

Chapter 3

Government Intervention and the Farm Labor Market: How Past Policies Shape Future Options

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By 1942, experience had already shown what Mexican migrants who entered the United States illegally for seasonal work might expect at the hands of unscrupulous employers. Left to their own devices, the forces that had created the great demand for Mexican manpower, particularly along the border states, had proved how great the evils of unregulated mass migration could be. The protection of the contractual and civil rights of the bracero while residing in the United States was therefore a fundamental aim of the original executive agreement between the two countries.

Ernesto Galarza 1956

Introduction

The current economic, social, and political situation in the farm labor market has been shaped by our history of immigration policy, labor policy, and agricultural policy. The development of policy includes not only the laws and regulations, but also administrative actions and inaction. Each of these three areas of policy development, as well as their intersection, has led to contradictions, unintended consequences, and perverse effects as much, if not more, than the stated policy goals. Yet each has had a continuing impact on developing realistic policy options for the future.

In addition to a history of political intervention that has led to the current agricultural labor market, another factor to be taken into account is the relationship between trade and the international mobility of capital and labor. The current binational labor force, and the entire concept of transnational employment, is a reflection of the present context of globalization.

This paper will briefly describe the history of policies and political intervention in the farm labor market and discuss some of the current policy options within this current and historical context.

Government's Efforts to Provide Workers to Agriculture

The U.S. government has played a key role in shaping the agricultural system. Government intervention has included such things as limiting production to artificially support prices, setting commodity price floors, purchasing surpluses, and establishing tariffs on imported foodstuffs. The government has also intervened to protect the economic viability of agriculture by assisting growers of fruits and vegetables to obtain a stable and plentiful labor supply. This has taken the form of establishing a system to match domestic workers with agricultural jobs, importing additional temporary foreign workers, and legalizing unauthorized farmworkers. The latter two strategies, which have been much more successful than the matching function, show the clear linkage between immigration policy, agricultural policy, and labor policy. They have also established a pattern of intervention among policy makers, a reliance on government assistance among agricultural producers, the expectation of cheap and readily available fresh produce among consumers, and an agricultural labor market that relies on regular influxes of foreign-born workers.

Temporary Worker Programs

The Ninth Proviso of the Immigration Act of 1917. The official admission of temporary non-immigrant agricultural workers to the United States began approximately 80 years ago in response to fears of agricultural labor shortages brought about by a combination of World War I and changes in immigration policy. Domestic workers began leaving agriculture in larger numbers to join the military or for higher paying jobs in wartime industries. At the same time, the Immigration Act of 1917 restricted immigration by imposing a literacy test for new immigrants while continuing to bar the entry of aliens

for prearranged contract labor.

The Bureau of Immigration, at that time housed within the U.S. Department of Labor, responded to Southwest growers' requests for help by issuing an order to allow the temporary admission of otherwise inadmissible aliens as allowed by the ninth proviso to section 3 of the Immigration Act of 1917.¹ This order suspended the contract labor prohibition, the head tax, and the literacy test requirement of the 1917 act for temporary agricultural employees from Mexico.

Employers had to submit an application with either a U.S. immigration or a U.S. employment official, setting out the number of laborers desired, class of work, wages offered, housing conditions, and duration and place of proposed employment (U.S. Congress 1921). In their application, employers also had to provide written evidence that domestic workers, either local or from "a reasonable distance," were not available. Emphasizing the extraordinary nature of this program, the Department of Labor explained that "any doubt which may arise as to the ability of the United States Employment Service to meet the needs in a particular case shall be taken as a reason to withhold granting permission to import agricultural laborers until such doubt can be cleared up" (U.S. Congress 1921:700).

Employers or employer associations requesting contracted workers were required to pay the current wages offered for similar employment, pay transportation costs, and abide by all state laws regarding housing and sanitation. If there were no such laws, employers were required to maintain conditions as specified by the Secretary of Labor. Employers were also required to withhold a specified amount from the workers' wages and deposit it in the U.S. Postal Savings Bank as a way to ensure that workers would comply with the terms of their temporary admission. Workers who abandoned their contacts and accepted employment in other industries were to be arrested and deported. However, workers were allowed to change employers in the authorized fields of employment (primarily agriculture, but for a brief period, maintenance of way on railroads and lignite coal mining) as long as the employers were authorized for contract workers and the Immigration Service was notified of the change.

¹ This proviso read, "...the Commissioner General of Immigration with the approval of the Secretary of Labor shall issue rules and prescribed conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission."

Employees admitted under this program were issued photo identification cards that they were required to supply to their petitioning employers. In contrast to current non-immigrant worker programs, family members were allowed to accompany the workers, who were admitted for six months, with a possible six month's extension.

