm workers, and this is limited to those working for employers with 20 or more employees.<sup>136</sup>

### B. Workmen's Compensation

As mentioned earlier, farming is a very dangerous business, the third most dangerous occupation in the United States.<sup>137</sup> Yet farm workers are made to bear the high costs of injury or illness resulting from their work on farms.

Farm workers have traditionally been excluded from workmen's compensation because it has long been erroneously assumed that farming is not dangerous.<sup>138</sup> The notion that farmers cannot pass on the costs of such compensation to the consumer and the administrative hassle of keeping records are other reasons for the exclusion of farm workers.<sup>139</sup> In light of the increasing danger of working on a farm, these reasons are not enough to exclude farm workers from coverage.

At the present time only 13 states provide for compulsory workmen's compensation for farm workers.<sup>140</sup> Only four of these states provide for the same coverage as is given other workers and contain no numerical limitations.<sup>141</sup> The remaining nine states either limit coverage to those farm workers working with machinery,<sup>142</sup> full-time employees,<sup>143</sup> farm workers employed by a farmer who has three or four or more em-

66-67. N.D. CENT. CODE §§ 34.06.01 *et seq.* (Supp. 1965); UTAH CODE ANN. §§ 34-22-1 *et seq.* (Supp. 1969); WASH. REV. CODE ANN. §§ 49.12.010 *et seq.* (1962).

<sup>135</sup> HFWF OF 1968, *supra* note 1, at 14.

<sup>136</sup> HAWAII REV. LAWS § 387-3(a) (1968).

<sup>137</sup> Note 5 *supra*.

<sup>138</sup> S. REP. NO. 91-83, at 88.

<sup>139</sup> Davis, *Workmen's Compensation-Excluded Employment*, 16 DRAKE L. REV. 68, 81 (1967).

<sup>140</sup> These states are Alaska, Arizona, California, Connecticut, Hawaii, Massachusetts, Michigan, Minnesota, New Hampshire, New York, Ohio, Oregon, and Wisconsin. A convenient table of the states providing workmen's compensation for farm workers is given in S. REP. NO. 91-83, at 89-90.

<sup>141</sup> CALIF. LABOR CODE § 3352 (West 1962); CONN. § 31-275 (Supp. 1969); HAWAII REV. LAWS §§ 386-1 *et seq.* (1968); MASS. GEN. LAWS ch. 152, § 1(4) (Supp. 1969).

<sup>142</sup> ARIZ. REV. STAT. ANN. § 23-902 (1956); MINN. STAT. ANN. § 176.011(12), (1966).

<sup>143</sup> ALASKA STAT. § 23.30.230 (1962).

ployees,<sup>144</sup> or farm workers whose employer has a payroll over a certain amount.<sup>145</sup>

Eight states provide for elective coverage of farm workers, and all of these states limit coverage so that not all farm workers are protected even if the farmer elects coverage.<sup>146</sup> Of these eight states only Vermont provides for the same kind of coverage for farm workers as for other workers.<sup>147</sup> Of the remaining 29 states which do not have either compulsory or elective workmen's compensation for farm workers, 23 states allow a farmer to voluntarily undertake coverage.<sup>148</sup>

Although the majority of the states allow for either elective or voluntary coverage of farm workers, it is doubtful that many farmers choose to provide the compensation for their employees. More states need to enact or extend laws to bring compulsory workmen's compensation to farm workers. Also, occupational diseases resulting from exposure to the chemicals used on the farm should be included in such coverage.

States should also enact safety and health regulations for farms, perhaps requiring a farmer to furnish protective clothing for his workers and facilities for washing off the chemicals once the farm worker has come into contact with them.<sup>149</sup> Many states do have safety laws or regulations for other occupations such as mining, and the cost of the safety protections for farm workers seems a small price in view of the dangers to which farm workers are daily exposed and the much higher costs which can result from such exposure.

If the states continue to fail to provide adequate workmen's compensation for farm workers perhaps the federal government should step in either to work with the states in providing such compensation or provide for a federal coverage for at least interstate workers.<sup>150</sup>

### C. Unemployment Compensation

Of the 50 states only Hawaii includes farm workers in its unemployment compensation laws.<sup>151</sup> The legislatures of the other 49 states

<sup>144</sup> OHIO REV. CODE ANN. § 4123.01 (Page 1965); WIS. STAT. ANN. § 102.04(1)(C) (Supp. 1969); MICH. STAT. ANN. § 411.2a(1)(d) (West Supp. 1969); N.H. REV. STAT. ANN. § 281:2 (1966).

<sup>145</sup> N.Y. WORKMEN'S COMP. LAWS §§ 2, 3 (McKinney Supp. 1968); ORE. REV. STAT. § 656.027(5) (1967).

