

**Report of the
Commission on
Agricultural
Workers**



Report of the Commission on Agricultural Workers /

November 1992

COMMISSION ON AGRICULTURAL WORKERS

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November 6, 1992

The Honorable J. Danforth Quayle
President of the Senate

The Honorable Thomas S. Foley
Speaker of the House of Representatives

Dear Mr. President and Mr. Speaker:

On behalf of the Commission on Agricultural Workers, I am submitting its final report as directed by Section 304 of the Immigration Reform and Control Act of 1986 (IRCA).

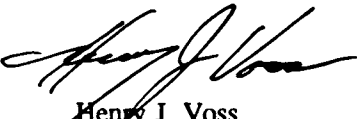
The Commission offers this report together with its separately printed record of hearings and studies in the hope that it will shed light on what has been one of the most contentious areas of public policy. Members of the Commission, representing a broad spectrum of interests, looked anew at issues which have long been defined by protagonists in the debate over agricultural labor policy. We did not always reach consensus, but I believe we were as successful in this attempt as a body so constituted could be on this issue.

Much work went into the preparation of this report. We reviewed and analyzed existing studies, developed data in-house and commissioned new studies by government agencies, universities, other organizations and individuals. This research, together with facts and insights gained from public hearings, workshops and field tours, has given us a vast amount of information to work with in responding to our mandate. Yet even with this extensive effort, we are unable to answer some questions with certainty. For example, we were asked to report on the impacts of IRCA on the agricultural labor market. The report notes the inherent difficulty of isolating such specific effects when this same labor market was simultaneously subject to significant influences totally unrelated to IRCA. It is clear that the general economic downturn in recent years has contributed to the imbalance in the agricultural labor market. Had our study taken place during a rising economy, our findings might have been quite different.

The Commission owes a special debt of gratitude to all those who took the time to testify at the hearings we held in major agricultural areas around the country and to the farmers and community organizations who helped us see conditions first-hand during field tours we took in conjunction with these hearings.

I particularly want to thank my fellow commissioners for their dedication to the task, hard work and honest effort, and our staff for long hours of work and professional competence.

Sincerely,



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The Commission would like to recognize the many farms, government agencies, and social service organizations who invited us to tour their area for a first-hand understanding of their concerns for the future of farm labor.

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PREFACE

The Commission on Agricultural Workers was authorized on November 6, 1986, by Public Law 99-603, the Immigration Reform and Control Act (IRCA). This law was primarily a measure to control illegal immigration through the imposition of sanctions against employers who hire unauthorized workers and a legalization program for certain unauthorized immigrants who had been living in the United States for many years. However, portions of IRCA were designed to give most of crop agriculture additional time to secure and adjust to a fully legal work force.

IRCA sought to accomplish these goals through three programs: (1) The Special Agricultural Worker (SAW) program, which legalized a large number of undocumented farmworkers with experience in perishable commodities; (2) The H-2A program, which revised the agricultural provisions of the existing H-2 program through continuing that program's emphasis on allowing growers to hire temporary, foreign farmworkers, under specified conditions; and (3) The Replenishment Agricultural Worker (RAW) program which, for a limited period, would allow additional farmworkers to enter the United States in the event of a labor shortage.

IRCA charged the Commission on Agricultural Workers with studying the effects of the Act on the agricultural industry, with special emphasis on perishable crop production. Congress also charged the Commission with conducting an overall evaluation of IRCA's Special Agricultural Worker provisions and recommending appropriate changes. In addition, the Commission was asked to review the following questions concerning the impact of IRCA and other specific factors on agricultural workers and employers:

(A) The impact of the special agricultural worker provisions on the wages and working conditions of domestic farmworkers, on the adequacy of the supply of agricultural labor, and on the ability of agricultural workers to organize.

(B) The extent to which aliens who have obtained lawful permanent or temporary resident status under the special agricultural worker provisions continue to perform seasonal agricultural services and the requirement that aliens who become special agricultural workers under section

210A of the Immigration and Nationality Act perform 90 man-days of seasonal agricultural services for certain periods in order to avoid deportation or to become naturalized.

(C) The impact of the legalization program and the employers' sanctions on the supply of agricultural labor.

(D) The extent to which the agricultural industry relies on the employment of a temporary work force.

(E) The adequacy of the supply of agricultural labor in the United States and whether this supply needs to be further supplemented with foreign labor and the appropriateness of the numerical limitation on additional special agricultural workers imposed under section 210A(b) of the Immigration and Nationality Act.

(F) The extent of unemployment and underemployment of farmworkers who are United States citizens or aliens lawfully admitted for permanent residence.

(G) The extent to which the problems of agricultural employers in securing labor are related to the lack of modern labor-management techniques in agriculture.

(H) Whether certain geographic regions need special programs or provisions to meet their unique needs for agricultural labor.

(I) Impact of the special agricultural worker provisions on the ability of crops harvested in the United States to compete in international markets.

The Commission responded by: (1) analyzing data generated by state and federal agencies, as well as a variety of independent research projects, concerned with agricultural labor;¹ (2) contracting for

1 Reports on the impacts of IRCA were prepared for the Commission by the U.S. Departments of Agriculture and Labor. Other reports prepared by Commission staff and consultants include analysis of the following data sets: workday reports (form ESA-92); farm and nonfarm wages; unemployment insurance; and farm income and expenses. These reports appear in Appendix I.

ten commodity- and area-specific case studies;² (3) sponsoring eight workshops on topics specified in the mandated questions;³ and (4) conducting nine hearings around the country at which representatives from diverse interests were invited to testify.⁴

The Commission interpreted its mandate broadly and took into account a broad spectrum of influences on the labor supply, the living and working conditions of farmworkers, wage trends, geographic variations within the overall farm labor market, seasonal unemployment and underemployment of farmworkers, and international competitiveness. While addressing the questions mandated by Congress, the Commission was constantly aware of the fact that trends in the overall U.S. economy, continuing push factors in migrant-sending countries,⁵ fluctuating weather and market conditions, and developing trade initiatives all play a role in the structure of U.S. labor-intensive agriculture.

The thrust of this report, however, is on the impact of IRCA, especially the Act's SAW provisions, on the agricultural industry. IRCA is the most recent example of a tradition of the intermingling of immigration, agricultural, and labor policy, as well as Congress' special treatment of the agricultural industry. From the waivers of the 1917 Immigration Act (Public Law 414) during World War I, through the Bracero Program, to the Special Agricultural Worker provisions of IRCA, agricultural labor has often been treated differently under

immigration law. The competing goals of protecting U.S. workers and providing agriculture with an adequate labor force has long contributed to the debates over immigration policy. Likewise, the persisting problems faced by agricultural employers and farmworkers alike have been the subject of many Congressional committee hearings and Commission reports prior to this one.

The breadth and compelling nature of the information obtained through its research program and hearings has encouraged the Commission to adopt an expansive reading of its charge. This report and its recommendations reflect this decision. Part I provides the historical context necessary to understand the questions posed to the Commission and the responses and recommendations it developed. Part II presents the results of the Commission's research program. Part III presents the Commission's recommendations to Congress.

2 The following case studies were commissioned: (1) fresh market tomatoes in the San Joaquin Valley, San Diego County, and Baja, California; (2) citrus in Tulare County, California and Yuma County, Arizona; (3) raisin grapes in Fresno County, California; (4) pears, berries, nursery products, and Christmas trees in the Willamette and Hood River Valleys, Oregon; (5) apples and asparagus in the Yakima Valley, Washington; (6) cucumbers and apples in southwest Michigan; (7) apples in the Hudson Valley and Wayne County, New York and south central Pennsylvania; (8) peaches in Taylor and Peach Counties, Georgia and Edgefield, Saluda, and Spartanburg Counties, South Carolina; (9) winter vegetables in south Florida; and (10) winter vegetables in south Texas. Reports from these case studies appear in Appendix I.

3 Public workshops with invited experts were held on the following subjects: (1) European and Canadian agricultural worker programs; (2) the need for and structure of U.S. foreign worker programs; (3) farmworker services of the U.S. Employment Service; (4) labor organizing in agriculture; (5) farm labor contracting; and (6) the international competitiveness of U.S. agriculture. Transcripts of and reports prepared for these workshops appear in Appendix II.

4 Public hearings were held in major agricultural communities in Hillsboro, Oregon; Visalia and the Coachella Valley, California; Raleigh, North Carolina; Weslaco, Texas; West Palm Beach and Belle Glade, Florida; Grand Rapids, Michigan; Rochester, New York; and Las Cruces, New Mexico. Witnesses from both labor and industry testified. Formal testimony was followed by an open microphone. In addition, interested participants were provided with the opportunity to submit a written statement for the record. Transcripts of the hearings and submitted testimony appear in Appendix II.

5 The Commission on Agricultural Worker's sister Commission, the Commission for the Study of International Migration and Cooperative Economic Development (Section 601) issued a report in July 1990, in response to its mandate to "examine the conditions in Mexico and such other sending countries which contribute to unauthorized migration to the United States and [explore] mutually beneficial, reciprocal trade and investment programs to alleviate such conditions."

EXECUTIVE SUMMARY

INTRODUCTION

The Commission on Agricultural Workers was authorized on November 6, 1986 by section 304 of Public Law 99-603, the Immigration Reform and Control Act (IRCA). Its purpose was to study the effects of the Act on the agricultural industry, with special emphasis on perishable crop production.

IRCA was primarily a measure to control illegal immigration through a system of penalties against employers who hired unauthorized workers. The Act also included special provisions to legalize some aliens present in the United States prior to 1982. The Act gave agriculture additional time to adjust to a fully legal work force. These provisions included a program to legalize a large portion of the existing agricultural work force — the Special Agricultural Worker (SAW) program, and the Replenishment Agricultural Worker (RAW) program that could admit additional agricultural workers during a four-year period beginning in 1989 if farm labor shortages developed. The Commission on Agricultural Workers was asked to conduct an overall evaluation of the SAW provisions and review specific questions regarding the legislation's impact on agriculture and the overall agricultural labor market.

Had employer sanctions succeeded in preventing the employment of unauthorized workers in agriculture, a more stable work force could have been expected. This, in turn, could have led to several possibilities: higher real wages and improved overall working conditions for domestic farmworkers (including SAWs); improvements in personnel practices; increased mechanization; decreased fruit, vegetable, and horticultural specialty (FVH) production; higher food prices for consumers; an efficient job matching system; increased use of the nonimmigrant H-2A program; and implementation of the probationary immigrant RAW program. On a national level, none of these has occurred, due primarily to an oversupply of labor resulting from continuing illegal immigration and a stagnant economy with little job growth in competing sectors.

The SAW program legalized many more farmworkers than expected, providing employers with access to a large, legal work force. No labor short-

ages that would have triggered implementation of the RAW program have occurred. Those who had hoped that IRCA would lead to a tighter labor market, with resulting improvements in wages and working conditions for farmworkers, have been disappointed. Despite this lack of direct impact on the agricultural system, however, IRCA has had important unanticipated and indirect effects on the U.S. farm labor market.

The Commission concludes that what perishable crop agriculture needs most is a more stable labor market. Many of its recommendations are intended to bring the sector closer to such stability. Stabilization of the labor force, and the adoption of more effective labor management techniques, will allow the agricultural industry to best compete in the global marketplace.

FINDINGS

Six years after IRCA was signed into law, the problems within the system of agricultural labor continue to exist. Since the mid-1980s, the living and working conditions of hired farmworkers have changed, but seldom improved. Nominal wages have increased, partially as a result of mandated changes in the federal, and in some cases state, minimum wage, but these increases have seldom kept pace with inflation, causing real wages to fall. In some areas, piece rates have risen, while in others they have remained the same or have been replaced by hourly wages. In most areas, an increasing number of newly arriving, unauthorized workers compete for available jobs, reducing the number of work hours available to all harvest workers and contributing to lower annual earnings. Increasing numbers of workers are covered by state-mandated unemployment insurance, but employers are less likely to provide such nonmandated benefits as housing, meals, and transportation.

Despite the fact that some FVH producers face economic losses, there has been a significant expansion of fruit, vegetable, and horticultural specialty production in the United States, an increase in cash receipts from that production, and a rise in farmland prices.

Rather than a stabilization of the labor supply, there is a general oversupply of farm labor nationwide. Unauthorized immigrants continue to cross the southern border in large numbers. While the majority find employment in industries other than agriculture, a significant number join the farm labor force. With fraudulent documents easily available, employer sanctions have been largely ineffective. As such, IRCA has not provided an economic impetus for the changes in the personnel practices of agricultural employers that could lead to improvements in the lives of seasonal farmworkers. After a slight improvement in 1985, the decline in real wages and annual earnings for farmworkers that began in 1978 has continued.

The continuing influx of unauthorized workers causes problems for both farm employers and farmworkers. On the one hand, the surplus of labor in most areas militates against improvements in wages and working conditions for seasonal agricultural employees. On the other hand, unauthorized workers are continuing to find employment, aided by the widespread availability, sophistication, and low cost of fraudulent documents. While it is unclear whether stemming the supply of new unauthorized immigrants, or even removing unauthorized workers from the current labor supply, would lead to labor shortages, illegal immigration has a negative effect on workers who are faced with increasing job competition and employers who are concerned about their continuing access to a legal labor supply.