While these procedures were carefully specified, they were not systematically enforced. According to the Bureau of Immigration, between 1917 and 1921 72,862 temporary non-immigrant workers were admitted, most for work in agriculture. Almost 30 percent deserted their employment and disappeared, and "as far as can be ascertained, 15,632 are still in the employ of the original importers" (INS 1921:7). Many of the problems, the Immigration Service felt, stemmed from an employer being "unmindful of the obligations he assumed toward the government as trustee for his laborers" (INS 1921:427). The Immigration Service's Supervising Inspector at El Paso wrote:

While some of the importers have in the utmost good faith endeavored to live up to their undertaking with the Government and return such laborers to Mexico without expense to it, many, if not most of them, have neglected or flatly repudiated their obligations in that respect, and it seems highly probable that with the lapse of time they will grow even more unmindful of the benefits which accrued to them from the Government's indulgence and exhibit a greater degree of indifference and remissness in the matter of disposing of these laborers in accordance with the terms of their contract with the Government (INS 1923:28).

Just as the government's best interests were not being protected by employers who did not fulfill their contractual obligations, many employers using the program were felt to be similarly unprotected from workers who did not abide by the contracts. An employer using the program

...has no means of compelling imported laborers to remain in his employ; he can not resort to force or duress, intimidation, withholding of pay, or any one of the many other devices which obviously come to mind. If after importing laborers and conveying them to their place of employment, all at heavy expense, they choose to desert their employer for work in an industry or with another employer offering a higher scale of wage than they agreed to work for at the

time of entry, the original employer has no redress, but becomes immediately liable for a heavy bill, which the government may at any time thereafter present for expenses incurred in returning these former employees to Mexico (INS 1923:28.)

Concerns expressed during this early program pre-shadow many of the debates that accompanied later non-immigrant, contract worker programs. These included the hiring of foreign in lieu of domestic workers, the need to ensure that prevailing wages and working conditions in that industry were not depressed, and concern over workers jumping contract. And, as was also the case in later programs, the perception was that most of the problems arose from inadequate enforcement mechanisms and personnel (INS Annual Reports and Scruggs 1960).

The 1917 war time emergency order by the Secretary of Labor set a precedent for subsequent use of the ninth proviso of section 3 to admit temporary non-immigrant agricultural workers again in 1942 until special legislation for the *Bracero* Program was passed and remained in effect until 1964. The order also served as the basis for the H-2 provision of the Immigration and Nationality Act of 1952.

The Bracero Program. The program that has come to represent all temporary agricultural worker programs is the 22-year “war-time emergency” Bracero Program through which 4 to 5 million Mexican workers were contracted. In 1942 the Mexican and U.S. governments entered into negotiations and exchanged a series of diplomatic notes that set the legal foundation for an intergovernmental accord between the two countries. Prior to the first round of recruitment, the Mexican government insisted upon certain protections for its workers. They were to be exempt from military service in the United States, they were not to be subject to discriminatory practices, and in general Mexican labor standards would be adhered to in their employment (Galarza 1956). A number of mechanisms were included in the agreement to try to protect braceros from exploitation. These included, for example, the role of the Farm Security Administration as the primary employer, with the farmer contracted as a “sub-employer,” and as recruiter, with employers prohibited from recruiting directly in Mexico. Growers using the program were required to pay the local prevailing wage, provide free housing and a reasonable subsistence allowance, and pay for transportation from Mexican reception sites near the border to and from the work site (CAW 1992).

In less than one year, growers were able to get Congress to remove the program from the auspices of the Farm Security Administration and place it within the War Food Administration, a much more “grower-friendly” agency (Calavita 1992). This was followed by four years of similar agreements, but with further significant revisions. A primary one was that employers, not the U.S. government, became the contractors. This allowed growers to bypass the Mexican government in the recruitment process. Employers were allowed to recruit at the border, with *braceros* admitted directly by the INS. In addition, direct grower-to-*bracero* contracts replaced the government-to-government contracts of the initial accord. The government of Mexico strongly objected to a lack of enforcement, the methods of determining the prevailing wage rate, and the absence of the U.S. government as a guarantor for ensuring that employers fulfilled their part of the contracts.

The period of 1947 through 1951 is marked more by administrative action and grower involvement than had been the previous five years. In fact, despite the fact that Congress officially declared the program over, the State Department arranged another accord with Mexico and the importation of *braceros* continued. More importantly, in 1949, the government of Mexico agreed to a provision in which workers already in the United States illegally would be given preference for *bracero* status.

With renewed concerns over labor shortages brought on by the Korean War, Public Law 78, which established the program’s framework for its duration, was enacted in 1951. The U.S. government again took responsibility for recruiting and transporting Mexican workers, while also “guaranteeing” that employers honored the terms of the contracts. At the insistence of the Mexican government, contracting workers already in the United States was prohibited and *braceros* were not to be used to replace striking workers (Calavita 1992:46).

