1-1-1981

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COLLECTIVE BARGAINING FOR FARMWORKERS—SHOULD THERE BE FEDERAL LEGISLATION?

Herman M. Levy*

I. BACKGROUND

To avoid keeping the reader in suspense, the answer to the question posed by the title of this article is provided prior to any discussion. The answer is yes, there should be and there is a need for federal legislation to provide collective bargaining for farmworkers. Whether such legislation can and will be enacted poses a different question. The purpose of this article is to provide some information relevant to the conclusion reached and to the available models for such federal legislation.

Federal legislation providing collective bargaining for farmworkers would serve a number of valid purposes. Such a law would equalize the position of agricultural and industrial workers and would provide uniform treatment of agricultural workers. The law would not only permit employees’ representatives to improve terms and conditions of employment by means of the collective bargaining process, but would also enable representatives to help enforce existing federal and state statutes and programs applicable to farmworkers. These statutes and programs have not been adequately enforced for the benefit of the workers.

The plight and problems of farmworkers have received attention in congressional hearings and from various commentators for many years.1 When Congress first considered the

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question of collective bargaining for farmworkers and passed
the Wagner Act in 1935, the decision was made to exclude
farmworkers specifically from any coverage by the new law.2
The reasons for exclusion appear to have been chiefly politi-
cal. Congressmen from industrial states sought to insure the
passage of the controversial Wagner Act by gaining the sup-
port of their colleagues from agricultural areas. The price for
this support was the exclusion of agriculture from collective
bargaining.6 This reason, while understandable, was clearly
unfair to farmworkers then, and the continued exclusion re-
 mains equally unjust now. Another reason for the Wagner Act
exclusion may have been that it was thought to be administra-
tively unfeasible to apply collective bargaining to agriculture.
Whatever validity this contention may have had, it is cer-
tainly undermined by the fact that one state, California, has
provided bargaining for farmworkers in comprehensive labor
legislation without any subsequent evidence that this legisla-
tion was impossible to administer or was destructive to the
agricultural industry.4

Whatever reasons for exclusion may have been articu-
lated earlier, on balance, these reasons are far outweighed by
the benefits to be derived from the passage of federal legisla-
tion providing collective bargaining for farmworkers. The his-
tory of improved terms and conditions of employment for
workers in industries covered by the National Labor Relations
Act should provide encouraging evidence that federal legisla-
tion for farmworkers would result in similar gains for them.
Federal legislation would insure that the rights of farm-
workers as well as the rights of employers and unions would

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2. Section 2(3) of the National Labor Relations Act of 1935 (29 U.S.C. § 152(3))
provides:

   The term "employee" . . . shall not include any individual employed as
   an agricultural laborer.


4. California has had an agricultural labor relations law since August 1975 (CAL.
LAB. CODE §§ 1140-1166.3 (West Supp. 1980)).
be uniform, rather than depending on various state laws or the lack of any specific state legislation. If no federal law is enacted, it may mean that farmworkers in major agricultural areas will continue to be denied the benefits which workers in other industries have enjoyed for many years.

II. THE MODELS FOR FEDERAL LEGISLATION

A proposal to have federal legislation provide collective bargaining for farmworkers is not new. A plethora of bills providing for collective bargaining or affecting agricultural labor relations have been introduced in the past fifteen years. A review of the bills introduced during the 92d Congress (1971-72) reveals a general pattern. Thus, of the seven bills introduced, four (H.R. 1410, 5010, 10445, 3625) would provide a comprehensive framework for labor relations by simply amending the exclusionary definition of employee in section 2(3) of the National Labor Relations Act and thus vesting the NLRB with jurisdiction over farmworkers. Except for H.R. 3625, these bills envision that the NLRB would cover all agricultural employees, apparently permitting the NLRB to apply interpretations of the law applicable to other industries and develop new interpretations specifically directed to agriculture. H.R. 3625, although providing that the NLRB would

have jurisdiction over farmworkers, would cover only agricultural workers employed by an employer who employed more than 12 workers and had labor costs of $10,000 or more.

The other three bills (H.R. 1689, 10459, 13981) introduced in the 92d Congress would have established a comprehensive system under newly created agencies separate from the NLRB. All three bills provided coverage for employees of an employer in agriculture affecting commerce who used more than 500 man days of agricultural labor during any calendar quarter in the preceding calendar year. H.R. 1689 would have created a separate agency with some functional ties with the U.S. Department of Agriculture.