An overall evaluation of the SAW provisions of IRCA

Notwithstanding fraud in the SAW program and the paucity of reliable data on the size of the perishable crop work force, it appears that the number of undocumented workers who had worked in seasonal agricultural services prior to IRCA was generally underestimated. However, the majority of SAW-eligible workers have indeed gained legal status. This has added substantially to the number of legally available agricultural workers. Nevertheless, due to the continuing participation of unauthorized workers in the farm labor market, the

objective of a legal work force has not been achieved and agricultural employers still face the possibility of having needed workers removed from their fields at critical times. Likewise, the labor surpluses, due in large part to the presence of unauthorized workers, have frustrated the development of a stable farm labor market with improved wages and working conditions.

In retrospect, the concept of a worker-specific and industry-specific legalization program was fundamentally flawed. It invited fraud, posed difficult definitional problems regarding who should or should not be eligible, and ignored the longstanding priority of U.S. immigration policy favoring the unification of families.

The statutory provisions in the RAW program for determining the existence of a national labor shortage were compromised by the inclusion of hypothetical questions. The findings of "no labor shortages" in each of the 4 program years, however, comport with all other evidence. Furthermore, although it was never implemented, the RAW program would not have been an efficient vehicle for dealing with local or regional agricultural labor shortages.

The extent to which the agricultural industry relies on the employment of a temporary work force

Due to its seasonal nature and its reliance on a biological production process, much of labor-intensive agriculture consists of a succession of short-term tasks. With the extent of specialization that characterizes the industry of fruit, vegetable, and horticultural specialty production, the practice is that many workers move not only from task to task but from employer to employer to make a living.

The impact of the SAW provisions on the adequacy of the supply of agricultural labor

Through IRCA, nearly 1.3 million foreign workers applied for legal resident status under the SAW program, a number that far exceeded expectations. To date, over one million of these applications have been approved. Most of these applicants were

young Mexican men. Although the SAW program's eligibility criteria required a history of field work in perishable commodities, there is no way to know what proportion of applicants were actively engaged in such work at the time their applications were approved. The U.S. Department of Labor (USDOL) National Agricultural Workers Survey (NAWS) estimates that in 1990, 29 percent of the perishable crop work force and 39 percent of the harvest work force was composed of SAWs. Commission-sponsored case studies conducted in 1990 and 1991 found between 28 and 77 percent of the harvest labor work force in different regions and commodities was made up of SAWs. While the majority of SAWs made application in California and other home-base states, newly legalized workers are increasingly dispersing into farm labor markets throughout the Northeast and Midwest.

The impact of the general legalization program on the supply of agricultural labor

There were nearly 70,000 applicants under the general legalization program of IRCA who listed their occupation at the time of filing as "farming, forestry and fishing." We do not know how many of those were employed in agriculture, nor how many other legalization applicants had worked in farming at some other time of the year. The NAWS indicates that about 3 percent of the 1990 seasonal agricultural services (SAS) work force was made up of general legalization recipients.

One of the impacts of both the SAW and general legalization programs has been to facilitate the legalized farmworkers' continued participation in the farm labor force. Legalization has led to increased settlement in the United States, thus improving the year-round availability of farmworkers. Legalization has also facilitated the process of cyclical migration, whereby workers return each year to their homes in other countries.

The impact of legalization on the supply of labor cannot be isolated from that of the presence of large numbers of post-IRCA unauthorized workers. Settlement in the United States has increased the number of "anchor households" whose presence stimulates both the entry and employment of future

authorized and unauthorized immigrants. At the same time, as in the past, increased cyclical migration has served to encourage additional unauthorized migrants to travel north in search of work.

The impact of employer sanctions on the supply of agricultural labor

Employer sanctions have been ineffective at preventing, and have not significantly curtailed, the employment of unauthorized workers in agriculture. The number of unauthorized workers, most of whom are young men traveling alone, is significant and growing. Equipped with the easily available fraudulent work-eligibility documents, they compete for entry-level jobs in the harvest labor work force.

A consequence of the failure of employer sanctions to significantly reduce the supply of unauthorized immigrants in U.S. agriculture is the diffusion of unauthorized farmworkers from such traditional immigrant settlement areas as California and Florida to the Midwest and Eastern Seaboard in search of jobs. Farm labor contractors often serve to recruit and transport workers from the traditional settlement areas into new parts of the country.

The extent to which SAWs have continued to work in seasonal agriculture

A large proportion of SAWs who were identified as working within agriculture after obtaining legal status appear to continue to work in seasonal agricultural services.

These SAWs' continuing participation in the farm labor force is the result of limited English-speaking ability, low educational levels, personal preferences, and relatively low wages and high unemployment rates in other industries. In the six years since the enactment of IRCA, the poor state of the U.S. economy has curtailed SAWs' movement out of agriculture.

Generally, worker decisions regarding post-IRCA work patterns and employment options are strongly affected by such factors as family considerations, length of experience in the U.S. labor market, and occupational history. As a result, there is

no typical post-IRCA work adaptation, but instead a broad spectrum of working and living patterns. However, as the work force ages and gains experience in the United States, gradual attrition of SAWs from agricultural work can be expected.

The adequacy of the supply of agricultural labor in the United States and the need to further supplement this supply with foreign labor

Despite an expanding perishable crop industry, the national supply of agricultural labor has been more than adequate for the past several years. In many parts of the country, however, a significant portion of the harvest work force is unauthorized. The majority in this latter group have entered the agricultural labor force since 1986.

With the existing agricultural labor supply, there is currently no need to supplement the farm work force with additional foreign workers beyond those authorized through the existing H-2A program. However, questions regarding the long-term adequacy of the agricultural labor supply persist. For example, more effective enforcement of employer sanctions would affect the supply of farm labor and could necessitate access to additional legal foreign workers.

The impact of the SAW provisions on the wages of domestic farmworkers

In general, agricultural wages have stagnated in the post-IRCA period while average nominal wage rates have risen. Most farmworkers' real (i.e. adjusted for inflation) hourly, weekly, and annual earnings have fallen. The discrepancy in agricultural wage rates between Western growers, who prior to 1986 paid higher wages than eastern growers, has been reduced. This is the result of western growers having held wages steady while nominal wages paid by eastern growers have risen — in part due to increases in the federal minimum wage.

Earnings for western seasonal harvest laborers, particularly those hired through farm labor contractors, have seen the sharpest decline. Any possibility for a general increase in farm labor earnings has

been offset by the presence of large numbers of unauthorized workers, and the general economic downturn affecting all industries. It is thus impossible to determine the precise effect of the SAW program on wages.

The impact of the SAW provisions on the working conditions of domestic farmworkers

The SAW program has had little direct impact on working conditions for farmworkers. Since IRCA, labor surpluses have contributed to stagnating and sometimes deteriorating conditions, particularly for harvest workers. There has also been increased crowding in farmworker settlement areas. Because most employers have had no difficulty attracting and retaining workers, there has been little incentive for them to increase benefits or generally improve working conditions for farmworkers. The abundance of labor, increased internal migration of SAWs, and the increase in men traveling alone, combined with higher building costs, increased regulations, and community resistance, have also reduced incentives for agricultural employers to upgrade and expand farmworker housing.

The impact of the SAW provisions on the ability of farmworkers to organize

There are fewer agricultural workers under union contract now than when IRCA became law. While there is evidence that legal status has allowed some workers to become more vocal in attempts to improve their job conditions, labor surpluses have generally interfered with workers' ability to organize. Even prior to IRCA, this ability had been curtailed by changes in the general economy, the political climate, and by management decisions affecting the agricultural work place — such as the increasing reliance on farm labor contractors in California.

The extent to which citizen and permanent resident farmworkers are unemployed and underemployed

Virtually all groups of legally authorized farmworkers (citizens, pre-IRCA permanent resident aliens, and IRCA-legalized resident aliens) who hold seasonal jobs are unemployed at some point during the course of the year. The extent of unemployment and underemployment is influenced strongly by the supply of labor, crop size and prices, and the availability and quality of mechanisms for matching workers with jobs.

Since IRCA, largely because of labor surpluses, unemployment rates among farmworkers have remained high, particularly during the off-peak season. Furthermore, there is no effective job placement system. Therefore, there is a great deal of variance in terms of an individual's access to work. Such access ultimately depends on the strength of an individual farmworker's connections. Farmworkers' various economic strategies often include periods of nonfarm work, reliance on unemployment insurance, and time spent in their home countries. Workers, however, would prefer to have access to more work.

The extent to which agricultural employers' problems in securing labor are related to the lack of modern labor management techniques

The abundance of labor has meant that most agricultural employers are not experiencing problems in securing adequate supplies of labor. As a result, there have been few incentives for producers to adopt modern labor management practices.

Modern labor management techniques in agriculture would include the adoption of benefit packages, seniority systems, mechanisms for dispute settlement, and techniques to reduce the size of the work force and increase the efficiency and amount of work available per worker. Adoption of such practices would allow employers to better utilize the local, domestic work force. Instead of adopting such techniques to stabilize the labor force, many agricultural producers are turning to labor market

intermediaries. Quality labor management in recruitment, compensation and retention, which would have become necessary in tighter labor supply situations, would result directly in increased employment stability and lower rates of turnover.

Whether certain geographic regions need special programs or provisions to meet their unique needs for agricultural labor

There is a great deal of variation among regions in the need for labor and the reliance on workers who migrate. Climate, cropping patterns, the size and structure of farms, and proximity to labor sources are attributes which distinguish one region from another.

Since IRCA, growers generally have been able to make planting decisions and assume that workers would be available. However, some regions, or, more accurately, individual producers within a region, may experience spot labor shortages. To respond to these situations, better systems for recruiting and training workers, transporting them to their jobs, and providing housing are necessary. When these efforts are ineffective, utilization of the H-2A program can be relied upon to prevent economic loss.

The impact of the SAW provisions on the ability of crops harvested in the United States to compete in international markets

The SAW provisions have had no direct impact on the ability of crops harvested in the United States to compete in international markets. With the current oversupply of labor, producers have experienced no labor-induced increases in production costs. The export of labor-intensive, perishable commodities reached an all-time high in 1991.

In the long run, however, the short-term positive impacts of a labor surplus on the industry's export performance may be offset by their tendency to dampen the industry's commitment to technological and organizational improvements that could increase production efficiency. The ability of the U.S. fruit, vegetable, and horticultural specialty industry to compete with other nations, particularly Mexico,

stems from its advantages of a highly-developed infrastructure, high quality produce, and the ability to offset higher labor costs with greater productivity.

RECOMMENDATIONS

Many of the problems in the farm labor market can be alleviated by a more structured system. Such a system would be characterized by more effective recruiting and job matching, reduced worker turnover and higher retention rates, a more dependable labor supply, institutionalized opportunities for training and advancement, and a better balance between labor supply and labor demand. Such a system would further address the needs of seasonal farmworkers through higher earnings, and the needs of agricultural employers through increased productivity and decreased uncertainty over labor supply. Market mechanisms would provide the incentives that would ultimately lead to and maintain this stabilization.

A stable and reliable work force is critical to the long-term health of the industry and would thus provide clear benefits to both workers and employers. One element necessary for achieving this goal is curtailing the employment of unauthorized workers in agriculture through the effective enforcement of immigration controls. A second is an effective system for recruiting agricultural workers. Farm labor contractors, who currently serve this matching function, must be more effectively regulated. In addition, alternatives to the use of contractors must be developed. These alternatives could be implemented by the government or through the private sector, with either worker or grower associations taking over the function of matching workers with jobs.

The agricultural worker provisions of IRCA were supported by both industry and labor groups. This indicates that common interests between these two traditional adversaries can be found. It is in the spirit of finding such common ground for the benefit of labor, the industry, and the public that the Commission has reviewed its findings and developed the following recommendations.

Any changes in various federal programs called for in this report should be achieved by reallocation

of existing resources and not from increased federal fees or taxes. The Commission's recommendations can and should be realized through a reprioritization and reexamination of the efficiency of current programs.

SAW/RAW as Immigration Policy

In crafting the agricultural compromise that allowed IRCA to pass, Congress created an industry- and worker-specific legalization program of unprecedented scale. It proved to be extremely difficult to implement the SAW program and to control for fraud within it. By legalizing workers but not their families, the Special Agricultural Worker (SAW) program deviated from the long-standing immigration policy of promoting family unity and contributed to the growing pool of immigrants who illegally enter the United States. Furthermore, special treatment for an industry requires difficult definitional distinctions to determine who should and who should not be eligible for the benefits of legalization.

Worker-specific and/or industry-specific legalization programs as contained in IRCA should not be the basis of future immigration policy.

The Implementation of IRCA

The Commission's evaluation of the SAW program leads it to conclude that in its implementation, some of the program parameters regarding worker eligibility for legalization were unduly restrictive. Specifically, the Commission believes that the exclusion of sugar cane and sod workers from SAW program eligibility was unwarranted. Field work and workers in these two commodities are close enough to other qualifying work and workers to have warranted inclusion within the SAW legalization provisions of IRCA. The exclusion of sugar cane and sod workers is relatively easy to rectify inasmuch as these workers filed applications for SAW status during the course of litigation. Notwithstanding a recent appellate court decision, the legal status of sod workers should not be rescinded

and the applications of sugar cane workers now in the Government's possession should be adjudicated.

Congress should amend the Immigration Reform and Control Act to specifically include field work in sugar cane and sod within the definition of seasonal agricultural services.

The Effects of IRCA on the Supply of Hired Agricultural Workers

Attacking the Pull Factors

A major factor contributing to the current oversupply of agricultural workers in the United States is continuing illegal immigration. This migration consists of family members and friends of those legalized under IRCA and others who are seeking work or who have been recruited. Increased monitoring of the southern border has not stopped the well-established immigration pathways between Mexico and the United States. With employer sanctions failing to curtail the employment of large numbers of these unauthorized immigrants, unauthorized entrants have continued to supplement the pool of available workers in the United States.