The British West Indies (BWI) Temporary Alien Labor Program. The BWI program originated at approximately the same time as did the *Bracero* Program and ostensibly for the same reasons—fears of agricultural labor shortages during World War II. While the *Bracero* Program was intended for western growers, BWI workers were primarily used on the east coast. Over the years, however, BWI workers were employed in shade tobacco in Connecticut, truck farming in New Jersey, cherry picking in Wisconsin, sweet corn in Idaho, tomatoes in Indiana, asparagus in Illinois, and peas in California (U.S. Congress 1975). In later years they were employed primarily in sugar cane in Florida and apple picking in many eastern states.

The governments of the offshore islands from which Caribbean workers came were heavily involved in the early stages of the program. The first workers were Bahamians who were admitted pursuant to an intergovernmental agreement signed in March of 1943. The next month Jamaica signed such an agreement with the United States. Adding legislative authority to these intergovernmental agreements, Congress enacted Public Law 45 on April 29, 1943. This Act, the first of a series referred to as the farm labor supply appropriations acts, authorized the U.S. government to temporarily admit “native-born residents of North America, South America, and Central America, and the islands adjacent thereto, desiring to perform agricultural labor in the United States” and provided funds for the recruitment, transportation, and placement of the workers. These acts, combined with the international agreements, formed the basis for the emergency labor supply programs operated under direct governmental supervision until the end of 1947. In 1945, approximately 19,400 BWI and Bahamian workers were employed in U.S. agriculture. BWI workers were also involved in non-agricultural work. In that same year, approximately three-fourths as many worked outside of agriculture as within.

The memoranda of understanding that were drawn up by representatives of the governments involved contained the following basic provisions:

- a) Transportation costs from the point of recruitment to the United States and the return trip home were to be borne by the U.S. government.
- b) Workers were to be paid the prevailing wage paid to U.S. workers, but not less than 30 cents per hour.
- c) Employment was guaranteed for three-fourths of the contract period; a subsistence allowance was to be paid if the work guarantee was not fulfilled.
- d) Employment of foreign workers was not to displace domestic workers, or reduce the rates of pay of domestic workers.
- e) The imported laborer was to be exempted from the draft, and to be protected from discriminatory acts.
- f) Housing and medical care were to be equal to that

received by local workers, or of quality approved by the government, and to be free to workers.

- g) Amounts which were to be deducted from the workers’ wages were established to be sent back home and claimed by the workers upon return. Other unauthorized deductions were prohibited. The amounts deducted varied as the programs developed during the war period.

In addition to the intergovernmental agreements, detailed work contracts were executed between the BWI workers and U.S. employers, although the government was ultimately responsible for employer compliance with the terms of the BWI agreements. As in the 1917 program, the international agreements provided for the transfer of workers from one employer to another. In 1944, the British government objected to the transfer of Jamaican workers among different employers without the workers’ consent. The U.S. government replied that workers had only one contract, which was with the U.S. government and thus could be transferred at will.

When the emergency wartime legislation expired at the end of 1947, the U.S. government no longer directly participated in and paid for the recruitment and transportation of BWI and Bahamian workers. Instead, agreements were made between the Caribbean workers, their U.S. employers, and representatives of the BWI and Bahamian governments. Again, the ninth proviso of section 3 of the Immigration Act of 1917 was used to allow for the temporary admission of contract laborers. Until 1951, the governments of Jamaica, Barbados, and the Leeward Islands contracted directly with U.S. employers, with the Caribbean governments essentially taking over the functions of recruitment, transportation, and contract-enforcement activities formerly assumed by the U.S. government. The British West Indies Central Labour Organisation (BWICLO) served as a general liaison.

When Public Law 78, which authorized the post-war Mexican worker program, was enacted in 1951, the BWI program was specifically excluded. This was at the request of Senator Holland (D-FL) who relayed the desires of the agricultural interests of Florida “not to have any subsidy from the government in this connection, not to have the Department of Labor serve as an official agency for recruiting offshore laborers” (U.S. Senate 1951:16). Instead, agricultural employers preferred to continue their ongoing practices, which included

paying the transportation costs for foreign workers themselves and posting bonds to ensure their return to the Bahamas or Jamaica. With enactment of the 1952 Immigration and Nationality Act, growers continued to contract with Caribbean workers through the H-2 program.

Section H-2 of the 1952 Immigration and Nationality Act. The 1952 Immigration and Nationality Act (INA) contained provisions which provided the first permanent statutory authority for the admission of temporary contract workers. According to the Act, workers entering the United States to perform temporary labor were defined as non-immigrants and contrasted with immigrants who were admitted permanently and allowed to change occupations upon entry, even if they were admitted under one of the occupational preferences. Most non-immigrant workers entered through Section 101(a)(15)(h)(ii), which closely followed the procedures established under section 3 of the Immigration Act of 1917. Section (h)(ii) defined a non-immigrant as “an alien having a residence in a foreign country which he has no intention of abandoning...who is coming temporarily to the United States to perform other temporary services or labor, if unemployed persons capable of performing such services or labor cannot be found in this country.”