Certainly in exploring any future legislative models for agricultural labor, serious consideration must be given to the simple amendment of the NLRA and the vesting of the NLRB with jurisdiction. This approach has merit in that it employs a fully established agency with over 45 years of experience in labor management relations and makes it available to oversee agricultural labor relations. This means that the present NLRA with the shortcomings sought to be corrected by the Labor Reform Act of 1977 would apply to agriculture in the same way as to other industries. Some argue that it is far better to have one uniform federal law for agricultural labor relations, even though not perfect, than to have uncontrolled regulation or varied controls under the laws of individual states. Many commentators who have considered the application of the NLRA to agriculture think the NLRB could handle this new area with little difficulty.

Advocates of legislation providing for a separate agency to control agricultural labor might feel that agricultural labor relations are so unique that the interest involved would be better served by a separate agency with a new law focused solely on agricultural problems. The cost of such an approach in the near future, however, would deter support from an economy-minded Congress. Perhaps a reasonable compromise, if feasible, would be to vest the NLRB with jurisdiction over farmworkers and include in such legislation new provisions specifically applicable to agriculture.\textsuperscript{10} It is important to remember that past proposals to amend the exclusionary provision of the NLRA and to place farmworkers under the jurisdiction of the NLRB were made at a time when there had been no actual experience with labor legislation applicable to farmworkers. Hence, no specific guidelines were available to supplement the existing legislation with provisions directly related to agriculture. Now, however, there is some state legislation, including California’s labor relations law, based on the NLRA. Models for new provisions pertaining to agricultural labor relations could be devised by studying state laws such as the California Agricultural Relations Act, the most comprehensive of the current state laws. Analysts could then determine how well these state provisions have worked.

Another suggestion for agriculture is federal legislation which would provide minimum federal standards for agricultural labor relations and would permit the states the option of enacting legislation in this field. If a state failed to act, the federal legislation would control. Such an idea has been provided by the Occupational Safety and Health Act.\textsuperscript{11} More recently, a bill proposing to regulate public employees in state and local government\textsuperscript{12} included this minimum standards concept. The difficulties experienced under OSHA with this minimum standards idea and the long time it has taken to implement the plan, however, suggest that this model is neither realistic nor viable.

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III. THE NATIONAL LABOR RELATIONS ACT AND THE CALIFORNIA AGRICULTURAL LABOR RELATIONS ACT

In exploring provisions which could be included in new federal legislation providing collective bargaining for farmworkers, a comparison should be made between the National Labor Relations Act (NLRA)\(^1\) and the California Agricultural Labor Relations Act (ALRA).\(^4\) The ALRA is basically a reenactment of the NLRA with some new or different provisions marking certain policy decisions made by the California legislature with respect to agricultural labor relations. The policies and the implementation of these provisions by the ALRB should be reviewed to determine the merits of including such provisions in any new federal legislation.\(^{16}\) It is also important to observe and evaluate how the ALRA has dealt with issues common to both statutes, and how the nature of the agricultural industry has dictated variation in analysis and conclusions.

Since the ALRB is patterned after the NLRB, it is not surprising to find that many of its unfair labor practice decisions are consistent with NLRB decisions in similar situations. Indeed, the ALRA mandates that "the Agricultural Labor Relations Board shall follow applicable precedents of the National Labor Relations Act, as amended,"\(^{16}\) and many ALRB opinions cite for support of their conclusions past NLRB decisions raising similar issues.

Many of the major differences between the two statutes occur in provisions relating to the ALRB's responsibility to conduct representation elections. The NLRA provides the Board with considerable discretion in determining the appropriate unit in which to conduct an election. It also authorizes a pre-election hearing to resolve the unit question and other representation matters.\(^{17}\) If the hearings are contested, a num-

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\(^{14}\) CAL. LAB. CODE §§ 1140-1166.3 (West Supp. 1980).


\(^{16}\) CAL. LAB. CODE § 1148 (West Supp. 1980).

number of months can elapse from the filing of a petition requesting an election until the actual date of the election. Board law, however, does not mandate the election process as the sole means for a labor organization to establish its majority status and function as a bargaining agent. Employers are permitted to grant recognition based on a majority showing by valid union authorization cards signed by employees in the appropriate unit.18

In contrast, the ALRA provides practically no discretion to the Board in determining the appropriate unit.19 This statute states that the bargaining unit in which to conduct an election shall be "all the agricultural employees of an employer."20 This provision eliminates in part the necessity of holding a pre-election hearing to determine the unit. The question of unit or other representation issues can be heard in a post-election hearing. The election itself is held within seven days of the filing of a petition accompanied by authorization cards signed by a majority of employees. Among other matters, the petition must allege that the number of employees is not less than 50% of employer's peak agricultural employment for the year.21 The ALRA procedure thus allows for a speedy secret ballot election and permits many seasonal employees to participate who otherwise would be excluded by the present NLRA electoral system. The ALRA provides the election process as the sole means for a union to be certified as bargaining representative and, by an unfair labor section, makes it an unfair labor practice for an employer to recognize a union not certified according to the ALRA.22 The Board has, however, recently ordered an employer to bargain with a union where the union had lost an election preceded by nu-