As long as the employment of unauthorized workers continues, it will be difficult to have a structured and stable agricultural labor market. Employers will continue to be threatened with the potential loss of a portion of their work force, while workers will suffer the consequences of stagnating wages and deteriorating working conditions.

Illegal immigration must be curtailed. This should be accomplished with more effective border controls, better internal apprehension mechanisms, and enhanced enforcement of employer sanctions. The U.S. government should also develop a better employment eligibility and identification system, including a fraud-proof work authorization document for all persons legally authorized to work in the United States, so that employer sanctions can more effectively deter the employment of unauthorized workers.

If these immigration control mechanisms ultimately prove ineffective, after being given ample time for implementation, alternatives to employer sanctions should be explored.

Attacking the Push Factors

In addition to the Commission on Agricultural Workers, IRCA established a Commission for the Study of International Migration and Cooperative Economic Development. The latter Commission was asked to explore measures that might mitigate migration pressures within the sending countries. Focusing on the principal reason people migrate, the lack of adequate economic opportunities at home, it recommended various ways to stimulate economic growth in developing countries.

The Commission on Agricultural Workers agrees with its sister Commission on the need for cooperative efforts that encourage economic development.

Supplementing the Labor Force

An important part of the mandate of the Commission on Agricultural Workers is the question of whether the domestic agricultural labor force should be supplemented with legal foreign workers during periods of labor shortages. The authors of IRCA sought to create statutory mechanisms that would respond to a shrinking agricultural labor supply. The RAW program was one of those mechanisms. Streamlining and continuing the H-2A program was the other.

The RAW program was designed specifically to supplement the farm labor force in the event of a worker shortage as U.S. perishable crop agriculture was adjusting to the new circumstances IRCA was expected to bring about. However, with the failure of immigration control efforts, the projected tightening of the labor supply, with concomitant changes in labor-intensive agriculture, has not materialized. Nor does the Commission believe that this situation will change in the near future.

Neither an extension of the RAW program nor any new supplementary foreign worker programs are warranted at this time. However, adequate labor supply-and-demand statistical programs must be continued and an ongoing analysis performed to provide a basis for immediate action by Congress and/or the Administration, should future agricultural labor shortages develop.

By "immediate action," the Commission means whatever measures may be necessary to avert crop losses due to a shortage of labor, without weakening protections for domestic workers. Such measures could include the effective recruitment of domestic, including Puerto Rican, workers through cooperative efforts between private and public sector agencies (including unions), and the importation of legal foreign workers.

Accurate determinations of the adequacy of the agricultural labor supply are a critical prerequisite to successful responses to crises.

The U.S. Departments of Labor and Agriculture should continue to coordinate efforts to determine the adequacy of the agricultural labor supply, including the proportion of legally authorized workers. This information should identify possible agricultural labor shortages and the need for any new supplemental foreign agricultural worker program. These findings should be reported to Congress annually.

The Department of Labor should continue to sponsor research on farmworkers and their evolving migration patterns, both within the United States and between the United States and immigrant-sending countries. The Department should issue an annual report on the status of U.S. farmworkers.

The Commission recognizes that there is an oversupply of workers in most agricultural labor markets. Yet, there continue to be instances of crop-specific local labor shortages. This indicates that the supply of workers is not coordinated well-enough with the demand for workers. This mismatch encourages some employers in some areas

to rely on the U.S. Department of Labor-administered H-2A program.

The H-2A program has been the target of both criticism and litigation. Many growers feel that the H-2A procedures are too cumbersome to respond to an emergency situation in a timely fashion. In testimony before the Commission, they argued that the complicated procedures and costs involved, particularly the need to provide worker housing, make the program prohibitively expensive. In view of the criticism of and the litigation surrounding the current H-2A program, its provisions should be reviewed.

Congress should reexamine the H-2 provisions of the Immigration and Nationality Act with the goal of having the same program available to agricultural and nonagricultural employers, both in law and regulation, for the importation of temporary nonimmigrant workers.

Matching Agricultural Workers with Agricultural Jobs

The fruit, vegetable, and horticultural specialty industry will continue to rely on a seasonal work force for many tasks. The seasonal nature of the demand means that many farmworkers are unable to find enough work during the course of the year to be economically self-sufficient. Resolving this dilemma is a precondition not only for the survival of the economically at-risk population, but the long term viability of the industry.

The U.S. Employment Service

Individual agricultural employers will continue to need seasonal workers for relatively short periods of time. The coordination between available jobs and available workers, however, can be improved. The U.S. Department of Labor's Employment Service currently plays a negligible role in farm placement — despite a statutory mandate to do so. The Commission is sensitive to the relatively high cost of offering placement services for short-term jobs and is cognizant of the mission conflict inherent in the Department of Labor's dual mandate of enforcing

work place and housing standards while soliciting jobs for workers. Nonetheless, the Commission urges the Department to consider redirecting its efforts to utilize the resources devoted to the agricultural sector more effectively.

The Department of Labor's U.S. Employment Service should develop a new and/or alternative system for recruiting qualified farm labor to meet agriculture's constantly changing labor needs. The focus of this initiative should be to facilitate the efficient movement of farmworkers from one crop task or job to the next, including the use of job itineraries or annual worker plans. Special funding provisions should be made for the development of this program.

The U.S. Employment Service should expand efforts to distribute information to farmworkers regarding labor needs by crop and area, including updates reflecting rapidly changing conditions. Outreach efforts should include information on the availability of housing for arriving workers.

The Department of Labor should consider separating the job matching function of the U.S. Employment Service from its non-labor exchange functions.

Congress should establish a task force to oversee implementation of the above recommendations.

Farm Labor Contractors

In recent years, farm labor contractors (FLCs) increasingly have filled the role of matching seasonal workers with jobs. Concurrently, the extent to which the U.S. Employment Service performs this function has declined steadily. Workers employed by farm labor contractors generally receive lower wages and are employed under working conditions inferior to those offered to farmworkers hired by other agricultural employers.

Farmers who hire labor contractors can be held jointly liable for these contractors' violations of labor laws. Many times, however, there are special problems in collecting judgments against farm

labor contractors. FLCs, even when fully responsible for the actions resulting in judgments, are often unable to satisfy them. In cases of joint liability, the payment then falls on the fixed-site employer, or farmer. Furthermore, unlicensed farm labor contractors are thought to be more likely to violate protective labor statutes than licensed ones. The Commission believes that the regulatory system that controls farm labor contractors must undergo significant reforms.

Licensing for farm labor contractors should be conditioned on adequate bonding for the services provided.

Participation in and adequate completion of educational and training programs, and a testing procedure, should be a prerequisite to an individual being certified as a farm labor contractor.

Persons who knowingly use the services of an unlicensed farm labor contractor should be solely liable for any claim arising from any violation of the applicable federal protective labor statutes or regulations.

Despite specific legislation designed to regulate farm labor contractors, the laws and regulations that govern farm labor contracting have failed to adequately protect many farmworkers. At the same time, they have provoked much litigation. In the absence of collective bargaining agreements, there has been an increase in the use of farm labor contractors, particularly in California. In light of this trend, steps must be taken to better protect employers and employees. Regulation of labor contractors is another area in which the utility and efficacy of exceptional treatment for agriculture should be reconsidered.

The body of the federal statutes and regulations that govern contracting activities in the farm and non-farm labor markets should be reexamined to bring all contracting activities under a uniform federal system.

Managing Agricultural Labor

In addition to the farm labor market's organization problems, many individual labor-intensive farm operations continue to be characterized by organizational inefficiency. Worker dissatisfaction and turnover increase employer costs and reduce farmworker earnings. Mutual employer-worker benefits are possible through the adoption of modern labor management techniques. Yet, both managers and workers receive little training on how these might be accomplished.

The U.S. Department of Agriculture's Extension Service, the U.S. Department of Labor's Employment Service, and state agencies and universities should undertake a major effort to educate growers, packing house operators, farm labor contractors, workers, and worker organizations in the need for and benefits of improving labor management practices in agriculture. This effort should include encouraging appropriate state agencies and universities in those states with a high incidence of hired farm labor to employ advisors, teachers, and researchers with expertise in farm labor management. Research on the need for and benefits of good labor management in agriculture, and the development of training and teaching programs, including outreach programs, in modern labor management must be supported.

Differential Treatment of Hired Agricultural Workers

There are several areas of labor law where exceptional treatment for agriculture is no longer warranted and puts agricultural workers at a disadvantage compared to other workers. This dichotomy can also be confusing and costly to agricultural employers.

Unemployment Insurance

Seasonal agricultural workers are, by definition, employed for less than a full year. As a result, significant unemployment and underemployment among farmworkers is common — particularly within the fruit, vegetable, and horticultural specialty sector.

Continuing labor surpluses have contributed to even lower average annual earnings. It is thus essential that FVH farmworkers be placed under the full protection of unemployment insurance programs and that the differential coverage of farmworkers across the unemployment insurance programs of various states be eliminated.

Agricultural employees should be provided with federal/state unemployment insurance coverage that provides them with protection against unemployment comparable to that of other workers in the United States.

The Commission recognizes the difficulty of administering unemployment insurance programs when multiple employers are involved in a relatively short period of time, and believes that close monitoring would be necessary to ensure program integrity.

Workers' Compensation

An additional area requiring policy attention concerns access to workers' compensation benefits for agricultural workers. Agricultural employment remains one of the most hazardous occupations in the country. Yet, many farm employees are poorly served by the uneven coverage of hired agricultural workers under state workers' compensation statutes. This must be remedied.

Congress should encourage all states to provide Workers' Compensation Insurance coverage to agricultural employees comparable to that of other workers in the United States. Workers' Compensation should be the exclusive remedy for all U.S. employees.

A recent judicial decision in *Adams Fruit Company v. Barrett* may have a negative effect on the likelihood of states to include farmworkers within workers' compensation legislation. The court held that a state workers' compensation program does not serve as the exclusive remedy for injuries resulting from violations of the Migrant and Seasonal Agricultural Worker Protection Act. Ongoing

negotiations in Congress are attempting to address this possibility.

The Commission recognizes the difficulty of administering workers' compensation programs when multiple employers are involved in a relatively short period of time, and believes that close monitoring would be necessary to ensure program integrity.

The Right to Organize and Bargain Collectively

Farmworkers face special problems if they attempt to organize and bargain collectively in order to improve their working conditions. Effective organizing is made more difficult by the fact that farmworkers are essentially powerless, both in objective terms and relative to the agricultural employers who oppose organizing. This powerlessness is compounded by the explicit exclusion of agricultural employees from legislation designed to afford U.S. workers this basic right.

Farmworkers should be afforded the right to organize and bargain collectively, with appropriate protections provided to all parties.

Living Conditions for Hired Agricultural Workers

Housing

The scarcity of low-cost housing continues to disrupt the lives of many seasonal agricultural workers. Thus, a serious examination of the overall farm labor system cannot be complete without paying proper attention to the housing needs of farmworkers. Yet, those who try to address this problem, in addition to obtaining only seasonal returns on their investment, also face administrative problems and community resistance in their attempts to provide adequate low-cost housing for farmworkers. Few states have been eager to finance, much less operate, housing projects for seasonal farmworkers. The result is that workers live where they can — many in overcrowded, substandard units, temporary camps, or with no shelter whatsoever. The Commission believes that housing seasonal farmworkers is a critical step to developing a stable and committed labor

force. Housing must thus be addressed more realistically and effectively. A necessary first step in this process is a reassessment of the federal government's role in supporting farmworker housing.

The Farmers' Home Administration, as well as any other agencies involved in providing funds for farmworker housing, should review their current housing programs to facilitate and expand funding to provide publicly and privately constructed and/or rehabilitated housing for agricultural workers.

Federal and state standards for farmworker housing should be reviewed to allow more flexibility in design and construction of conceptually different seasonal farmworker housing which responds to the needs of workers and is economically viable. This could take the form of in-transit camp sites, trailer camps, or direct housing subsidies to farmworkers. Federal and state funds should be provided for such construction and assistance.

Services to Farmworker Children

The conditions in which many children of seasonal farmworkers live is of critical concern to the Commission. An unstable child care environment, and, at best, intermittent access to health care and educational opportunities place an unjust burden on these children. Between fiscal years 1988 and 1992, federal funding for migrant health, education and day care programs increased 28 percent, yet many children remain unserved and most children are at risk.

Providing adequate services for farmworker children must take into account the mobility of the parents, language problems, and other elements that are unique to the farmworker population.

Federal, state, and local government programs and policies should ensure that the children of migrant and seasonal farmworkers are provided the same opportunities for health care, education, day care, and child development as are provided to the children of other workers in the United States.

Coordinating Farmworker Service Programs

A 1992 report by the Administrative Conference of the United States, prepared at the request of the National Commission on Migrant Education, addressed the problem of regulatory barriers to coordinating federal programs that provide benefits to migrant and seasonal farmworkers.

The Commission on Agricultural Workers endorses the recommendations of the Administrative Conference to ensure the efficient and effective delivery of services to farmworkers and their dependents by improving the coordination of farmworker programs at the federal, state, and local levels. A better data collection system could help to achieve these goals.

An interagency coordinating council on migrant and seasonal farmworker programs should be established to strengthen national coordination of these service programs. The Council would be charged with identifying specific coordination tasks to be accomplished, in most cases under the primary responsibility of a designated lead agency.

A farmworker data base designed to meet the needs of federal agencies involved in designing and allocating resources at the local level for programs for migrant and seasonal farmworkers should be created. This data base should be developed by a multi-agency federal group representing the various farmworker programs.