Section 214(c) then authorized the Attorney General, in consultation with appropriate agencies of the government, and after petition from an employer, to determine whether such non-immigrants could be imported. Later regulations set out the procedures for consultation between the Justice Department and the Department of Labor.

While the DOL’s role in implementing the H-2 provision was determined by law, the philosophical approach to that role has varied. When the *bracero* program was terminated in 1964, there was much debate over the scope of the only remaining avenue for the importation of non-immigrant agricultural workers. During this time the Secretary of Labor, Willard Wirtz, clearly indicated that the Labor Department did not want the *bracero* program to continue under the guise of the H-2 program. Upon issuance of new DOL regulations at the time of the termination of the *bracero* program, he stated:

(the issuance of new regulations)... does not imply that there will be any large scale use of foreign workers in the future. To the contrary. It is expected that such use will be very greatly reduced, and hopefully eliminated (USDOL 1966).

The DOL regulations in question required that employers requesting foreign workers offer domestic workers wages substantially higher than the wages such employers previously had been required to offer. The regulations further required that those domestic workers be offered other benefits, such as housing, transportation, and insurance—benefits previously offered only to *braceros*. Finally, worker certification was limited to 120 days, emphasizing that the program was intended only to meet the peak seasonal needs of the industry. In responding to questions before the Senate Committee on Agriculture and Forestry in 1965, Secretary Wirtz specifically linked Congress’ desire to reduce U.S. dependence on imported labor (as seen in the termination of the *bracero* program) with the nation’s problems of rising unemployment and the generally depressed wages and working conditions that characterized agriculture in contrast to other industries (U.S. Congress 1965). Concern over the Secretary of Labor’s outlook expressed by employer interests is reflected in an unsuccessful 1965 Congressional attempt to legislatively transfer the advisory certification responsibility regarding the availability of domestic workers from the Department of Labor to the Department of Agriculture.

As early as 1962, the department began to publish “adverse effects rates” (AEWRs) for agricultural employment which were to be paid to all workers hired by an employer using H-2 workers. These rates, which varied by crop and area, were determined by the department with the goal of ensuring that the wages of similarly employed U.S. workers would not be adversely affected. These might be the prevailing wage rate if the use of aliens had not depressed local wages, or a higher rate if the administrator determined that the use of aliens had already depressed the wages of similarly employed U.S. workers. In terms of cost savings for the employers, however, they were exempt from paying social security and unemployment taxes for the H-2 workers.

In 1978, the Department of Labor issued revised regulations governing the labor certification process. The primary difference between these and prior regulations was the degree of detail specified. An employer’s application for certification was to include a job offer for U.S. workers and specify standards regarding wages, working conditions, subsistence costs, housing transportation and worker rights and benefits—essentially requiring that employers offer and provide U.S. workers with at least the same level of wages, benefits and working conditions provided to foreign workers. The Immigration Reform and

Control Act of 1986 (IRCA) divided the H-2 program into H-2A visas for agricultural employees and H-2B visas for nonagricultural temporary or seasonal employees. It also provided for the following changes:

- 1) including input from the Secretary of Agriculture;
- 2) shortening the filing time required from 90 to 60 days; and
- 3) expediting the time periods for appeals and reconsideration of labor certifications.

Legalization Programs

The Bracero Program. Legalization as a mechanism to reduce the vulnerability of undocumented farmworkers was used for a brief period during the *Bracero* Program. Mexican negotiators agreed to this approach in the 1949 bilateral accord. Farmers strongly supported this provision because it made recruitment cheaper and easier for them. Mexico also hoped that it would reduce the number of illegal immigrants in the United States. For the three years between 1947 and 1949, approximately twice as many Mexican nationals in the United States illegally were put under *bracero* contracts as were brought from Mexico (142,000 legalized; 74,600 brought from Mexico) (President's Commission 1951:6117). In 1950, there were almost five times as many workers legalized as were brought from Mexico (96,000 legalized; 20,000 brought from Mexico (Galarza 1964). Contrary to Mexico's hopes that placing undocumented workers under *bracero* contracts would reduce the number of illegal immigrants in the United States, this strategy actually increased illegal immigration as Mexicans learned that the best way to obtain a *bracero* contract was to come to the United States illegally (Calavita 1992:28).