19. The Agricultural Labor Relations Act of 1975 (CAL. LAB. CODE § 1156.2 (West Supp. 1981)) does provide some discretion with respect to unit determinations where the agricultural employees of the employer are employed in two or more non-contiguous geographical areas. In these situations, the board determines the appropriate unit or units of employees in which the election shall be conducted.
merous employer's unfair labor practices. The Board concluded, after analyzing its statutory powers and limitations, that where employer unfair labor practices make unlikely the possibility of a fair election, it may rely on employee authorization cards and order the employer to bargain with the union as a remedial solution. This remedy is consistent with current NLRB practice following the United States Supreme Court's decision in NLRB v. Gissel Packing Company.

The ALRA contains a significant remedial innovation. The NLRB decided that it was not authorized by law to provide a "make whole" remedy where the employer had refused to bargain, in violation of the Act, and employees had been deprived of any collective bargaining agreement during the time the employer was contesting the violation through the administrative and legal systems. The NLRB felt it lacked the statutory authority even if the employer was purposely utilizing the administrative and legal procedure to postpone the execution of a collective bargaining agreement. The ALRA, on the other hand, specifically permits the use of the make whole remedy when the Board deems such relief appropriate to compensate employees for losses sustained because of the employer's refusal to bargain. The ALRB had applied this remedy to all cases involving an employer's refusal to bargain according to a formula devised in its first interpretation of this section of the statute. The ALRB's broad interpretation of its make whole remedy was recently reviewed and limited by the California Supreme Court. The court concluded that the make whole remedy was not appropriate in all situations in which the ALRB had found that the employer had refused to bargain. It further recommended that the ALRB should carefully scrutinize the refusal to bargain cases before applying the make whole remedy.

28. J.R. Norton Co. v. ALRB, 26 Cal. 3d 1, 603 P.2d 1306, 160 Cal. Rptr. 710
The ALRA also differs from the NLRA in sections dealing with secondary boycott and hot cargo. The ALRA permits a certified bargaining representative who has not concluded a collective bargaining agreement with the agricultural employer to exert pressure against neutral employers in situations which would give rise to unfair labor practices under the NLRA. These ALRA sections are viewed as giving unions additional bargaining tools at a time when these unions are not as powerful as their industrial counterparts under the NLRA.

There are also differences in union security provisions. ALRA appears to sanction union requests for discharge pursuant to a union security agreement for reasons other than an employee's failure to tender periodic dues or initiation fees. Few cases have yet been heard by the ALRB, so the range of permissible reasons for discharge has not yet been established. The California legislature, however, has unsuccessfully sought in two sessions to amend this section of the ALRA to conform it to the NLRA. The right to execute union security agreements a short time after the employment of the worker (in California the time period is five days) has been viewed as extremely important to agricultural unions. Without this right it might be difficult to collect dues from seasonal workers who have received the benefits of the union's collective bargaining but have moved on to other farms.

The ALRA varies the NLRA procedure for court review by placing initial responsibility on the party affected by the Board's order to petition the court of appeal for review within 30 days of the Board's decision. If no review is sought, the

(1979); See J.R. Norton, 6 A.L.R.B. No. 26 (1980) for the ALRB's current policy with respect to application of the make-whole remedy. The Board noted in this case that in determining whether the make-whole remedy is appropriate in technical refusal to bargain cases, it would consider whether the employer's litigation position was reasonable at the time of the refusal to bargain, and whether the employer acted in good faith.


31. See Conchola, 6 A.L.R.B. No. 16 (1980) where the ALRB held that pursuant to a union security agreement, employees could not be compelled to contribute, as a condition of employment, to political or ideological union expenditures unrelated to collective bargaining.