Within the President's budget, there should be an ongoing review of all programs that expend funds for delivery of services and enforcement of protective statutes for farmworkers and their children to determine whether these programs are effectively meeting farmworker needs.

Enforcement of Farmworker Protective Statutes

Enactment of the above recommendations would help stabilize the farm labor market. However, it is clear that a sustained commitment to enforce protective legislation for farmworkers is also essential. The Commission was made aware of numerous violations of worker protective statutes in both its research and hearings. Clearly, this must stop.

The enforcement of protective statutes for farmworkers should be made more effective, and should be coordinated within the federal enforcement agencies and between responsible federal and state enforcement agencies. When it is apparent that an agency has failed to properly interpret, enforce and apply laws and regulations assigned to it for enforcement, and an agricultural employer has relied upon that agency's interpretation of those laws and regulations in the conduct of its business, then the agency and not the agricultural employer should be held legally responsible for any monetary damages, fines, and penalties arising therefrom. All laws related to farm labor should be uniformly enforced by the agencies concerned so that employers not in compliance do not gain an unfair competitive advantage over those employers in full compliance with the various laws and regulations.

The U.S. Department of Labor's Farm Labor Coordinated Enforcement Committee should play a leading role in the allocation and coordination of resources to effectively enforce agricultural labor standards. To this end, it should convene a special task force of industry, labor, and public representatives to conduct a comprehensive review of present U.S. Department of Labor enforcement policies and practices that affect farm labor contractors, farmworkers, and farmers, including enforcement strategies. This task force should direct enforcement toward those violations that endanger the health and safety of workers, while encouraging agencies to work with employers to correct the problems arising from other violations.

CONCLUSION

Congress charged the Commission with addressing issues specific to the effects of IRCA, but also to certain long-term concerns that surround agricultural labor in the United States. In addressing its mandate, the Commission identified certain significant trends which are changing the structure of agriculture. Increasing economies of scale in production and distribution have led to more levels of supervision, changing the relationship between employers and employees. The globalization of agriculture has allowed labor-intensive fruits, vegetables, and horticultural specialty products to be grown and distributed by countries whose wages are only a fraction of comparable U.S. wage costs. How FVH agriculture in the United States can remain competitive in the world market while affording a decent life for its workers was central to the theme of the Commission's discussions.

The Commission examined the farm labor market in the aftermath of a policy designed to reduce the number of people who worked and lived illegally in the United States, curb illegal immigration, and provide an adequate legal agricultural work force. While the SAW program was successful in legalizing large numbers of workers, ineffective enforcement of employer sanctions and inadequate border controls have curbed neither illegal immigration nor the employment of unauthorized workers in agriculture.

The 1986 law and its effects cannot be analyzed as if they occurred in a vacuum. The overall U.S. economy, consumer expectations of inexpensive yet high-quality fresh produce, changing patterns of agricultural production, the economic and political situation in immigrant-sending countries, and changing trade opportunities and challenges must all be taken into account. Furthermore, international migration must be understood as the social process it is. The strength of networks in continuing migration patterns and as a time-tested and preferred

method of worker recruitment has proven to be unyielding, despite expectations that changes in the legal framework would alter long-standing labor market dynamics.

There is currently an oversupply of agricultural workers at the national level. The attrition of newly legalized workers from agriculture has been much less rapid than expected. At the same time, illegal immigration has continued and the work force in many parts of the country now includes proportions of unauthorized workers that rival those of a decade ago. This is particularly clear in the case of the harvest work force. That work force has become increasingly "latinized" and more likely to be employed through farm labor contractors than in the pre-IRCA period. Because of the labor surplus, wages and working conditions for most hired farmworkers have remained relatively stagnant since the passage of IRCA. For many seasonal (particularly short-term) workers, real earnings and working conditions have deteriorated.

The response of the United States to competition from countries that pay even lower wages should be the development of a more structured and stable domestic agricultural labor market with increasingly productive workers. Industries must modernize to remain successful in the increasingly competitive international market place. Agriculture is no exception.

To assure its long-term competitive position, agriculture must improve its labor management practices. This report suggests ways to stabilize the labor force, improve productivity, and increase earnings for farmworkers through longer periods of employment.

In a fundamental way, IRCA's goal of controlling illegal immigration may be better served by such reforms. The prospect of employment is a magnet for unauthorized workers. To the extent that job opportunities are secured by legal workers in a more stable labor market, the pull factor for illegal immigration is reduced.

PART I — THE SETTING

BACKGROUND

In 1991, the United States produced more than \$28 billion of fruit, vegetable, and horticultural specialty (FVH) crops. This reflects a significant growth in the industry. During the 1980s, cash receipts for fruit and tree nuts increased by 42 percent; cash receipts for vegetables rose 58 percent; and receipts for greenhouse and nursery products, the fastest growing sector, increased by 138 percent (USDA 1991b). High levels of production, combined with sophisticated marketing and transportation systems, have long allowed FVH growers to

provide U.S. consumers with inexpensive, fresh produce year-round.

Controversy surrounding the availability of an adequate labor supply to support the agricultural industry has accompanied this growth. As the need for hired farm labor continues, so does the controversy. Despite repeated predictions to the contrary, mechanization has not dramatically reduced the need for agricultural labor in the United States. In fact, the decades-long decline in the number of hired farmworkers leveled off during the 1970s. The Commission estimates the current number of hired farmworkers to be approximately 2.5 million (Box 1). The economic

Box 1 — How Many Farmworkers Are There?

The government carefully tracks agriculture's commodities each step of the way from field to retail outlet. Yet there is no national survey which accurately counts the people that the industry employs.

The number of hired farmworkers in the United States has been the subject of conjecture for years. According to the U.S. Department of Agriculture's Farm Labor Survey, 1,106,000 hired farmworkers were employed in July 1990 (the largest number of the four counts taken that year). Of these, 650,000 worked for at least 150 days, and 456,000 worked less than 150 days. These numbers are based on employer reports of workers actually hired, and for this reason, and the fact that the survey does not adequately capture workers hired through farm labor contractors, are believed by most observers of farm labor to be low.

The U.S. Department of Health and Human Services, through its Atlas of State Profiles which estimates the number of migrant and seasonal farmworkers and members of their families, reports that there were more than 4.1 million migrant and seasonal farmworkers and their dependents in 41 states and Puerto Rico between 1987 and 1989.

The decennial Census of Population counts the number of people who report farm work as their occupation during the last week in March of that year. While a

comprehensive national survey, the Census is not particularly adept at counting farmworkers. Many "farmworkers" are not working actively in agriculture in March. In addition, farmworkers are likely to be seriously undercounted due to their housing patterns, mobility, and limited English ability. In 1990, the Census counted 759,669 farmworkers; the USDA count of hired farmworkers in July of that same year was 1,106,000.

The Current Population Survey counts those employed in agriculture each month. In 1991, it reported an annual average of 1,253,000 wage and salary workers in Agriculture and Related Occupations. This figure excluded farmers and farm managers. Of these, 563,000 were listed as farmworkers.

A final source of data available for some states is unemployment insurance reports. California, which has the most inclusive coverage of all states, reported an average annual employment of 347,401 crop, livestock, and farm agricultural service workers in 1990. According to USDA, the annual average employment on farms and ranches in California that year was 128,000.

Given the fact that there are significantly more workers than there are jobs, a reasonable estimate would be that there are approximately 2.5 million hired farmworkers in the United States.

importance of labor-intensive agriculture clearly demands that the industry have access to an adequate and stable labor supply. At the same time, continued access hinges on farmworkers being able to achieve a standard of living that will allow them to continue in that occupation.

SEASONAL AGRICULTURAL PRODUCTION IN THE UNITED STATES

Most hired farmworkers are employed in the fruit, vegetable, and horticultural specialty sector.¹ The sector's products are grown throughout the country. However, California dominates the industry in terms of acreage, production, and number of farmworkers.

The seasonal nature of FVH production defines the agricultural labor market. Peak labor demands challenge growers to find and hire enough workers to prune, tend, and harvest their crops in a timely manner. Such concerns loom larger, however, for northern farmers who are faced with short growing seasons and fewer available local workers. Seasonal farmworkers, in turn, are confronted with the task of trying to piece together enough hours and days of work to earn a living. Farmworkers who leave their homes in search of agricultural work face additional problems created by migration.

Federal and state governments participate actively in this system. They regulate and enforce farmworkers' wages and working conditions, but also support producers by attempting to match domestic workers with available jobs and supplementing the labor supply with additional foreign workers when it is deemed necessary.

The Growth of FVH Production

In 1987, the year after IRCA was enacted, the production of fruits, vegetables, and horticultural specialty crops represented only a small fraction of the agricultural industry — accounting for 7 percent of all farms and 13 percent of farm sales. Yet, FVH farms paid 40 percent of farm wages and hired most of the seasonal farmworkers (USDC 1989). Since 1987, the production of perishable commodities has continued to grow. Between 1987 and 1990, cash

receipts of fruits, vegetables, and horticultural specialty products nationwide increased 17 percent (USDA 1991b).

Agricultural producers face many difficult planning decisions. One of the most difficult is whether to plant a labor-intensive crop or one that can be mechanically produced and harvested. Most FVH crops are both labor- and risk-intensive. Production costs are high and, unlike in many other commodities, there are few government-sponsored price supports or safeguards. In addition, the market for many FVH commodities is volatile — making for enormous profits and losses. Yet, many growers of perishable commodities have expanded their operations, particularly in those states that allow for near year-round production — California and Florida.

The Structure of FVH Production

The business of growing FVH products has changed dramatically over the past few decades. The number of small entrepreneurs running independent farming operations for local marketing and distribution has shrunk. And while the majority of FVH farms continue to be classified as small, family-run operations (Box 2), large, corporate agribusinesses have increased their domination of the industry, accounting for the majority of acreage and production and employing most of the farmworkers.

At the same time, the industry itself is becoming vertically integrated. Packing houses and processing companies coordinate and control decisions ranging from the crop variety and timing of the planting to the final price a grower will receive. As a result, these larger farms and a maze of corporate

1 The agricultural provisions of the Immigration Reform and Control Act (IRCA) applied to workers in seasonal agricultural services (SAS). The Act defined seasonal agricultural services as "the performance of field work related to planting, cultural practices, cultivating, growing, and harvesting of fruits and vegetables of every kind and other perishable commodities" (Sec. 201(h)). This term was further defined by the U.S. Department of Agriculture specifically for IRCA, 7 CFR Part 1(d), to include work in practically all labor-intensive commodities except hay, silage, feed grains, and all work with animals. Sugar cane was also excluded. Despite this specific definition, IRCA was likely to affect those sectors employing the majority of seasonal workers, or FVH agriculture, most heavily. This likelihood, combined with the fact that agricultural statistics are not kept specifically for SAS, led the Commission to focus on FVH production in assessing the impacts of IRCA in agriculture.

Box 2 — What Is a Farm?

The Census of Agriculture first defined a farm in 1850. Since then, it has changed its criteria nine times. The current definition, used since 1974, is “any place from which \$1,000 or more of agricultural products were produced and sold or normally would have been sold during the census year.”

Such a broad definition necessarily includes many small, part-time operations, and even some back yard gardens where the owner operates a roadside stand. As a result, the vast majority of farm operations in the United States are small scale. This reinforces the myth of the importance and prevalence of the small, family farm in U.S. agriculture. Even with such an inclusive definition, however, the average size of a farm according to the 1987 census is 462 acres, with average sales of slightly over \$65,000. Farms with sales of \$500,000 or more (only 1.5 percent of all farms) account for over 38 percent of all farm sales.

The Census of Agriculture also collects data on land tenure or ownership patterns (full owners, part owners, tenants, and hired managers) and by the legal status of

the owner (sole proprietorship, partnership, and corporation). In 1969, the definition of “farm operator” was changed from referring to the person managing the farm operation on a daily basis, doing the farm work, or directly supervising such work, to the person in charge of the farm or ranch operation. “In charge” means the ability to control, by virtue of proprietorship alone, the organization and operation of a farm.

Thus, corporations and absentee farm owners became farm operators, and the category of farms operated by hired managers vanished. Classification by legal status is also somewhat misleading, as it is not cross-referenced with other structural features of farms. Thus, a farm designated as “sole proprietorship” (over 86 percent of all U.S. farms in 1987) which many assume to be a family farm, can be characterized by absentee ownership, use of a hired manager, and employment of large numbers of hired workers. In 1987, corporations owned 3 percent of U.S. farms, but produced 26 percent of the market value of agricultural products sold.

structures, government agencies, financial institutions, brokers, and attorneys shape individual growers’ business decisions.

With a largely immigrant labor force, capital and technology flowing across national boundaries, and global markets, FVH agriculture is increasingly an international operation. The internationalization of FVH agriculture has changed both the arena in which growers market their goods and the patterns of production. Transportation system improvements allow highly perishable commodities to be shipped routinely from Chilean fields to American supermarkets and from California ports to Pacific Rim countries. Improvements in storage and post-harvest handling techniques extend the time that harvested produce will remain fresh.²

Such advances, together with the current trend toward reducing trade barriers, make differing production costs between industrialized and develop-

ing countries critical in determining the financial viability of the FVH industry in the United States. The developed countries’ production advantages of advanced technology, well-developed infrastructure (e.g., water projects), crop quality, and improving yields have become less significant as U.S. multinational agribusinesses establish farms and processing plants around the world and use the U.S.-developed technologies and expertise in all their operations.

² These improvements include, for example, the development of controlled atmosphere storage that allows fresh apples to be kept for months rather than weeks, and the application of a ripening agent to tomatoes so that they can be picked and handled when green.