The Immigration Reform and Control Act (IRCA). The decade of the 1980s saw repeated Congressional attempts at drafting immigration legislation. Most included three critical elements: employer sanctions; an amnesty or legalization program; and a temporary work program for agriculture. The first two elements were included in IRCA, while the third element underwent a dramatic change weeks before the final bill was passed. Instead of a temporary worker program, the agricultural portion of IRCA included a Special Agricultural Worker (SAW) provision allowing for the legalization of an unlimited number of applicants who had worked for 90 days in qualifying agricultural employment.

Approximately one million persons were legalized under the SAW provisions of IRCA, most of them young men from Mexico. As was the case under the legalization portion of the *bracero* program, the SAW program was found to increase illegal immigration, rather than reduce it.

The Effects of Government Intervention

Stabilizing a labor force for highly seasonal jobs presents challenges under the best of circumstances. Instead of concentrating political and economic resources on this task, however, the U.S. government has taken the route of ensuring that agricultural employers are provided with new cohorts of foreign-born workers on a regular basis. This has gone on for almost 100 years.

Added to the challenge of stabilizing a legal work force is the government's policy of funding programs that provide the poor with opportunities to improve their employment status. With regard to agriculture, this involves programs for domestic farm workers to upgrade their employment opportunities, often by exiting farm work. This year over \$67 million was allocated to states to provide employment and training opportunities to domestic farm workers through the JTPA 402 program.

Another policy issue is that most farm workers are ineligible for unemployment insurance, making reliance on seasonal jobs even more problematic. This is a result of a combination of factors. Aside from the issue of needing to be legally authorized, many states discourage the use of unemployment insurance for those holding highly seasonal jobs by having certain earnings requirements for each quarter during a base-line year. Other employees are excluded because agricultural employers have a substantially higher wage threshold than do non-agricultural employers.²

Finally, upward mobility for most workers in the United States is defined by achieving stable, consistent employment in comfortable surroundings, earning increasing amounts of money. While we can

² For example, non-agricultural employers must pay FUTA taxes if they pay wages of \$1,500 or more during any calendar quarter or if they employ at least one individual on one day in each of 20 weeks during the year. In contrast, agricultural employers must pay wages of at least \$20,000 during any calendar quarter or employ 10 or more workers on at least one day in each 20 weeks during the current or preceding year.

extol the virtues and nobility of working in the fields for someone else, studies have shown that this is not an occupation that many parents want for their children.

Government's Support for Agriculture

In addition to shaping the agricultural labor system through the provision of workers to the industry through both temporary worker programs and legalization programs, growers of fresh fruits, vegetables and horticultural products receive assistance through subsidized agricultural research conducted through the U.S. Department of Agriculture and the land-grant college system. Much of this research emphasizes increasing overall productivity and yield per acre.

Other research has focused on using technology to promote mechanization and other labor-saving devices. A lawsuit brought in 1979 challenged the use of public funds to promote mechanization, with critics claiming that mechanization has accelerated the development of monopolies in food production, the dispossession of family farms, and the displacement of large numbers of hired workers (CAW 1992:36).

Other subsidies to agricultural producers include large-scale irrigation projects and cheap water in dry western states and the support of marketing orders that allow growers to increase consumer demand and control quality and volume of perishable commodities.

Finally, low-cost loans for farm worker housing, and government-funded medical and educational programs for farm workers shift the costs that many employers in other industries pay as employee benefits onto the shoulders of the government.

Agricultural Exceptionalism

The differential treatment of agriculture and agricultural workers by the government has a long tradition, deriving primarily from government's attempts to deal with the agricultural crisis of the 1920s. Arguments stressing the need to protect our nation's food supply, the seasonality of the work and perishability of the product, and the pervasive romanticization of the family farm convinced policy makers that agriculture was, indeed, a special case. The resulting premise of "agricultural exceptionalism" continues to guide national policy not only through legislation specifically designed to subsidize agricultural producers and immigration policies that ensure farmers a work force, but lesser pro-

tections provided to agricultural workers under many labor laws.

Fair Labor Standards Act (FLSA). The 1938 act was designed to eliminate poverty among workers by establishing a minimum wage; discouraging excessively long hours of work; and eliminating child labor. At its inception, farm workers were completely excluded from its protections. The act was amended in 1966 and 1974 to provide farm workers on larger farms federal minimum wage protections. In addition to those on small farms, many hand-harvest workers who are paid on a piece-rate basis continue to be excluded. Agricultural workers are also not entitled to overtime pay for work performed beyond the federally established 40-hour work week. Finally, there are less restrictive prohibitions regarding child labor in agriculture. For example, children aged 12 or 13 can be employed in agriculture as long as it is outside of school hours and in a non-hazardous occupation. The minimum age in non-agricultural jobs is sixteen.

State Workers' Compensation and Unemployment Insurance. The majority of states do not offer the same level of compulsory coverage for agricultural workers injured on the job. Likewise, as stated earlier, agricultural employers are less likely to be required to pay unemployment insurance taxes.