32. Governor Brown vetoed the bills passed by the legislature in 1979 and 1980.
Board may petition the superior court for enforcement of its decision and order. The court is then limited to reviewing whether the order was issued according to established Board procedures, and may not consider the merits of the case.³³ The ALRB procedure is seen as more efficient and speedy than the current processing of NLRB cases.³⁴

Application of the ALRA has created some issues which have parallels under the NLRA and others which are original to the farm labor statute. For example, the ALRB has dealt with the question of who is a "successor" with respect to collective bargaining obligations and unfair labor practices when a farm is sold. The NLRB has faced similar questions,³⁵ but some of the factors especially relevant to its conclusions, such as the continuity of the workforce, had to be viewed and balanced in a different way because of the distinctive nature of the agricultural industry.³⁶

Then too, both Boards have faced questions of who is an employer within the meaning of the statutes. The presence of persons on the agricultural scene in addition to the owner of the land, such as labor contractors, custom harvesters and others involved in agricultural production, has created unique factual problems for the ALRB to resolve in deciding who is the employer.³⁷

The ALRA requires that a representation petition must allege among other things that the number of agricultural employees currently employed by the named employer, as determined from his payroll immediately preceding the filing of the petition, is not less than 50% of his peak agricultural employ-

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³⁴ The California Supreme Court has approved the review of ALRB decisions by the courts of appeal as provided in the statute. See Tex-Cal Land Management v. ALRB, 24 Cal. 3d 335, 595 P.2d 579, 156 Cal. Rptr. 1 (1979). No case has arisen thus far testing the statutory authority given the superior courts for limited review and enforcement of board orders.


ment for the current calendar year. The question of the meaning of "peak employment" and the timeliness of the petition has no exact equivalent under the NLRA. The ALRB in a series of cases has attempted to develop reasonable guidelines to establish peak employment in a variety of different situations and to make sure that the intended electorate is permitted to participate fully in elections.

During the time the ALRB has been interpreting and applying the statute, there have been numerous legislative proposals to amend the existing law. In 1979 there were more than twenty bills introduced in the legislature, none of which were enacted. Most bills were designed to curtail the authority given the Board by the ALRA or to limit certain union or employee rights under the law. For example, there were proposals to eliminate the make-whole remedy, change the union security provisions, limit strikes, change the definition of employer, provide remedies outside the ALRA, and change provisions relating to contract bar and decertification. There was also a proposal which would have permitted the Board to issue bargaining orders in a Gissel type situation, a power not specifically provided in the Act.

In 1980 a bill was introduced in the Assembly designed to repeal the ALRA. In its stead the bill seeks to enact the

38. CAL. LAB. CODE § 1156.3(c) (West Supp. 1981).

The ALRB recently interpreted the contract bar rule (CAL. LAB. CODE § 1156.7(c) (West Supp. 1981)) as it applies to the timeliness of a decertification petition filed during the first year of a one-year collective bargaining agreement. The Board's conclusion that a decertification petition could be timely filed at any time during the twelve months following the 30th day prior to the contract's expiration date, M. Cartan, Inc., 4 A.L.R.B. No. 68 (1978), was disapproved by the court of appeal as not in conformity with the Board's statutory authority. See Cadiz v. ALRB, 92 Cal. App. 3d 365, 155 Cal. Rptr. 213 (1979).
NLRA stripped of any provisions specifically directed at the peculiarities of the agricultural industry and supplemented by some NLRA provisions which have doubtful applicability to agriculture. See, for example, proposed section 1158(f) which would enact the NLRA special construction industry exemption. The bill, however, varies the NLRA model by providing for the enjoining of strikes or lockouts after a Governor's board of inquiry has concluded that the strike or lockout imperils public safety or health. A careful examination of this proposed law leads to the conclusion that it would provide a more costly, less efficient, and more restrictive procedure for California than the present law which was designed specifically to deal with agricultural labor relations.

Statutory language aside, there also appear to be some differences in the focus of the two Boards in implementing the purposes of the statutes. Thus, for example, in the representation area, the NLRB is most concerned in maintaining "laboratory conditions" when elections are conducted and ordering bargaining or a new election if these conditions are destroyed. The ALRB, on the other hand, is much more concerned with creating a well-informed electorate that will be able to exercise a free and informed judgment in the election. The ALRB has not been unconcerned about "laboratory conditions" and election atmosphere, but it has felt that top priority should be given to the dissemination of voter information. The ALRB may be influenced in this decision by the fact that setting aside agricultural elections might mean a rerun could not be held for another year at the time of peak employment called for by the statute. The ALRB in carrying out its goal of informing the electorate has promulgated rules and programs. One rule sets forth the guidelines by which unions may gain access to the employer's property to talk to employees. Another rule requires that employers furnish the ALRB with names and addresses of employees prior to the time a union files a petition for an election. These lists of employees are made available to the union by the Board. The ALRB has also


44. 8 CAL. ADM. CODE § 20910 (1979) (pre-petition employee lists).
developed a program to inform workers and growers of their rights and obligations. Upon the filing of an election petition, the Board may explain the election process to workers. It is interesting to observe that the ALRB, in contrast to the NLRB, appears to be using its rule-making power to establish certain standards rather than making determinations on a case by case basis.