<sup>146</sup> These states are Florida, Kentucky, Louisiana, Maine, New Jersey, South Dakota, Vermont, and Wyoming. S. REP. NO. 91-83, at 89-90.

<sup>147</sup> VT. STAT. ANN. tit. 21, §§ 601 *et seq.* (1967).

<sup>148</sup> Of the six states that do not provide for voluntary coverage, Alabama expressly prohibits it; Oklahoma, Tennessee, and Texas are silent on the subject; and Georgia and Maryland require the joint action of the employer and employee. S. REP. NO. 91-83, at 89.

<sup>149</sup> *Id.* at 92.

<sup>150</sup> *Id.*

<sup>151</sup> HAWAII REV. LAWS §§ 383-1(8), 383-2 (1968).

have either ignored the farm worker or specifically excluded him from this type of compensation.<sup>152</sup>

The arguments usually given for excluding farm workers from unemployment compensation are that it is not administratively feasible, that farm workers are seasonal workers, and that such compensation is costly.<sup>153</sup> The administration of unemployment compensation requires employment records to be kept by an employer, and it is argued that farmers do not keep such records. However, farmers do have to keep records for social security purposes, and the big farms keep records on their employees as a matter of course. As to the objection regarding the seasonal nature of farm work, 12 percent of all farm workers work 250 or more days a year at farm work and 37 percent of all farm workers also do some nonfarm work.<sup>154</sup> It would seem that unemployment compensation could at least be extended to those year-round farm workers and also to those who do nonfarm work. Also, unemployment compensation often covers other workers engaged in seasonal work. The costs of applying unemployment compensation to farm workers should not be any more than for other seasonal workers.

The inclusion of farm workers under unemployment compensation would be of great benefit both to the farm workers and to the state. The farm worker can easily be put out of work by weather and crop conditions, by a large labor supply caused by over-recruiting and illegal aliens in the area, and by gaps in the growing seasons between various crops. If the state were to pay the living expenses of the farm worker during these periods of forced unemployment, the state would be more likely to find other work for the farm laborer during these periods and would be more careful to control the labor supply. The farm worker and his family would not be so severely harmed by the periods of forced idleness.

#### D. Child Labor Laws

Farm work can be very dangerous, and children because of their lack of experience and maturity are probably more susceptible to farm accidents than adults. However, there is very little meaningful state legislation keeping young children out of farm work. Children also need to go to school, and yet there is little legislation prohibiting children from working during school hours.

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<sup>152</sup> The argument has been made that the exclusion of farm workers from unemployment compensation is a violation of the due process and equal protection clauses of the fourteenth amendment of the Constitution of the United States. See *Romero v. Wirtz*, No. 50213 (N.D. Calif., filed Oct. 29, 1968) (reported in 2 CCH POVERTY L. REP. 10,254, (1969)).

<sup>153</sup> S. REP. NO. 91-83, at 86.

<sup>154</sup> HFWF OF 1968, *supra* note 1, at 9, 21.

Sixteen states exclude agriculture from minimum age laws.<sup>155</sup> Thirteen states have minimum age laws which do not expressly include agriculture and therefore could be interpreted as including agriculture.<sup>156</sup> In all but one of these states, the laws relate only to employment *during* school hours.<sup>157</sup> That is, as long as school is not in session children of any age can work in the fields. Twenty states specifically state a minimum age for agricultural work *during* school hours. These limits range from age ten to age 16.<sup>158</sup> Only 11 states speak on the subject of farm employment of children outside of school hours or during vacation time. These limits range from age ten to age 14.<sup>159</sup> Even in those states which do have a minimum age, there are often exceptions which lower this age, such as parental consent or working for parents.<sup>160</sup>

Farm workers often need to have their children working in the fields because they bring in necessary additional income. Once minimum wage laws are passed giving farm workers a decent wage, it will not be so necessary for them to have their children working in the potentially dangerous fields.

### *E. Labor Relations Laws*

Several states have enacted legislation similar to the NLRA,<sup>161</sup> and unfortunately, most of these states also exclude farm workers from

<sup>155</sup> These states are Alabama, Delaware, Georgia, Kentucky, Louisiana, Michigan, Mississippi, New Hampshire, North Carolina, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Washington, and West Virginia. S. REP. NO. 91-83, at 80.

<sup>156</sup> These states are Arizona, Arkansas, Idaho, Kansas, Maine, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, Vermont, and Wyoming. S. REP. NO. 91-83, at 80.

<sup>157</sup> Arkansas. S. REP. NO. 91-83, at 80.