National Labor Relations Act (NLRA). The 1935 act provides the basic statutory framework that governs labor-management relations by providing employees the right to organize and bargain collectively. Farm workers continue to be completely excluded from the act.

High levels of direct and indirect government assistance to growers, assistance which is avidly sought and widely expected, is an interesting contrast to the general feeling, as expressed in many surveys, that what agricultural employers really want is to have the government leave them alone. Of course, this feeling is directed toward enforcement and regulation, not assistance.

The Current Situation in the Agricultural Labor Market

The best data about current conditions in the agricultural labor market is derived from the National Agricultural Worker Survey (NAWS) conducted by the U.S. Department of Labor. Unfortunately, the most recent usable data comes from the period 1994-95. The bleak picture of the continuing deterioration of farmworker wages and working conditions that the NAWS paints, however, is reinforced by other studies.

In terms of basic demographics, farm workers are young (two-thirds are younger than 35 years old), male (80 percent of the workers), and foreign-born (70 percent of the workers—mostly born in Mexico). Thirty-seven percent of workers reported that they were unauthorized. Over the seven-year period of NAWS data that has been analyzed, the population of foreign-born farm workers increased by 10 percent; the participation of women in farm work dropped from 25 percent to 19 percent; the proportion of unauthorized workers increased from 7 percent to 37 percent; and the proportion of farm workers younger than 17 years old doubled from four percent to eight percent. (Mines 1997).

According to the 1995 NAWS, farm work provided an annual income of between \$2,500 and \$5,000. Only about one-fourth of the farm workers had non-farm work earnings. In 1997 the Current Population Survey reported median weekly farm worker earnings of \$277—55 percent of the median for all workers. Over three-fifths (61 percent) of the farm worker population lived below the poverty line. Five years previously, one-half were reported living in poverty (USDOL 1997).

Policy Options to Reform the Farm Labor Market

Several policy options have been proposed or are currently being discussed with regard to the agricultural labor supply. We will consider three basic ideas: changes to the H-2A program, a substantially different type of temporary worker program, and the approach of allowing market mechanisms to improve conditions for agricultural workers. Subsequently we will discuss our current thinking about what elements any new temporary worker program for agriculture should contain.

Revisions to H-2A. Grower interests have identified a number of problems that they see with the current H-2A program. As indicated in testimony on behalf of the National Council of Agricultural Employers (NCAE) before the Senate Judiciary Committee (May 12, 1999) these include:

- 1) The program is administratively cumbersome and costly. Included in this category is the requirement that employers must apply for workers 60 days in advance of their need. (This was shortened from 90 days in 1986). Also included as needlessly cumbersome is the prescribed recruitment and advertising

procedure for domestic workers (which most observers agree are ineffective as currently specified). Growers also assert that many “domestic” workers referred by the state employment services for the advertised jobs are unauthorized or else they quickly quit the jobs.

The solution proposed by the NCAE is a computerized farm worker registry, run by the Department of Labor. Apparently the only responsibility that a grower would have is to list the job and tell workers about the existence of the registry.

- 2) The required wages and benefits are unreasonably rigid or not economically feasible and thus exclude many from participating in the H-2A program. Growers object to the Adverse Effect Wage Rate (AEWR) set by the DOL, which is calculated to attempt to mitigate against the downward effect on wages that the introduction of foreign workers will have. Another objection is the requirement that growers provide housing.

The solution proposed by the NCAE is to replace the AEWR with the prevailing wage (which is the 51st percentile of wages of workers in the occupation and area of employment). With regard to housing, the proposal is to allow growers to provide a housing allowance in areas where there is adequate housing and a “transition period” for employers without housing during which time there apparently would be no housing required.

The NCAE also stated that “aliens who participate in the U.S. seasonal agricultural work force, contribute to the U.S. economy, and abide by U.S. law, including the requirements of the H-2A program while they are H-2A workers, should have a realistic opportunity to move up into permanent agricultural work and greater responsibilities and earnings, or to move up and out of the agricultural work force if they so desire” (Holt 1999).

The current H-2A program has some important protections for farm workers besides the previously mentioned AEWR and housing provision. These include a three-quarter guarantee (workers are to be paid for three-quarters of the contracted period of employment) and the requirement that employers must pay for a worker's transportation expenses in getting to the place of employment.

Many of the negative aspects of the H-2A program stem from its requirement that workers must work only for the employer with whom they are contracted and can continue to participate in the program only if that employer is satisfied. This provides employers with a high level of control and places workers in a structural position that minimizes the likelihood of their speaking out against unfair treatment. As is the case with non-contract agricultural workers, the recruiting system also provides a myriad of opportunities of exploitation and control, primarily through a system of "black-listing."