The ALRB and NLRB also appear to vary somewhat in the thrust of remedies. Both, of course, seek to correct the violations found; but some ALRB remedies appear to be ordered in a particular case for their future deterrent value as, for example, where the employer violator must afford increased access to employees on his property, or must furnish lists of employees to the union at more frequent intervals, or when the union exceeds its access privileges.45

The divergent focus of the two agencies is cited not to establish that one is right and the other wrong, but merely to suggest that both approaches should be carefully analyzed when new legislation is being considered in order to determine which might serve best in agricultural labor relations. In considering new federal legislation it will be important to consider and evaluate all that has happened under the ALRA. In this way, the drafters of the new legislation can incorporate provisions which appear most desirable and correct any deficiencies which may have come to light during the implementation of the statute.

In general, the ALRA presents the best state legislative model to study, because it was designed to deal specifically with agricultural labor relations and is comprehensive in its coverage. As with federal labor legislation, the ALRA was the result of compromise between the parties affected. No one party got all the provisions it wanted included in the law. The ALRA has dealt effectively with the problems it was enacted to address and has survived despite numerous obstacles. Immediately following the law's enactment, the ALRB was inundated with election petitions. This created problems because of the newness of the law, the lack of fully trained personnel, and the speed required by the statute to process these petitions. Within six months of its enactment, the legislature de-

nied funding for the agency, thereby forcing it to suspend operations and making it difficult to recruit staff knowledgeable in labor relations. The legislature has also, as indicated, attempted to amend many of the ALRA's innovations even before a case had arisen which might give the ALRB an opportunity to interpret the statute and apply it. Legislative committees at the same time continually investigated the operation of the ALRB. Gubernatorial appointments in the early years seemed more calculated to appease labor and management interests than to supply persons well grounded in labor relations and capable of fully developing the statutory framework already enacted. Later, when appointments were made of persons knowledgeable in the labor relations area, the Senate refused for political reasons to confirm such appointments. During the initial years both parties, management and labor, attacked appointees and other ALRB personnel for alleged bias. Employers appear to have organized recently chiefly to resist the continued implementation of the new law. Despite these difficulties, the ALRA has endured without significant change, and as a statute is still capable of creating the proper atmosphere for the development of sound agricultural labor relations.

IV. OTHER STATE LAWS

In addition to California, three other states, Arizona, Idaho and Kansas, have enacted specific legislation regulating agricultural labor relations. These states' statutes contain provisions demonstrating particular policy determinations made with respect to farmworkers. It is fair to say that these statutes when compared with the NLRA or the California ALRA would be considered much more restrictive of farmworkers' rights. It is interesting to note that none of these statutes in existence since 1972 appear to have stimulated organizational activity, resulted in many representation elections, or produced many decisions by their boards concerning


When compared with the California law passed in 1975, the activities generated by these other state laws appear to be minuscule. This lends substance to the feeling of some commentators that these state statutes were hastily developed by pro-employer interests to thwart the passage of more comprehensive and balanced legislation encouraging formation of unions and collective bargaining.

Perhaps one reason why these statutes have had an insubstantial impact on agricultural labor relations is because the limiting features of some of their provisions do little to stimulate collective bargaining and the development of a balanced labor relations law. For example, the Kansas statute is a "meet and confer" type statute rather than legislation which requires collective bargaining, and limits the topics upon which the parties must meet for discussion. Similarly, the scope of bargaining under the Arizona statute is restricted by an "employer rights" clause. Idaho removes from the scope of bargaining any negotiations on subcontracting.

The statutes also restrict the coverage of the legislation by their definitions of "employer" and by their procedures for establishing units and conducting elections. Thus, the Kansas law covers employers who employ six or more employees for twenty or more days of any calendar month in the six months preceding the filing for recognition by such employees. Arizona includes those employers who employed six or more agricultural employees for a period of thirty days during the preceding six month period. In general, the longer election


49. See ARIZONA AGRICULTURAL EMPLOYMENT REL. BD. ANN. REP. (1972-73). This four and one-half page report indicates that the statute did little to stimulate agricultural labor relations.

50. KAN. STAT. ANN. § 44-819(h), (1973).


52. KAN. STAT. ANN. § 44-819(c) (1973).

process of all three statutes as compared to the California legislation would appear to curtail or eliminate seasonal employees from becoming part of the unit or prevent them from being in a unit with full time employees.