The Importance of Labor Costs

Labor costs play a crucial role in the decisions of multinational corporations to expand abroad further. In growing labor-intensive fruits, vegetables, and horticultural specialty products in the United States, labor can typically account for 20 to 35 percent of production costs, although figures between 40 and 50 percent are also possible. In their effort to control these costs, growers have come to rely on immigrants from third world countries who are willing to work in the United States for lower wages than are domestic workers. To supply this seasonal labor force, many employers utilize farm labor contractors (FLCs) who recruit, organize, supervise, and offer transportation and housing to an increasing proportion of the workers employed in seasonal FVH agriculture each year.

IMMIGRATION AND U.S. AGRICULTURE

U.S. farmers have long had access to foreign workers. African slaves and European and Asian immigrants provided labor in the Republic's first hundred years, while Mexican immigrants have contributed heavily to the agricultural labor pool since the turn of the century. Today, most seasonal agricultural work on U.S. FVH farms is accomplished by young men who were born in Mexico.³ The proportion of the agricultural labor force made up of unauthorized Mexican immigrants grew steadily from the early 1960s until the implementation of IRCA. Since then, it has again begun to increase.

Concern over the number of unauthorized immigrants entering, residing, and working in the United States is not confined to agriculture. Most estimates place the number of immigrants illegally in this country at fewer than 1 million in 1970 and increasing to between 2.5 and 3.5 million in 1980. By 1987, this estimate grew to between 4 and 5 million (The President's Comprehensive Triennial Report on Immigration 1989).⁴

Immigration Reform

As early as 1971, Congress held hearings on the problems of illegal immigration and the impact of unauthorized workers on the U.S. labor market. In subsequent years, the issue of undocumented immigration in the United States became the subject of increasing public concern. After various unsuccessful attempts to pass immigration control legislation, Congress created a Select Commission on Immigration and Refugee Policy (SCIRP) to review overall U.S. immigration policy. Among that Commission's principal recommendations were the sanctioning of employers who knowingly hired unauthorized workers and the legalization of many unauthorized immigrants (SCIRP 1981).

These two recommendations became the cornerstones of immigration reform during the 1980s, which culminated in the passage of the Immigration Reform and Control Act in the fall of 1986. The Act sought to reduce the flow of unauthorized immigrants into the United States by requiring employers to hire only authorized workers. Noncomplying employers who knowingly hire unauthorized workers are subject to substantial civil and criminal penalties.⁵ For those unauthorized immigrants who had a stake in this country as a result of their length of residence, IRCA provided an opportunity for legalization.⁶

3 The National Agricultural Workers Survey found that in 1990, 62 percent of SAS workers were foreign-born — 92 percent in Mexico. The median age of all SAS workers was 31 years (USDOL 1991a).

4 Estimates made by Commissioners of the Immigration and Naturalization Service (INS) regarding the number of illegal aliens in the United States have varied enormously. In 1972, the estimate was 1 million (Hill 1985). By 1975, the INS Commissioner was widely using an estimate of between 4 and 12 million (Chapman 1976). The next year, the same Commissioner reduced this estimated range to 6 to 8 million. By 1978, the INS estimate had dropped further, to 3 to 6 million. In 1985, the Commissioner determined that 6 million was the "median belief" (Washington Post 1985). By 1989, after the legalization programs of IRCA, the INS estimated that there were between 1.7 and 2.9 million illegal aliens in the United States.

5 Section 274 of the 1952 Immigration and Nationality Act had made it unlawful to willfully import, transport or harbor illegal aliens, yet specifically exempted employers from legal culpability for hiring such aliens. Section 101 of IRCA amended this section (Section 274A) to make it "unlawful for a person or other entity to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien."

6 Section 201 of IRCA provided for the "Adjustment of status of certain entrants before January 1, 1982, to that of persons admitted for lawful residence."

Employer Sanctions

An array of groups separated by wide philosophical chasms opposed employer sanctions. Many employers felt that sanctions unnecessarily and unfairly placed them in an enforcement role that more properly belonged to the government. They also balked at the paperwork requirements and the potential disruptions of their labor supply. Civil rights and religious groups focused on sanctions' potential for discrimination as employers might become reluctant to hire foreign looking or sounding employees. This community was also concerned about the effect that sanctions might have on the living and working conditions of those immigrants who remained in an undocumented status. Nevertheless, with the inclusion of anti-discrimination provisions, Congress opted for employer sanctions as the principal enforcement tool for reducing illegal immigration to the United States.

Legalization

Just as with sanctions, offering legal status to illegal immigrants engendered intense debate. Its coupling with employer sanctions, however, created the compromise that allowed IRCA's passage.

With regard to illegal labor in agriculture, Congress followed a precedent established during the Mexican Labor, or Bracero Program.⁷ At that time, Mexican farmworkers employed illegally in the United States were given preference over applicants for the program who had remained in Mexico and offered employment contracts as a means of legalizing their status. The 1951 President's Commission on Migratory Labor took strong exception to this approach, predicting that "if this process is continued, the wetbacks will almost certainly be encouraged to enter illegally in the hope of being legalized later on" (President's Commission on Migratory Labor 1951:6117).

Not surprisingly, the idea of legalizing formerly undocumented foreigners prompted an outcry against "rewarding" people who had broken the law at the expense of those potential immigrants who had "played fairly" by waiting in line for legal entry

into the United States, sometimes for years. These arguments were overshadowed, however, by the advantages of reclassifying as legal a large group of people who had been living and working in the United States without authorization.

ILLEGAL IMMIGRATION AND AGRICULTURE

Historically, farm work has been a first step into the U.S. labor market for many unauthorized immigrants who followed friends and relatives into this sector. Many of the estimated 100,000 to 300,000 unauthorized immigrants who settled in the United States each year between 1980 and 1986 (Woodrow and Passel 1990) were drawn to seasonal agricultural work.

The FVH sector has depended on a foreign-born labor force for most of the 20th century. Based on that dependence, and the special conditions that have always surrounded U.S. agriculture, IRCA contained several provisions that dealt specifically with farm labor.

IRCA's Solution

The Immigration Reform and Control Act's agricultural worker provisions emerged from a lengthy and intense process of negotiation and compromise. On the one hand, advocates for the agricultural industry wanted a temporary foreign worker program⁸ to provide growers with ready access to a legal work force which could be tapped when needed. On the other hand, advocates for agricultural workers vehemently opposed any such temporary program on the grounds that it would

7 The Bracero Program is the term commonly used to refer to the set of agreements between the U.S. and Mexican governments that allowed for the importation of contracted agricultural workers from Mexico into the United States. These agreements began August 4, 1942, and ended in January 1964, with a several-year interruption during which time there was no formal agreement.

8 Temporary foreign worker programs are nonimmigrant programs, such as the former Bracero or current H-2A and H-2B. Such programs allow workers to enter the United States for particular periods of time, with particular restrictions on the place and type of employment, while specifying certain protections for these workers. Once their contracts are fulfilled, workers must return to their home countries.

depress wages and displace U.S. workers. Labor groups also wanted to end the exploitation of undocumented workers by extending them legal status. The resulting compromise was to provide undocumented farmworkers with legal status and employers with access to a legal supply of workers.

Therefore, IRCA's agricultural provisions had three objectives: (1) ensure the agriculture industry an adequate supply of labor; (2) provide certain undocumented foreign farmworkers with legal immigrant status; and (3) streamline the existing nonimmigrant program while continuing to protect U.S. farmworkers from displacement and depression of wages and working conditions. The first two objectives were to be met by the Act's Special Agricultural Worker (SAW) provisions. The third was to be met by changes to the H-2 program.

The Agricultural Worker Provisions of IRCA

SAW Legalization

The SAW legalization program provided lawful residence for eligible farmworkers.⁹ It divided the eligible population into two groups. Group 1 was limited to workers who had "performed seasonal agricultural services in the United States for at least 90 man-days during each of the 12-month periods ending on May 1, 1984, 1985, and 1986" [Section 210(a)(2)(A)]. This group was capped at 350,000 applicants. Group 2 farmworkers who did not meet the 3-year requirement could still apply for legalization if they had "performed seasonal agricultural services in the United States for at least 90 man-days, during the 12-month period ending on May 1, 1986" [Section 210(a)(1)(B)]. There was no cap on group 2. In recognition of the unique, unstructured nature of agricultural labor, Congress required only 90 days of qualifying work in SAS for legalization.¹⁰ Group 1 SAWs were granted permanent resident status automatically after 1 year of temporary status. Group 2 SAWs were granted permanent status after 2 years.

Nearly 1.3 million workers applied for legalization through the SAW program — a number which surprised Congress, the Immigration and Naturali-

zation Service, and almost all observers of farm labor in the United States. In explanation, many observers assume that the number of undocumented workers in agriculture at the time of IRCA's enactment was underestimated, and that there were high rates of fraud in the SAW program as a result of the relative ease with which applications could be made. While some applications are still pending, to date, more than 1 million SAW applications have been approved.

Replenishment Agricultural Workers

In addition to legalizing many undocumented farmworkers, IRCA included a transitional foreign worker program for agriculture. As SAW workers were not required to remain in farm work subsequent to their application for legalization, the industry feared a large exodus of these workers into other occupations. To assuage those fears, Congress created a Replenishment Agricultural Worker (RAW) program that would provide a supply of legal foreign farmworkers for each of fiscal years 1990-1993 if the U.S. Departments of Labor and Agriculture agreed that there was an agricultural labor shortage. If it was determined that a shortage existed, RAW workers would be admitted and required to work in seasonal agricultural services, anywhere in the country, for a minimum of 90 days for each of the following 3 years. The numeric limitation on the admission of additional workers was to be determined each year, as was an actual shortage number. After working for the required 3-year period, RAWs would gain permanent resident status. If these workers then performed a minimum of 90 days of agricultural labor in each of 2 additional years, they would be eligible for naturalization. The RAW program is in its last year of authorization, and no RAW workers have been admitted.

9. Section 302 of IRCA provided for lawful residence for certain special agricultural workers. Section 210 defined the requirements and procedures for such adjustment of status.

10. In contrast, the general legalization program required entry before 1982 and proof of more than 5 years of continuous residence in the United States. It also required much stricter supporting evidentiary material.

However, in preparation for a quick response in the event of a labor shortage, the INS registered a pool of more than 600,000 potential Replenishment Agricultural Workers in 1990. Eighty-seven percent of those registrants were already in the United States.

H-2A Program

Prior to the enactment of IRCA, U.S. agricultural employers facing temporary domestic labor shortages could import foreign workers pursuant to the H-2 provisions of the 1952 Immigration and Nationality Act (Public Law 82-414). IRCA divided the H-2 program into two visa categories. The first, designated H-2A, allows employers to import foreign workers "to perform agricultural services or labor... of a temporary or seasonal nature" [Section 301(a)]. The other, designated H-2B, allows employers to import foreign workers to perform non-agricultural temporary or seasonal service or labor.

H-2A differs from the agricultural provisions of the former H-2 program in only minor ways. These include allowing for input from the Secretary of Agriculture, shortening the filing time required to 60 days, and expediting the procedures for appeals and reconsideration of labor certifications.

CONCLUSION

The production of fruits, vegetables, and horticultural specialty products in the United States is increasing. Because of the labor-intensive nature of such production, the availability of workers is of critical concern to the industry. With the enactment of IRCA, FVH agriculture could no longer legally rely on an undocumented work force and was thus expected to change its labor practices. Employers, however, continued to be concerned about the industry's economic competitiveness and viability if the newly legalized farmworkers (SAWs) left agricultural work in large numbers.¹¹ In turn, worker advocates hoped that IRCA would tighten the labor supply and lead to improved wages and working conditions for seasonal farmworkers. This is the policy and philosophical backdrop against which an assessment of the law's provisions must be understood.

¹¹ This concern was not unrealistic given the historic role of agricultural employment as a stepping-stone occupation for many newly arriving immigrants to the United States.

CHAPTER I

THE DEVELOPMENT OF U.S. AGRICULTURE

BACKGROUND

To understand U.S. agriculture, one must look at the interplay among patterns of land ownership, changing technologies with resulting fluctuations in the demand for farm labor, and government policies and programs affecting the industry.

The history of U.S. agriculture is a story of increasing productivity with a decreasing proportion of the population directly engaged in farming. In 1790, 90 percent of all persons gainfully employed were engaged in agriculture. By 1890, this proportion had dropped to 43 percent. By 1990, only 3 percent of the working population was employed on farms.

The number of farms in the United States reached a peak of approximately 6.5 million in the 1920s. Since then, there has been a continual decline. The last Census of Agriculture (1987) counted 2.1 million farms.

While the number of farms has declined, the average farm size has increased and agricultural productivity has soared. Recently, there has also been a growth in the share of farm work performed by hired workers instead of farm operators and their family members. In 1910, hired workers made up 25 percent of all those working on farms. By 1990, the proportion had risen slowly to the point that hired farmworkers comprised 31 percent of all those working on farms and contributed 36 percent of all hours worked — up from 26 percent in 1974 (USDA 1991f).

Farmers have also become less self-sufficient and increasingly dependent on specialized nonfarm services, supplies, and equipment. The number of people involved in providing agricultural inputs and services, processing, marketing, and selling agricultural goods has grown to almost 21 million (USDA 1991a). Technological innovations, from tractors to laser-leveling of fields, have increased the productivity of land and labor, while transportation and communication advances have facilitated the separation of production and consumption and the internationalization of the agricultural system.