<sup>158</sup> Ten is the minimum age for non-residents in Indiana while residents are better protected with a minimum age of 14; 12 is the age in Wisconsin but this does not apply to all farming activities; 14 is the age in Colorado, Iowa (migrant workers only), Massachusetts, Minnesota, Missouri, Texas, and Utah; 15 is the minimum age in Alaska and Pennsylvania; and 16 is the age in California, Connecticut, Florida, Hawaii, Maryland, New Jersey, New York, Ohio, and Virginia. S. REP. NO. 91-83, at 81.

<sup>159</sup> To work outside school hours and during vacation periods, children must be at least ten in Hawaii (coffee growing only), Iowa (migrant workers only), and Utah; 12 in California (vacation periods only), Colorado, New Jersey, New York (hand harvest only), and Wisconsin (only specified farming activities); 14 in Alaska, Connecticut (only applicable during weeks in which a farmer has 14 or more employees), Missouri and New York. S. REP. NO. 91-83, at 81.

<sup>160</sup> S. REP. NO. 91-83, at 81.

<sup>161</sup> Colorado, Connecticut, Hawaii, Kansas, Massachusetts, Michigan, Minnesota, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, Utah, and Wisconsin have laws similar, in part, to the NLRA.

coverage. Hawaii and Wisconsin, however, do include farm workers.<sup>162</sup> Hawaii's farm workers have been organized for many years and have effectively used the collective bargaining process.<sup>163</sup> Wisconsin farm workers lately have begun to organize, and one union is now recognized by the Wisconsin Employment Relations Commission as the official bargaining agent for field workers for one of the large farm corporations.<sup>164</sup>

#### F. Crew Leader Laws

Although crew leaders cause many problems for farm workers, only eight states have passed laws regulating the activities of crew leaders or requiring their registration.<sup>165</sup> These are somewhat similar to the federal law and often require the crew leader to keep payroll records and furnish the farm worker with a statement of his wages.<sup>166</sup> It is difficult to ascertain the effectiveness of these laws, but if other states have had the same experience as Colorado, these laws have very little effect. Colorado's law was passed in 1959 but has never been enforced partly because funds have never been appropriated for its enforcement.<sup>167</sup> The state laws, like the federal law, must have adequate enforcement provisions and funds or they are meaningless.

In addition to laws controlling crew leaders, the states should work closely with the federal government in an attempt to eliminate crew leaders by providing better farm placement services. As discussed earlier, the framework for the cooperation of the federal and state governments in maintaining a farm placement service is already in existence.<sup>168</sup> The states should undertake educational campaigns to acquaint both farmers and farm workers with the farm placement service. Furthermore, the state employment agencies should refuse to work through crew leaders when recruiting farm workers.

#### V. CONCLUSION

The laws of this nation do not treat the farm worker on an equal basis with other workers. They deny to him the benefits and protections afforded other wage earners. Lawmakers can begin to end this discrimination by amending such federal legislation as the NLRA and the

<sup>162</sup> HAWAII REV. LAWS § 377-1(3) (1968); WIS. STAT. ANN. § 111.02(3) (1957).

<sup>163</sup> Note 59 *supra*.

<sup>164</sup> Note 46 *supra*.

<sup>165</sup> These states are California, Colorado, Nevada, New Jersey, New York, Oregon, Pennsylvania, and Washington. S. REP. NO. 91-83, at 83.

<sup>166</sup> See, e.g., COLO. REV. STAT. ANN. § 80-8-2(3),(4) (1963).

<sup>167</sup> LICENSING AND REGULATION OF LABOR CONTRACTORS, *supra* note 83, at 5.

<sup>168</sup> See pp. 228-29 *supra*.

FLSA so that *all* farm workers can receive the benefit of these Acts which have worked for many years to protect and benefit other workers. State laws must also be amended to give protections to the farm worker.

There are many people who close their eyes to the poverty in rural America and to the plight of the farm worker and say that it is a problem which will be eliminated in a decade or two by the increasing application of technology and machinery in farm production, doing away with the need for human labor on the farms. But we cannot close our eyes to the here and now, to the almost three million people who suffer the hardships of being farm workers. We cannot forget about the children slaving in the fields so that their families can have enough food, but who should be in school where they can get the education that will help them deal with the problems that technology and machinery will bring to their way of life. We cannot ignore the number of accidents and fatalities that go hand in hand with this way of life. We may not be able to see these three million people working far from the cities where the laws are made, stooped in the fields and hidden by the crops. But they are there, treated unjustly, denied the very food they help to provide, discriminated against by a system that is supposed to treat all men as equal. If they are not allowed to share in the harvest, we have not only a harvest of shame but a system that has failed.

*Viva la causa!*