Neither the NLRA or the ALRA restrict strike activity of the employee. On the other hand, based on a theory that work stoppages in agriculture could seriously interrupt food production and distribution, Arizona and Kansas have limited the right to strike. Arizona makes it an unfair labor practice to call a strike unless a majority of the employees in the bargaining unit have first approved the strike by a secret ballot. Kansas also makes striking an unfair labor practice. Its statute appears to seek resolution of impasse by requiring mediation, fact finding, and binding arbitration.

Overall these statutes cannot serve as meaningful models for national legislation, but some of their limiting provisions do highlight areas where opposition might well attempt to dilute any proposed national legislation.

Other states, although having some labor laws applicable to farmworkers, do not have any exclusive and comprehensive act for agricultural labor relations. States vary with respect to the existence of general laws affecting farmworkers. Subjects which may or may not be covered include minimum wage, hours, collection of wages, child labor, working conditions, labor contractors, collective bargaining, workers' compensation, unemployment insurance, transportation, and housing.

Of the five leading states in terms of number of hired farmworkers in that state, only one, California, has a comprehensive agricultural law; the others, Texas, North Carolina, Florida and Wisconsin, cannot be expected to enact one in the near future. The farmworkers in those states will have no meaningful coverage unless federal legislation is enacted.

54. Id. § 23-1385.
55. KAN. STAT. ANN. §§ 44-826(c)(d), 44-828(c)(7) (1973).
56. A minority of states provide workers' compensation or unemployment insurance for farmworkers. See Exclusion of Farmworkers from Workers' Compensation Coverage: Analysis Indicates No Rational Basis, 11 CLEARINGHOUSE REV. 719 (1977).
57. For survey of state legislation, see STAFF OF SUBCOMM. ON AGRICULTURAL LABOR OF COMM. ON EDUC. AND LABOR, 94TH CONG., 2D SESS., FEDERAL AND STATE STATUTES RELATING TO FARMWORKERS (Comm. Print 1976).
58. For a listing of the average number of hired farmworkers in each state, see Farm Labor, U.S. DEPT. OF AGRICULTURE, PUBLISHED ECONOMIC STATISTICS AND COOPERATIVE SERVICE, (Feb. 22, 1979).
V. LEGISLATION AND PROGRAMS AFFECTING FARMWORKERS

As mentioned previously, another reason for the passage of federal legislation providing collective bargaining for farmworkers would be to enable employees' bargaining representatives to help enforce the numerous existing statutes and programs which are applicable to farmworkers. Such statutes are not always fully enforced. Others provide only limited coverage of farmworkers compared with industrial workers. A brief look at some federal laws and programs applicable to farmworkers will create for the reader some awareness of the types of federal legislation now existing which can affect farmworkers' lives. No attempt is made to discuss fully the scope of these laws, nor to describe the shortcomings of their current application to farmworkers. Footnote citations to the laws, however, will direct the reader to more detailed discussions.

The Farm Labor Contractor Registration Act requires labor contractors to obtain a certificate of registration from the Secretary of Labor. Contractors must show evidence of insurance or proof of financial responsibility. Prior to transporting migrant farmworkers, contractors must show compliance with the rules and regulations of the Interstate Commerce Commission. In addition to revocation of registration, criminal and civil penalties are provided. The act was amended in 1974 to extend coverage and strengthen enforcement.


61. For testimony critical of the enforcement of this statute, see Administration of Laws Affecting Farmworkers: Hearings of House Subcomm. on Manpower and Housing of the House Comm. on Gov't. Operations, 96th Cong., 1st Sess. 56 (1979).

it provided a minimum wage rate for most employees but expressly excluded farmworkers. Subsequent amendments to the law in 1966 and 1974 extended coverage to farmworkers. The limitation that wage rates apply only to employers who are engaged in interstate commerce and who utilized 500 man days of agricultural labor in any quarter of the preceding calendar year, however, excludes many farmworkers from coverage. The 1974 Amendments prohibited employment of children under twelve on farms covered by the Act’s 500 man day test. Overtime provisions do not apply to farms not meeting the 500 man day test. Other provisions exempt specific kinds of farmworkers.

The Wagner-Peyser Act establishes the United States Employment Service (now called U.S. Training and Employment Service) in the Department of Labor which, among other responsibilities, maintains a farm placement service. By regulations standards relating to wages, housing, and transportation are set for the use of this service and to protect the migrant worker. The Act provides for denial of federal funds to state employment services not in compliance with federal rules and regulations.

Sections 303 and 304 of Title 49 provide for regulation by the Department of Transportation (Federal Highway Administrator) of certain transportation of migrant farmworkers in interstate and foreign commerce. Regulations issued are designed to protect workers in terms of safety, comfort standards, driver and inspection standards. The law includes provisions for investigation of complaints and the imposition of fines.