While changes in technology have been paramount, the government has played a key role in

shaping the agricultural system. Before independence, the king of England bestowed large land grants to a few individuals and allowed poorer immigrants to establish their own small farms. Following independence, small-scale land ownership continued as a national ideal. Yet government policies in the ensuing 200 years allowed, and in many instances encouraged, large-scale control.¹

The federal government's involvement in agricultural production has included limiting production, setting commodity price floors, encouraging conservation measures, establishing marketing standards, purchasing surpluses, and establishing tariffs on imported agricultural goods.² The goal of each of these policies, if not always their effect, has been to protect the economic viability of agricultural producers (Luttrell 1989).

The government has also intervened to protect the economic viability of the agricultural industry by attempting to ensure producers a stable and plentiful labor supply. This has taken the form of matching domestic workers with jobs, importing additional temporary foreign workers, and/or legalizing undocumented members of the farm labor force.

The government's support of hired agricultural workers has been intermittent and less direct. When general labor legislation was first enacted, agricultural labor was consistently placed outside its reach. It was not until the 1960s that agricultural employers began to be included under such legislation, and the federal government, under pressure from farm labor advocates concerned over the economic welfare of the hired farm work force, started to fund

1. Concern over this tendency was noted as early as 1909 by the Country Life Commission, established by Theodore Roosevelt. The Commission stated that "[c]ertain landowners procure large areas of agricultural land in the most available location, sometimes by questionable methods, and hold it for speculative purposes. This not only withdraws the land itself from settlement, but in many cases prevents the development of an agricultural community. The smaller landowners are isolated and unable to establish their necessary institutions or to attract the attention of the market. The holding of large areas by one party tends to develop a system of tenantry and absentee farming. The whole development may be in the direction of social and economic ineffectiveness" (Country Life Commission 1909:30).

2. While targeted toward the overall agricultural industry, the first two interventions, limiting production and setting price floors, have not included fruit, vegetable, and horticultural specialty producers.

special farmworker programs in health, education, child care, job training, and legal services.

Changes in the structure of the industry, technology, and government policies and regulations mean that the business of farming is far different today than it was even 50 years ago. Nevertheless, certain factors have remained constant. Farm operators and family members continue to be the major source of labor for most farms in the United States, although this varies significantly by both commodity and region.³ Most importantly, in areas where the number of hired workers is substantially higher than the number of farm operators, workers continue to come from ethnic minority groups (Holt 1984).

THE EVOLUTION OF U.S. AGRICULTURE THROUGH THE 19TH CENTURY

Europeans immigrating to the United States in the 17th and 18th centuries worked as both farmers and agricultural laborers. Settling first in the Northeast, they produced what they needed to survive, helping each other during the harvest season. During the 19th century, as the population grew and settlers moved west, increasing amounts of land were brought under cultivation, following very much the same pattern. The 1790 census showed that 96 percent of the population was rural. While farmers were not counted as a separate category, most rural residents took advantage of the abundant land to establish small, diversified, family-run farms. Hired labor, when needed, was generally confined to one or two additional hands.

Regional Variation

The East Coast

On the Eastern Seaboard, early settlers needed to produce not only enough food to survive but a surplus to sell — both to purchase additional items and to pay English taxes. In New England, exports included furs, fish, and lumber; in the southern colonies of Virginia, Maryland, and the Carolinas, the most lucrative export was tobacco.

In the Southeast, the early pattern of agricultural settlement was different than in the Northeast and later the Midwest. While the majority of southern farmers were independent yeomen, by the 1800s, large landholdings dominated the economy. These plantations produced for the commercial, primarily export, market. At first, the large number of farmworkers needed to support these plantations were temporarily contracted or “indentured” servant immigrants from Europe. African slaves became increasingly important during the 18th century.

In the early 1800s, the invention of the cotton gin made that industry extremely profitable and opened new markets in the north and abroad, but lucrative, large-scale cotton plantations were short-lived. The plantation system, which depended on work-gangs of slaves, was virtually destroyed by the end of 1865. Following the end of the Civil War, reconstruction centered around rebuilding agriculture. With its high price, cotton continued to be the crop of choice. However, planters faced two “new” problems: (1) they had no money to plant crops or pay workers, and (2) they no longer had a captive work force (Fligstein 1986). They addressed the first problem by using their future cotton crop as collateral to obtain crop liens from northern or European banks. Their second problem, however, was more intractable. Newly freed blacks were reluctant to work in gang situations, preferring a system that provided them with more control over their own labor. Within a few years, sharecropping and similar forms of tenancy became dominant.

The resulting subdivision of plantation land increased the number of farms in the South, while decreasing their average size. Nevertheless, a reliance on cotton continued, as many subsistence farmers shifted to cotton production to take advantage of its high price. This led to tenant farmers producing for the market, rather than for their own food needs. As is common, overproduction led to reduced prices. The resulting economic hardships reinforced existing social relationships in agricul-

³ In general, there tends to be more hired than family workers in areas where fruits, vegetables, and horticultural specialties are the leading crops, as well as in those areas where farms and ranches historically have been larger than could be worked by a single family.

ture. Throughout the 19th century, the South continued to be an area of modified plantation culture and agriculture as landowners maintained control over those who worked the land.

The Midwest

Settlement of the areas west of the original 13 states progressed slowly. The 1830 census counted 13 million people in the United States, with all but 3 percent living east of the Mississippi River. By 1848, following the Louisiana Purchase and the acquisition of the Mexican Territory, the boundaries of the continental United States became essentially fixed. Each of the subsequent decades during the latter half of the 19th century saw waves of settlers pushing west and establishing relatively small farms, largely with the government's encouragement. With private land ownership continuing as an ideal, the historic 1862 Homestead Act represented the high point of government-assisted individual land ownership.⁴

With a climate conducive to both cereal and livestock production, the number of farms in the Midwest increased by 157 percent between 1850 and 1870 (USDC 1976). Rapid construction of railroads, improvement in farm machinery, and the shift from processing farm products in the home to city factories all contributed to transforming the relatively self-sufficient Midwest farmer of the early 1800s into a commercial entrepreneur. By the mid- to late-1800s, large-scale farmers in the Midwest began to specialize in wheat production, hiring newly arrived immigrant settlers who had been unable to make a living on their own farms.

The West

As in the Southeast, large land holdings were common during the early history of the West. In what became California, large landed estates were established during Spanish colonization. Many remained intact throughout the period of westward expansion.

Employing large crews of seasonal farmworkers, large-scale grain farming dominated California agriculture during the mid-1800s. During these years,

the structure of California agriculture was hotly debated in the political arena. So-called "bonanza farming" came under serious attack by "agrarians" who decried the "get-rich-quick" mentality of monopolistic landholders and large-scale farmers. Agrarians called instead for a system of small-scale fruit and vegetable farming that depended primarily on family labor (Daniel 1981). While the transformation from grain to fruit and vegetable production was well under way by the 1880s, it did not become the foundation of a small-scale family farming economy. Proving extremely profitable, fruit and vegetable farming was generally pursued on a highly specialized, commercial basis. This was made possible by the rapid market expansion resulting from the construction of railroad lines and the development of the refrigerated boxcar, as well as by improved methods of canning and drying fruits.

Native Americans, disillusioned gold miners, and other pioneers from the East provided the early sources of labor to California farmers. The earliest immigrant farmworkers in California were Chinese men, initially brought to the United States in the early 1800s to work on the transcontinental railroad and in the mines. With the railroads completed and the mines no longer profitable, many Chinese sought work on California's newly developed fruit and vegetable farms. By 1882, there were more than 130,000 Chinese in California, many working as agricultural laborers⁵ (Vogeler 1981).

The Chinese Exclusion Act of 1882 halted the flow of Chinese immigrant workers. Growers did not experience an immediate labor shortage, as the Chinese moved out of low-paying, hired farm labor only gradually and growers began to recruit abroad

4 The Homestead Act (12 Stat. 392) gave individuals 160 acres of land if they would establish a home, attempt to improve the land's productivity, and stay for 5 years. While this Act promoted family farm development, speculators and employers also used it to carve out large land holdings. Many settlers were encouraged to file homestead claims then turn them over to their employers (Havens 1986). The accumulation of large-scale land holdings was further assisted by the Swamp Lands Act of 1850 (9 Stat. 519) and the Desert Land Act of 1877 (19 Stat. 377).

5 Chinese farmworkers were organized under a Chinese crew boss — an early example of farm labor contracting, a system by which most seasonal agricultural labor needs continue to be met in California.

again, this time looking to Japan.⁶ While Japanese workers were recruited initially to work in sugar beets, they quickly branched out into other crops and ultimately into owning and operating their own small operations.

Farmer Difficulties and Government Response

The last half of the 19th century witnessed major changes in the agricultural industry. New technologies were introduced, more than 500 million new acres of land were brought into cultivation, and the number of farms grew from 2 to 6 million (Snodgrass and Wallace 1970).

Nonetheless, this was also a period of trouble. With massive frontier settlement and increased farm mechanization, agricultural production increased beyond domestic consumption and export capacity. Prices for farm products collapsed, and many farmers found themselves in severe financial trouble.

Monopolies in the milling and meat packing industries, as well as in freight transportation, added to the financial difficulties faced by many small farmers. This situation ultimately led to a great deal of farmer unrest. The federal government responded by developing a range of programs such as rural education, agricultural research, and farm extension work. In 1862, the same year the Homestead Act was passed, Abraham Lincoln signed two laws that set up the system of agricultural support still in existence today.

The first law (12 Stat. 387) established the United States Department of Agriculture (USDA). The first client-oriented department in the federal government, USDA was charged with developing and dispersing general information about agriculture, as well as distributing free plants and seeds.⁷

The second law was the Morrill Act (12 Stat. 503), under which each state was granted 30,000 acres (or the equivalent in scrips for land in other states) per senator and representative in Congress. This land was to be sold, with the profits used to establish agricultural and mechanical colleges. Land-grant colleges, the first attempt to democratize higher education in the United States, were to

provide instruction for the practical needs of farmers⁸ (Vogeler 1981).

A related bill, the Hatch Act (24 Stat. 440), was signed in 1887, channeling federal money to each state for an agricultural experiment station conducting agricultural research. The aim of the research was to improve rural life, while maintaining a viable agricultural industry.

AGRICULTURAL DEVELOPMENTS IN THE EARLY 20TH CENTURY

The early decades of the 20th century saw few changes in the structure of land ownership patterns. They did, however, witness enormous fluctuations in the demand for and supply of agricultural labor. Overproduction — and a corresponding demand for additional labor — continued as farmers sought to maintain their income in the face of lower commodity prices by increasing production, further depressing prices. At the same time, rapid advances in technology, especially the widespread use of tractors to perform pre-harvest cotton work, and increasing cultivation of other less labor-intensive crops on land diverted from cotton, reduced significantly those sectors' need for workers.

Government Programs to Provide Workers to Agriculture

Channeling European Immigrants to Agriculture

On the east coast, European immigrants arriving during the early 1900s were encouraged by the Bureau of Immigration's Division of Information to seek work in the wheat-growing areas of the Great Plains and the fruit orchards of the Pacific Northwest (USDOL 1963). This effort became more systematic when the U.S. Department of Labor created

6 Mexicans, too, worked on fruit and vegetable farms during this early period, although heavy reliance on Mexican labor did not appear until the 1900s.

7 This latter function was discontinued as private businesses entered into the profitable arena of selling agricultural products.

8 In 1890, a second Morrill Act (26 Stat. 417) appropriated additional money for land-grant colleges, while at the same time authorizing a separate land-grant college system for blacks.

the U.S. Employment Service in 1918, with a division devoted exclusively to farm labor. The first task of the Employment Service was to use its network of public employment service offices to recruit farm labor for the Midwest grain harvest and industrial workers for war industries. When the field operation of the Employment Service was abolished the next year, the offices of its Farm Labor Division continued to function, along with the newly created Veterans Employment Service. It was not until the late 1920s that Congress passed legislation to create another nationwide employment service for all industries.

Providing Mexican Immigrants to Agriculture

In the southwestern United States, Mexicans provided most of the labor for highly labor-intensive fruit and vegetable farms. This occurred despite persistent efforts by various coalitions of restriction-minded activists to control immigration. As controls tightened for many groups, Mexicans continued to enter the United States, with the government paying little attention to this flow.

Immigration legislation enacted during this period reflects the then-prevalent nativist mind-set. The Immigration Act of 1917 (39 Stat. 874) restricted the types of persons eligible to immigrate by imposing a literacy test.⁹ In 1924, a quota system designed to maintain the U.S. ethnic balance that existed in 1890 was established.¹⁰ However, special exemptions excluded Mexican workers from such controls. These included a waiver of both the literacy test and head tax for Mexican farmworkers applying for temporary admission to work.

In further recognition of agriculture's special standing in relation to immigration policy, a temporary worker program was enacted during World War I which admitted almost 77,000 Mexican workers to the United States¹¹ (Briggs 1983). Farmers recruited their own labor in Mexico with little interference from either the Mexican or U.S. governments. The majority of these workers were employed in the sugar beet industry in California, Colorado, Utah, and Idaho, and in the cotton industry in Texas, Arizona, and California (Commit-

tee on the Judiciary 1980). By the end of World War I, hundreds became stranded and the Mexican government had to absorb their transportation costs (Scruggs 1960). More than 25 percent, however, simply "disappeared," presumably remaining in the United States (Committee on the Judiciary 1980).

The Great Depression

A brief drop in surplus agricultural products during World War I proved to be temporary, as speculative investment again soared following the war's end. Soon after, however, the country's precarious credit structure, combined with natural disasters and wasteful farming systems, made the Great Depression of the late 1920s particularly disastrous for agriculture (Havens 1986).