Many researchers have pointed out the long-lasting effects of the *Bracero* Program in establishing patterns of migration, both legal and illegal, from specific sending areas in Mexico. Others emphasize that temporary workers themselves, over time, are likely to become permanent, albeit unauthorized, immigrants. Thus, temporary worker programs are seen as a leading cause of illegal immigration, rather than a potential solution. A significant element of the H-2 program that should be of concern to policy makers is that workers can be recruited from any part of the world. In fact, there have been a number of instances over the past few years when employers and contractors have talked about and even explored the possibility of bringing workers from even more desperately poor and heavily populated countries than Mexico, such as Bangladesh and mainland China. The possibility of establishing new migrant streams, with the kinds of long-lasting effects that have been the case with Mexico and various Caribbean nations, has implications far beyond the agricultural labor market.

A RAW-type Program. One proposal that is being discussed at this time is legislation that would combine a temporary worker program with amnesty. This is often referred to as a RAW-type program. Part of the legalization provision for agricultural workers under IRCA was the Replenishment Agricultural Worker (RAW) program. This pro-

³ The shortage number was always estimated to be zero, thus the RAW program was never implemented.

vision was developed to protect the industry from the possibility of a large exodus of newly legalized workers from farm work—something that many assumed would occur given the poor wages and working conditions, as well as the seasonality of the work. Through this program the Departments of Labor and Agriculture would jointly decide on a "shortage number" of agricultural workers for three years (FY1990-1993).³ The RAW workers would be admitted with the provision that they work in agriculture 90 days for each of three years following their admission. After fulfilling this obligation, they would be adjusted to permanent resident status. Failure to perform 90 days of agricultural work in any of the three years was to result in loss of temporary resident status and deportation. If the workers continued to work in agriculture for 90 days in each of two additional years, they would have been eligible for naturalization.

Procedures by which potential RAW workers were to register and the preference given to certain categories of people for this program were left to the INS to develop and implement. The INS established a single three-month registration period during which time 624,000 potential workers registered. To be eligible these applicants were to have worked at least 20 days in U.S. agriculture during a qualifying period of three and one-half years. Those in the United States at the time of registration were given priority for selection. Eighty-seven percent of the registrants fell into that category. First priority went to aliens in the United States claiming family preference to someone legalized through IRCA, while second priority went to aliens in the United States not claiming family preference to someone legalized through IRCA. Third and fourth priority went to aliens who registered outside the United States (Heppel and Amendola 1991).

The mechanism by which workers were to be matched with jobs remained unspecified as the program was never implemented. Some preliminary discussions were held to discuss the idea of limiting RAWs to a particular region of the country; however, RAWs would have been free to change employers at will, as long as they met the criterion of work in agriculture for the specified time.

Enforce Labor Standards, Reduce the Labor Supply, and Allow Market Mechanisms to Take Over. The goal of enforcing labor standards within the context of the debate over immigration policy would be to ensure that there is no economic advantage to hiring unauthorized workers. Currently there are only about 950 DOL Wage and Hour compliance officers whose job it is to monitor workplaces throughout the country. It is thus no surprise that enforcement is lax across the

board. This obviously has an impact on all farmworkers and it is clear that the DOL has to both expand its resources significantly and better target its enforcement efforts—something that should be part of any legislation having to do with the agricultural labor market. In a context in which such a large proportion of the work force is unauthorized, however, it is less clear that such enforcement would significantly change the dynamics of the labor market.

The goal of tightening the labor supply by reducing illegal immigration, of course, raises the issue of how. We have already spent millions of dollars to increase the presence of the border patrol, build fences and institute a range of detection devices along the southern border. Many observers believe that the result has been to increase the costs and dangers of crossing illegally rather than to actually reduce the flow of potential workers into the United States, as well as posing a constant irritant between the United States and Mexico. Another impact has been to discourage cyclical migration. We do not believe that it is either feasible or desirable to continue the trend of militarizing the southern border to the point of actually significantly reducing illegal immigration. Migration should be managed as much as possible, not “controlled” at all costs.

Enforcing employer sanctions to the point at which it becomes a work place standard to hire only authorized workers is again laudable if it can be accomplished without an increase in discrimination against foreign-looking or foreign-sounding workers. The effectiveness of achieving this goal, of course, brings up the issue of a national ID card—an always hotly contested idea. Again, viewing this as a reasonable and timely solution to the deteriorating conditions in the agricultural labor market is unrealistic.

Reducing the need for agricultural workers through labor-saving technologies has also been suggested as a means to improve conditions for farmworkers. This strategy raises the question of continuing un- and under-employment for farm workers as well as the question of who will pay for such research. Government-sponsored research on mechanization in the past ran into the problems mentioned previously when a lawsuit was filed objecting to it on the basis of the impact it had on farm workers.