64. 29 U.S.C. §§ 213(a)(6), 213(b) (1976).

65. 29 U.S.C. § 49 (1976); See Morse, *supra* note 59, at 828, 835-36, 858-59; NAACP v. Brennan, 360 F. Supp. 1006 (D.D.C. 1973). In this case the court held that the Department of Labor had violated the Wagner-Peyser Act by funding state agencies which denied farmworkers the full range of services and failed to enforce protective legislation.


The Occupational Safety and Health Act⁶⁹ empowers the Secretary of Labor to promulgate safety and health standards which apply to agriculture. Standards have been issued concerning sanitation in temporary labor camps, storage and handling of anhydrous ammonia, pulpwood logging, slow moving vehicles, equipment safety and cotton dust.⁷⁰ Civil and criminal penalties are provided⁷¹ for violations of this statute.

Section 1182(a)(14) of the Immigration and Naturalization Act⁷² provides that aliens seeking to enter the United States for performing skilled or unskilled work are excluded unless the Secretary of Labor certifies certain facts to the Department of Labor and the Attorney General. The purpose of this law is to protect the wages and working conditions of U.S. workers against competition from alien workers. The statute provides for deportation⁷³ and criminal penalties.⁷⁴

Federal Insurance Contributions Act (FICA)⁷⁵ and Old Age Survivors and Disability Insurance Act (OASDI)⁷⁶ have limited application to farmworkers.⁷⁷ FICA imposes a tax on wages to fund the old age survivors and disability insurance program under the Social Security Act. As defined by FICA, "wages" does not include noncash payments for agricultural labor,⁷⁸ nor does it include cash payments of less than $150 per year or payments for less than twenty days' work.⁷⁹ Coverage by OASDI does not apply to persons whose wages are not taxed under FICA.

⁶⁹. 29 U.S.C. §§ 651-678 (1976). Standards for agricultural pesticides have been the subject of bitter disputes among EPA, OSHA, farmworkers and pesticide industry. See Florida Peach Growers Ass'n v. United States Dep't of Labor, 489 F.2d 120 (5th Cir. 1974); OMICA v. Brennan, 520 F.2d 1161 (D.C. Cir. 1975); Comment, Farmworkers in Jeopardy, OSHA, EPA and the Pesticide Hazard, 5 Ecology L.Q. 69 (1975).


The Sugar Act of 1948\textsuperscript{80} is of historical interest only at this time, since the law expired and the 96th Congress in 1979 voted down its reenactment. The Act provided that growers would receive allotment payments provided they made certain minimum wage payments to farmworkers.

There are also numerous federal programs enacted as part of a more comprehensive law which affects farmworkers. For example, the Special Health Revenue Sharing Act of 1975\textsuperscript{81} provides aid to migrant farmworkers' health centers;\textsuperscript{82} the Hospital and Medical Facilities Amendments of 1964\textsuperscript{83} gives funds to states for the construction of public and nonprofit hospitals. Hospitals receiving funds are required to furnish services to persons unable to pay. The Rehabilitation Act of 1973\textsuperscript{84} provides grants to states to pay for the cost of vocational rehabilitation of handicapped migratory agricultural workers. The Food Stamp Act of 1974 applies to low income persons including farmworkers.\textsuperscript{85} The Elementary and Secondary Education Act of 1965\textsuperscript{86} allows grants to states to meet the educational needs of children of migratory farmworkers.\textsuperscript{87}

Farmworkers are also affected by the Migrant Head Start Program and Comprehensive Employment and Training Act as well as the work of the Community Services Administration and Volunteers in Service to America (VISTA).

Farmworkers are specifically excluded from some federal statutes. For example, as mentioned earlier, the National Labor Relations Act,\textsuperscript{88} in its definition of "employee" excludes the agricultural worker and hence the applicability of this Act to agriculture. The Internal Revenue Code provides for income tax withholding by employers from wages, but wages are


\textsuperscript{82} 42 U.S.C. § 247(d) (1976).


\textsuperscript{87} Morse, supra note 59, at 828, 849-50.

defined to exclude monies paid for agricultural labor.\textsuperscript{89} The Tax Reduction Act of 1975\textsuperscript{90} excludes migrant farm workers from the definition of "eligible employee" for the purpose of computing federal welfare recipient employment incentive tax credit.