The decade after World War I saw many farmers going into debt, as the national average farm income dropped more than 45 percent. Agricultural exports fell 61 percent during the 1920s and another 51 percent in the 1930s (USDC 1976). To survive, many farmers expanded and intensified their production techniques. The period also saw farmers and workers attempting to organize to reverse their deteriorating economic, social, and political positions.

The 1930s were a time of sweeping changes in land ownership patterns in the South. During the early 20th century, tenant farmers and sharecroppers continued to provide most seasonal labor in the South. With the introduction of tractors, the

9 The Act, however, also included a clause, the ninth proviso, that authorized the Commissioner of Immigration to admit temporary contract labor upon approval of the Secretary of Labor. (The use of contract labor had been banned since 1868.) This clause would prove extremely useful for agriculture in the decades which followed.

10 The Immigration Act of 1924 (Public Law 68-139) was similar to an act passed in 1921 that based the immigration quota on the ethnic balance existing in 1910 (Public Law 67-5). The 1921 Act exempted immigrants who had resided for at least 1 year immediately preceding entry into the United States in a contiguous country such as Canada, Mexico, and the Caribbean Basin. The relevant census year for the 1924 Act eventually became 1920.

11 This program was the first time a temporary foreign worker program was enacted in response to fears of an agricultural labor shortage during war time. It was also the first time such a program was used to resolve the conflict between the special demand for Mexican labor and national standards for immigrants.

need for such labor began to fall. As a result, southern planters began to discharge tenants and sharecroppers no longer needed for pre-harvest operations (James 1986). Some of these tenants were hired back on a seasonal basis, but only as day workers for wages, not operators (Harris et al 1986). It was the demise of tenancy and sharecropping in the South that gave rise to migrant labor crews in that region.¹² Thousands of other displaced tenants left agriculture entirely.

Western agriculture's reliance on Mexican workers was also interrupted during this period. Extraordinarily adverse weather conditions in the 1930s created a dust bowl in Missouri, Arkansas, Oklahoma, and Texas, uprooting more than 300,000 workers and their families who fled to California seeking employment in agriculture (Goldfarb 1981). This period of widespread unemployment of U.S. workers also saw intense government efforts to "protect American jobs" by repatriating Mexican citizens. During the 1930s, more Mexicans left the United States than entered, although many of those who left were legally entitled to stay (Grebler 1965).

Protecting Agricultural Producers

The government's response to the crisis in agriculture took the form of the Agricultural Adjustment Act (AAA) (48 Stat. 31), one of the New Deal's many forms of government intervention in the marketplace. This Act sought to address a fundamental contradiction in agriculture — the tendency of farmers to increase production during an overproduction crisis — by paying farmers to curtail crop acreage and reduce numbers of livestock.¹³ Later amendments to the AAA permitted farmers to set marketing quotas to help regulate prices and established programs that allowed the government to purchase surplus commodities and provide crop insurance and direct loans to farmers (Howe 1986). The Depression also led to government efforts to provide jobs for U.S. workers. On July 1, 1933, the Wagner-Peyser Act (48 Stat. 113) reorganized the U.S. Employment Service as a joint federal/state labor exchange network within the Department of Labor.

Government's Exclusion of Agricultural Workers

While these legislative initiatives were addressing the problems of agricultural producers, hired agricultural workers were explicitly excluded from a range of labor legislation such as the 1935 National Labor Relations Act (NLRA) or Wagner Act (49 Stat. 449) and the 1938 Fair Labor Standards Act (FLSA) (52 Stat. 1060). The government's differential treatment of agriculture has a long tradition. This can be seen in previous as well as later immigration policies; specific supports for agricultural producers and, later, agricultural workers; and more recently, regulation of portions of the industry. This premise of "agricultural exceptionalism" also permeated the development of protective labor statutes.

The National Labor Relations Act

The systematic exclusion of farmworkers from New Deal legislation has generated a great deal of speculation about the reason for "agricultural exceptionalism." In the case of the NLRA,¹⁴ for instance, farmworkers were included in the original bill.¹⁵ Yet they were excluded from the bill as reported by the Senate Education and Labor Committee in 1934 and when the Act was finally approved in 1935. The only explanation found in the legislative record is as follows: "For administrative reasons, the committee deemed it wise not to include under the bill agricultural laborers, persons in domestic service... or any individual employed by his

12 This system of migrant labor crews under the supervision and control of a crew leader continues to provide seasonal labor to southern agriculture.

13 The effect of the AAA in the South was to hasten the demise of tenant farming, as the amount of benefits a farmer received was based on the amount produced. Thus, the lower the tenure status of farmers, the smaller the proportion of benefits.

14 The National Labor Relations Act provides that: "The term 'employee' shall not include any individual employed as an agricultural laborer..." 29 U.S.C. sec 152 (3) (1982). See *DiGiorgio Fruit Corp. v. NLRB*, 191 F.2d 642 (D.C. Cir.), cert. denied, 342 U.S. 869 (1951).

15 The NLRA's stated policy is "...the protection by law of the right of employees to organize and bargain collectively" and to safeguard commerce by the encouragement of "...practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees."

parent or spouse.”¹⁶ During the House debate on the NLRA, an amendment to strike the exclusion was defeated on a voice vote.¹⁷ Throughout the years, particularly from 1965 to 1969, several bills were introduced to provide NLRA coverage for some farmworkers, but have been unsuccessful.¹⁸ The absence of federal statutory provisions leaves farmworkers’ union-related rights to the discretion of the states. California and Arizona have enacted specific agricultural labor relations acts¹⁹ while other states have covered migrant farmworkers under general state labor relations acts.²⁰ On the other hand, some states,²¹ in response to agricultural employer concerns, have enacted agricultural labor legislation establishing specific limitations to union activities so as to prevent the interruption of “production, packing, processing, transporting, and marketing of agricultural products ...”²² Only five states and Puerto Rico have passed constitutional provisions guaranteeing agricultural workers the right to organize and bargain collectively.²³

The Fair Labor Standards Act

The legislative history of the 1938 Fair Labor Standards Act on the exclusion of farm laborers is similarly unrevealing. Bills introduced in both houses of Congress simply excluded agriculture, with the debate centering on what industries and occupations were within the legislation’s scope. The FLSA was enacted pursuant to Congressional authority to regulate interstate commerce. It guarantees a right to a minimum wage; requires employers to keep accurate records of time worked; defines what compensation may be included in the minimum wage calculation; establishes guidelines for compensable time; provides for child labor regulation; allows for a private cause of action for employees to recover double the loss in entitled wages; and establishes special criteria for the employees’ burden of proof in establishing damages. It was not until 1966 that the FLSA was amended to provide some of these protections to certain agricultural workers.

Farmworker Unrest

Scattered agricultural labor disputes occurred throughout the early 1900s. At that time, the American Federation of Labor (AFL) dominated most union organizing efforts in the United States. The AFL, however, never showed a sustained interest in attempting to organize farm workers. Instead, the more radical International Workers of the World (IWW or the “Wobblies”) took over the task.

An early concerted attempt to improve wages and working conditions for agricultural workers was in 1913 among hop workers in California. This ended in the infamous “Wheatland riot” that killed four people. Though disastrous, the riot called public attention to farm labor conditions and low wages, and led to the establishment, in 1915, of the Agricultural Workers Organization. The organization was a national IWW-established union that, although including California farmworkers, relied most heavily on the 250,000 grain workers who

16 S. Rept. 573, 74th Cong: 1st sess. (1935).

17 There is little in the legislative record that sheds light on this action. During the short debate on the amendment, the Chairman of the House Committee on Labor, Mr. Connery, said: “Mr. Chairman, the Committee discussed this matter carefully in executive session and decided not to include agricultural workers. We hope that the agricultural workers eventually will be taken care of. I might say to my friend from New York (Rep. Marcantonio) at this point, certainly I am in favor of giving the agricultural workers every protection, but just now I believe in biting off one mouthful at the time. If we get this bill through and get it working properly, there will be opportunity later, and I hope soon, to take care of the agricultural workers.” 79 Cong. Rec. 9721 (1935).

18 At different times and for different reasons throughout the years, both employer and labor groups have advocated including farmworkers in the NLRA.

19 The California Agricultural Labor Relations Act of 1975, codified at Deering’s Calif. Code Ann. Labor sec. 1140 *et seq.*; Arizona Employment Relations Act, codified at Ariz. Rev. Stat. Ann. sec. 23-0181 to 1935.

20 See: Wis. Stat. Ann. sec. 111.02(3) (West Supp. 1973); Hawaii Rev. Stat. tit. 21 sec. 377-1(3); Ann. Laws of Mass. ch. 150A sec. 5A (Supp. 1972) [special provision for agricultural workers; except that for collective bargaining, agricultural workers are not “employees”]; Rev. Code Wash. Ann. sec. 49.36.010 (1962)].

21 Arizona [Ariz. Rev. Stat. Ann. sec. 23-1381 to 1395 (Supp. 1972-72) (Agricultural Employment Relations Act)], Kansas [Kan. Stat. Ann. sec. 44-818 to 830 (Supp. 1986)], and Idaho [Idaho Code Ann. sec. 4101 to 4113 (Supp. 1972) (Idaho Agricultural Labor Act)].

22 Ariz. Rev. Stat. Ann. sec. 23-1381 (Supp. 1972-73).

23 New York (1938), Florida (1944), Missouri (1945), New Jersey (1947), Puerto Rico (1952), and Hawaii (1968).

migrated between Oklahoma and southern Canada (Meister and Loftis 1977).

These initial organizing gains, however, were short-lived. The Wobblies' antiwar protests during World War I earned the "unpatriotic" label and made them easy targets for both growers and AFL organizers who felt threatened by IWW successes. At the same time, the war-related demand for agricultural products and labor shrunk farm labor supplies, stimulating growers to improve wages and working conditions to retain and attract labor. New groups of immigrant workers from Mexico, along with special wartime workers supplied through appeals to patriotism, also stymied attempts to organize agricultural labor during this period.

The two decades following the post-WWI decline of the IWW witnessed a new rise and fall of organizing in agriculture. Between the late 1920s and the Second World War, the Great Depression's contribution to the rise of farm labor unions included the Dust Bowl refugee movements, the gathering strength of the Democratic Party, and the increasingly close ties between Democratic Party politics and organized labor.

One of the strongest union efforts during this period was the communist-supported Cannery and Agricultural Workers Industrial Union (CAWIU). The CAWIU marshalled the general discontent of California farmworkers into a force for change. As workers became more militant, however, they were met with corresponding resistance from growers. Union drives in the 1930s often resulted in violence, bloodshed, and paramilitary or vigilante activities on the part of both workers and growers.

The publication of a Congressional report directed by Congressman La Follette (Committee on Education and Labor 1942), Steinbeck's *Grapes of Wrath* (1939), and Carey McWilliam's *Factories in the Fields* (1939) helped create a climate of increased tolerance for farm labor organizing. Unfortunately for labor, however, this occurred at the time that the United States was being drawn into World War II, which cleaned the slate of most of labor's gains. As during World War I, special battalions of workers who would not normally have been in the labor force — prisoners of war, soldiers on leave, conscientious objectors, and students —

were working in agriculture. Most importantly, special wartime programs to provide temporary nonimmigrant labor to agriculture allowed foreign workers with limited rights into the fields, frustrating labor organizing attempts further. Again, organizing farmworkers took a back seat to the war effort, and attempts to organize led to accusations of anti-Americanism.

WORLD WAR II TO THE 1970s

The United States' entry into World War II marked another watershed event for U.S. agriculture in that it led to labor shortages and intensified government intervention in the marketplace. The government's support of the industry during the war years took the form of guaranteeing prices, primarily for cereals and milk products, and developing export markets. Agricultural labor shortages, in turn, led to the widespread adoption of many labor-saving devices, such as combines and milking machines. Because certain tasks could not be mechanized completely, the government supported the labor-intensive sector of agriculture through the importation of temporary foreign workers.²⁴

Contracting Mexican Workers for Western Agriculture

Large-scale operations continued to characterize California agriculture during this period. California's form of "industrial agriculture" was described by a Congressional committee in the following terms: "[t]he large agricultural operation employs a large number of workers; when it no longer has use for these workers, they are laid off and must go elsewhere in search of employment. The relationship between employer and employee is impersonal. In smaller operations, the impersonal relationship may result from the casual or temporary character of the employment" (Committee on Education and Labor 1942).

24 These temporary foreign worker programs were the precursors of the current H-2A program that allows the importation of nonimmigrant agricultural workers under conditions very similar to those developed during these early programs.

In the 1930s, the migration of the "Okies and Arkies" who had come to California during the Depression, as well as the continued employment of Mexican-born workers, had led to labor surpluses. With the onset of World War II, however, western growers began to fear a labor shortage and looked again to Mexican workers for help. Mexico's experience during WWI made it reluctant to enter into an agreement to provide U.S. agriculture with Mexican temporary workers. Nevertheless, after intense negotiations, the largest contract worker program in this country's history — the Bracero Program — was instituted in 1942, pursuant to an intergovernmental accord between the U.S. and Mexican governments.

The Bracero Program

At the inception of the Bracero Program, most Mexican-born farmworkers in the United States were legal immigrants. During the program's early years, contract or bracero workers constituted only a small portion of Mexican agricultural workers in the country.²⁵ Gradually, however, braceros made up increasing shares of the labor force and by 1956, more than one-third of the seasonal workers in California were braceros (SFFC 1961).