More important, however, is the fact that political involvement in the farm labor market is so entrenched that it is unlikely that the operation of free market mechanisms will be able to “work”. We cannot start from scratch and ignore the almost 100 year history of such political involvement. As a result, failure to address the issue of immigra-

tion policy and agricultural labor will continue to condemn hundreds of thousands of farmworkers to the poor wages and working conditions under which they currently suffer.

Elements that Should be Included in a New Temporary Worker Program. The following is our assessment of several important issues that are critical for developing a new temporary worker program for agriculture. There are undoubtedly more, but we feel that the following represent key elements that must be seriously considered in the ongoing debate about non-immigrant workers and agriculture—a debate that is unlikely to simply disappear:

- 1) It must be experimental. It must be time-limited. It must include a mechanism by which it is monitored and evaluated. And, its ultimate fate should be determined by the results of an independent evaluation. The history of policy development with regard to agricultural workers shows that intended consequences are not always achieved. One of the most recent examples is the 1986 IRCA, which was supposed to drastically curtail the employment of unauthorized workers in agriculture, yet had the opposite effect. Another is the perverse effect of tighter border controls leading to a reduction in seasonal, cyclical migration and an increase in the settlement of unauthorized immigrants in the United States.
- 2) It must be limited to specific countries and give preference to workers already employed in U.S. agriculture. These workers represent a long history of migration to U.S. agricultural labor markets from Mexico and various Caribbean countries, the strength of which should be recognized in crafting effective policies. For example, under the current H-2A program, recruitment is not limited to traditional migrant-sending countries. Thus, various recruiters have explored the possibility of recruiting workers in Bangladesh or China. The potential for establishing *new* migration streams through a temporary worker program could be politically explosive and have serious and negative long-term implications. A new program should focus on countries

with a history of cyclical migration to U.S. agriculture. This would also represent a logical extension of current economic arrangements, such as the North American Free Trade Agreement and the Caribbean Basin Initiative.

- 3) A new program must recognize and seek to minimize the level of control over workers exerted by employers and recruiters in the current H-2A program. This control is structurally created when workers are tied to a particular employer and/or employer association. Addressing this imbalance of power should take the form of providing temporarily authorized workers with the right to change employers and of allowing workers to join unions and have access to worker representatives and legal representation.
- 4) Housing is an issue that needs serious consideration. On the one hand, employer-provided housing, while clearly a significant work-place benefit, also increases the control that an employer is able to exert over his/her employees. Vouchers are only successful if local housing is available. If vouchers are considered, it is important to note that workers often need to spend approximately 25% of their income on housing. The best solution to this dilemma would entail incentives to private entrepreneurs to build housing, coupled with support for not-for-profit housing developments and increased federal/state/local government support for farm worker housing.
- 5) A temporary foreign worker program should not continue to include a *de-facto* exclusion of women. Such an exclusion runs counter to U.S. norms of equality as well as the historical participation of women in the agricultural work force. It also imposes significant social costs on sending communities in terms of family separation.

- 6) A new program must not undercut the participation of U.S. workers in agriculture. The “positive recruitment” requirement of the H-2A program is ineffective. The best way to protect U.S. workers is not making it cheaper, in any sense, to hire foreign workers. Employers must pay a premium for being provided, by the government, access to authorized foreign workers.
- 7) Finally, the issue of workers being able to gain permanent residence status must be addressed. Ultimately this country may arrive at the conclusion that a binational labor force in which workers, whether foreign or domestic, are *guaranteed* decent wages and working conditions in an industry is all that we can offer. Until that is guaranteed, however, foreign workers who are needed because the work does not attract enough domestic workers should be allowed to ultimately gain permanent residence status and the right to participate fully in our democracy.

Conclusion

The best approach to attempting to improve conditions for farm workers in the United States—notice we say the best, not the ideal—is one that is politically feasible, that does not allow the status quo to continue, and that provides increased protections for workers in this labor market. A first step is to recognize its long-standing and ever-increasing binational character. The task at hand is to work together with labor-sending countries to regularize and manage this labor flow, and to develop standards that regulate its movement and improve the conditions under which this needed labor is performed. The North American Free Trade Agreement (NAFTA) has been described as “both a culminating act, giving legal and hence more entrenched form to changes already in process, and an initiating act to foster and cement the restructuring of the bilateral relationship” (Weintraub 1997). Goods were already flowing between the two countries, as was capital. NAFTA was to provide a better, more even-handed mechanism

to manage that flow. In the same way, we must consider ways to give “legal and hence more entrenched form to changes already in process” with regard to the flow of foreign workers into the U.S. agricultural labor market and to “cement the restructuring of the bilateral relationship” to provide enduring standards and worker protections for a binational work force.

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