A passing observation should be made concerning federal legislation or programs which in general provide social or protective benefits for American workers. Congress appears to have acted belatedly in making many social benefits applicable specifically to farmworkers, and when it did act concerning farmworkers, limitations were placed on the laws designed to give farmworkers what others have had for many years. Furthermore, it would be fair to say that agencies given responsibility for the enforcement of the legislation have been less than zealous in seeing that farmworkers receive the maximum benefits from these laws. One would hope that employee representatives created by federal collective bargaining legislation would press for increased enforcement of these benefits.

VI. AGRICULTURAL LABOR UNIONS

It can be anticipated that with national legislation similar to the NLRA to promote representation of employees and collective bargaining, unions will evolve as they have in the private and public sector to meet the special needs of their constituents. It is understandable that in the absence of collective bargaining laws, either federal or state, there is currently a paucity of strong, financially secure agricultural unions. However, the present existence of agricultural unions is irrelevant to the question of whether there should be a federal law to provide collective bargaining for farmworkers. There are good reasons for such laws, and these reasons should be determining factors in promoting the enactment of federal legislation.

Probably the best known of the current organizations representing farmworkers is the United Farmworkers (UFW) headed by Caesar Chavez in California. This organization both before and after the passage of the California ALRA has vied with the Teamsters to represent farmworkers. Since the UFW has more contracts than the Teamsters and both organizations have reached an agreement ending their competition

\textsuperscript{90} 26 U.S.C. § 1 (1976).
for agricultural workers under the jurisdiction of the ALRB, UFW will probably be the dominant union on the California agricultural scene.\textsuperscript{91}

There are organizations representing or seeking to represent farmworkers in other states, but the organizations have not achieved the success of the UFW in California, no doubt because of the lack of meaningful state legislation. In Arizona there is the Arizona Farmworkers as well as the UFW. In Florida there is the UFW, the Arizona Farmworkers, the United Migrant Association and the United Migrants. In Texas there is both the UFW and the Texas Farm Workers. In Ohio and Indiana the Farm Labor Organizing Committee has been active, while in New Jersey the Association de Trabajadores Agrícolas de Puerto Rico has done some organizing but may be dormant at the present time.

VII. CONCLUSION

As mentioned before, the question of whether it might be politically feasible to enact federal legislation for farmworkers is an issue distinct from the necessity for such legislation. Congress has not been receptive to passing labor legislation in the past, and this particular proposed law would generate a great deal of vocal opposition. Opponents would surely argue that unionization of farmworkers would result in high food costs and, although this argument could be refuted, it could be used to rally consumers in opposition during this inflationary period.

Then too, this is not a publicized period of crisis for farmworkers as it was during the lettuce boycott and times of turmoil during the sixties and early seventies. Not that the farmworkers' problems have been solved, but the question of national legislation is not a current burning issue. It might be difficult to arouse those who would traditionally support such legislation.

With respect to the parties who would be affected by the legislation—growers and farmworkers—support or opposition would depend upon the specifics of the legislation. Growers in general would probably still prefer no regulation. Only if it appeared that legislation was inevitable would they opt for

\textsuperscript{91} For a more detailed explanation, see Rochin, \textit{New Perspectives on Agricultural Labor Relations in California}, 28 \textit{Lab. L. J.} 395, 399-400 (1977).
the simple amendment of the NLRA rather than more extensive legislation specifically directed at agriculture. [It is perhaps somewhat misleading to talk about farmers as if they represented a monolith with common ideas and goals. There is much diversity depending on type of farming and location. Farmers in different areas could well have varying views.] Some opposition by farmers who own small farms might be diffused if care was taken in drafting legislation to exclude such farms. Most commentators agree that such exclusion would not be detrimental to the general goals of a national agricultural labor relations law.

Support for the NLRA amendment by such unions as the UFW in California cannot be guaranteed. The UFW has already expressed its feeling that it would oppose a federal law which would preempt state law and might result in giving them less than they now have under the California ALRA. Perhaps the UFW could be convinced that some compromise regarding a federal law would serve the interests of all those farmworkers who have no coverage at this time. This is not to suggest that the California ALRA be stripped of all its innovative features to serve as a model for a new federal law. The intent is rather to urge that the UFW give serious thought to the benefits a national law would have for all farmworkers and that it consider what compromise is possible and reasonable. Compromise between the parties, as mentioned earlier, has always been a crucial element in achieving the enactment of labor legislation. Should the UFW actively oppose the idea of national legislation, their opposition would surely undermine support for the passage of such legislation.

There is a need for national legislation to provide collective bargaining for farmworkers. Ideally, the legislation should vest the NLRB with jurisdiction and contain provisions directly related to the problems of agricultural labor relations. Whether this ideal can be achieved is still uncertain, but the hope is that those in Congress who understand the benefits of such legislation will try again as soon as politically feasible to make the ideal a reality.