The Bracero Program lasted 22 years and admitted between 4 and 5 million Mexican agricultural workers to the United States for temporary employment. At the insistence of the Mexican government, the initial agreement stipulated broad worker protections. In an attempt to shield braceros from exploitation, for example, contracts were to be structured so that the Farm Security Administration (FSA) was the primary employer, contracting with a farmer as "sub-employer" on the one hand and the worker on the other. The agreement also prohibited U.S. growers from recruiting directly in Mexico. Again, the FSA assumed that function. Finally, growers using the Bracero Program were required to pay the prevailing wage for the area of employment, provide free housing and reasonably priced meals (or a subsistence allowance), and pay for transportation from Mexican reception sites near the border to and from the work site.

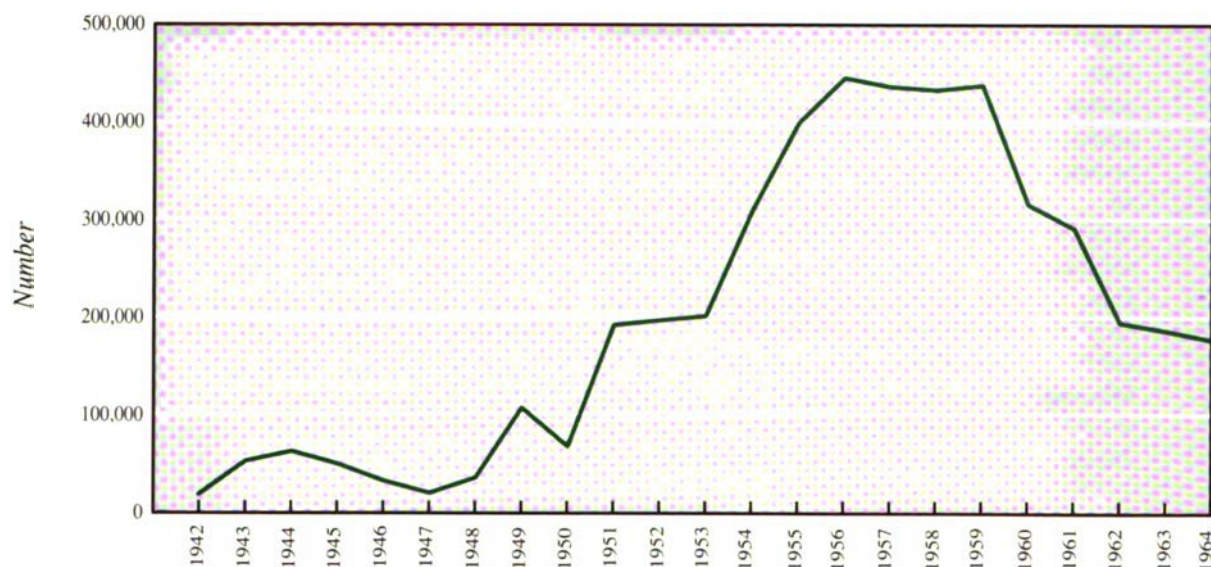
The original agreement (Public Law 45) was extended through 1947. When the special authorizing legislation expired that year, the importation of Mexican workers continued, under a frequently revised agreement, until 1951. In contrast to the war years, however, employers, not the U.S. government, were the contractors. The Mexican Government strongly objected to the changes in the program, expressing concern over inadequate compliance measures, the methods for determining the prevailing wage rate, and the lack of government participation as a guarantor of employers fulfilling their contracts (Committee on the Judiciary 1980).

In addition, the thrust of the program changed. While continuing to import workers from Mexico, a large number of the contracts went to former contract workers who had remained in the United States illegally. As the President's Commission on Migratory Labor noted, "[f]or the 3 years, 1947-49, the Mexican farm-labor program in summary amounts to this: 74,600 Mexican nationals under contract were brought from the interior of Mexico; 142,200 wetbacks already in the United States were legalized by being put under contract" (1951:6117).

The Bracero Program was officially revived in 1951 when the Korean War rekindled fears of another labor shortage. Public Law 78 established the program's basic operational framework for the next 13 years. The U.S. Government was again made responsible for recruiting and transporting Mexican workers, while also guaranteeing that employers honored the terms of the contracts. Public Law 78 also included provisions designed to protect domestic labor. Among these was the role of the Department of Labor in certifying that no domestic workers were available for employment, and ensuring that the wages of similarly employed workers were not adversely affected and that reasonable efforts were made to attract domestic workers at wages and standards comparable to those offered foreign workers.

25 From 1942 to 1947, the Mexican government refused to certify braceros to work in Texas due to that state's history of discrimination against Mexicans. During this time, Texas producers relied on both undocumented Mexican workers and Mexican-American citizens. After the first few years of the program, however, braceros were also used in Texas and the upper Midwest (Garcia y Griego 1981).

Figure 1.1 Mexican Workers Admitted for Temporary Employment in U.S. Agriculture 1942 - 1964



Source: INS

The number and concentration of braceros in U.S. agriculture shifted considerably during the course of the program. Beginning slowly, with only 4,200 Mexican contract workers admitted in 1942, it peaked in 1956 with 445,000 braceros (Figure 1.1).

At the program's inception, bracero workers were concentrated in California and the Northwest. During the immediate post-war years, however, this concentration shifted to Texas, New Mexico, and Arkansas. The President's Commission on Migratory Labor pointed to another shift, this one from relatively high-wage Pacific states to the lower wage cotton fields throughout the Southwest. As cotton became mechanized in the late 1950s, however, most braceros gravitated toward work in vegetable crops, primarily in California. By the end of the program, the majority of bracero workers were employed in the California vegetable harvest (Runsten and LeVeene 1981).

The End of the Bracero Program

Under pressure from agricultural interests, Congress continued to extend the Bracero Program through 1964. Opposition to the program, however, had been growing. The Department of Labor began to tighten its administrative control over the program in the late 1950s under pressure from organized labor as well as religious and other community groups. In 1962 it imposed a higher "adverse effect" rather than "prevailing" wage for bracero users. With administrative regulations making the program less attractive to employers, and the bitter political struggles engendered during the social reform movements of the 1960s, Congressional support for the Bracero Program's continued extension was waning. Fearing eventual termination of the program, and wanting to retain this work force,

many growers helped braceros working for them to become permanent residents during this period.²⁶

In 1963, Congress reopened the annual debate over the program's extension. Members from the heavy bracero-using states again warned their colleagues that termination of the program would have dire consequences — crops would rot in the fields, U.S. farmers would be forced out of business, and American consumers would be forced to buy the more expensive fruits and vegetables produced in Mexico (Congressional Record 1963). The actual effects were quite different. The end of the bracero era saw increased mechanization in a few crops and a gradual rise in unauthorized immigration from Mexico.

It was also argued that, in addition to providing temporary foreign workers, the Bracero Program had provided a legal channel for Mexicans to work in the United States, thus reducing the number of illegal Mexican entrants. Following the program's end in 1964, apprehensions of deportable aliens did, in fact, begin to rise.²⁷ However, this increase was similar to that occurring between 1946 and 1953, when approximately 100,000 braceros were authorized each year. Thus the relationship between the existence of a legal channel for temporary workers and a reduction in illegal migration was far from clear.²⁸

Many observers contend that the Bracero Program has had a lasting effect on the farm labor market. By attracting workers from the rural interior of central and northern Mexico to the border towns, the Bracero Program facilitated the formation of additional Mexican migration to the United States. Over the longer term, then, the Bracero Program probably enhanced the movement of undocumented workers across the southern U.S. border.

With the termination of the Mexican contract labor program in 1964, many growers were forced to find alternatives to bracero labor. Some reduced the size of their work force through mechanization, as happened with processing tomatoes. In other commodities, other Mexicans, both legal and undocumented, quickly replaced bracero workers.

The Contracting of Caribbean Workers for Eastern Agriculture

Problems in securing agricultural labor during this period were less extreme in the Southeast. The mid-1900s witnessed major changes in both land use and the commodities produced in the South. Cotton was replaced by soybeans, beef cattle, dairying, poultry and egg production, tobacco, peanuts, and fruits and vegetables. Local and migratory African-American workers continued to provide most seasonal labor needs from southern Florida through New York. Another government-sponsored temporary foreign worker program that allowed the importation of workers from the British West Indies, primarily for employment in eastern agriculture, supplemented this labor supply.

The British West Indies (BWI) Program

As farmers in the West and Midwest were successful in obtaining the Bracero Program, eastern farmers persuaded the government to establish a program responsive to their wartime labor needs. In April 1943, the United States entered into an intergovernmental agreement with various Caribbean islands that created a second nonimmigrant worker program for U.S. agriculture. The British West Indies program was formalized under Public Law 45 and operated from 1943 through 1947. From then until 1952, when it was codified under the 1952 Immigration and Nationality Act, the program functioned under the authority of the ninth proviso of the Immigration Act of 1917.

26 Immigration for employment did not require certification by the Labor Department as it now does, and there was no numerical limit to immigration from western hemisphere countries at the time.

27 Apprehensions by the Immigration and Naturalization Service are an extremely crude indicator of the movement of unauthorized aliens into the United States. However, they are one of the few measures available.

28 More effective at curtailing illegal immigration was a determined enforcement operation, "Operation Wetback," in 1954. This enforcement initiative doubled the number of deportations in 1 year, and in the following 5 years, 3.8 million illegal Mexican immigrants were expelled from the United States. "Operation Wetback" also raised serious procedural and civil rights questions and summarily expelled many Mexican-Americans (Moore 1976).

During the war years, the U.S. Government was responsible for recruiting workers and negotiating contracts with the island governments. With the end of the wartime agreement, however, U.S. employers were allowed to recruit directly in the islands, negotiate private work agreements, and deduct transportation advances and meals from workers' pay, after receiving certification of a labor shortage from the U.S. Employment Service. Withholdings to cover possible deportation costs were also allowed, as were enforced savings plans. The BWI program did not require employers to pay transportation costs, and the contracts did not set forth a procedure²⁹ for handling complaints.³⁰

Between 1943 and 1947, approximately 66,000 British West Indian workers were contracted to work in U.S. agriculture, although the number employed during any one year never exceeded 20,000. These workers, employed primarily in the fruit, vegetable, and sugar cane sectors, were widely scattered throughout 21 states, with the largest concentration in Florida. From 1947 through 1952, the number of workers dropped to between 3,000 and 9,000 per year.

The H-2 Program

With enactment of the 1952 Immigration and Nationality Act, many growers continued to contract with Caribbean workers through the H-2 provisions of that Act [section 101(a)(15)(H)(ii)]. After termination of the Bracero Program, this was the only mechanism by which nonimmigrant workers could be contracted for agricultural work in the United States.

Regulatory implementation of the H-2 program followed the pattern set by the Bracero Program in many ways. The Immigration and Naturalization Service required Department of Labor certification that domestic workers were not available and that the wages and working conditions offered would not adversely affect U.S. workers.

One crucial difference between the H-2 and its precursors, the Bracero and BWI programs, was that the H-2 program was enacted as a permanent part of law, rather than a program intended to meet a specific labor shortage.

The Employment of Puerto Rican Workers

During the years that these wartime labor programs were developed, there was very little attention being paid to Puerto Rican workers. The President's Commission on Migratory Labor pointed out this neglect, citing the employers' preference for foreign contract workers as a principal cause. This report quotes the president of a Florida growers association as saying "[t]he vast difference between the Bahama Islands labor and the domestic, including Puerto Rican, is that labor transported from the Bahama Islands can be diverted and sent home if it does not work, which cannot be done in the instance of labor from domestic United States or Puerto Rico" (1951:6103).

Only after World War II ended were Puerto Rican workers extensively recruited for agricultural jobs on the mainland.³¹ Between 1948 and 1990, 427,604 Puerto Rican farmworkers were contracted for jobs in the United States. At the same time, a large number of workers came without benefit of this work agreement. The number of Puerto Rican contract workers peaked in 1968 when 22,902 men were referred to U.S. agriculture. By 1990, this number had dropped to 2,080. This decline is due both to resistance of U.S. employers to the terms and conditions of the work contracts for Puerto Ricans (who are not tied to a particular employer in the same manner in which foreign contract workers are),³² as well as to economic changes in Puerto

29 British West Indians were found to desert from their contracts much less frequently than did Mexicans. According to the 1951 President's Commission on Migratory Labor, "This undoubtedly is to be explained in large part by the vulnerability of the British West Indian workers to financial discipline, as provided for in their agreements. Mexican workers are subject to no such discipline" (1951:6112).

30 While the contract did not call for a procedure for handling complaints, there was a government/employer system for handling complaints in effect throughout the program.

31 To regulate this practice, the Government of Puerto Rico passed Public Law 89 in 1947. This law required a contract specifying the terms and conditions of employment for Puerto Rican agricultural workers employed in the United States. In 1951, Puerto Rico was included within the interstate clearance system set up by the U.S. Bureau of Employment Security. This meant that Puerto Rican workers (who are U.S. citizens), like other domestic workers, must be recruited before authorization can be granted for the importation of H-2 workers.

32 See the written testimony of Aurelio Segundo in Appendix II for a discussion of the Puerto Rican migrant farmworker contract program.

Rico resulting in fewer Puerto Ricans coming from agricultural backgrounds (Kissam and Griffith 1991b).

The Placement of Domestic Workers

Despite the intent that neither the Bracero nor the British West Indies worker program should harm U.S. worker interests, the President's Commission on Migratory Labor concluded that this goal had not been met. "It is our conclusion that the evidence demonstrates that the agencies of Government responsible for importing and contracting foreign labor have not been successful in protecting domestic farm labor from detrimental effects of imported contract alien labor. We find alien labor has depressed farm wages and, therefore, has been detrimental to domestic labor" (1951:6123). Eight years later, the Consultants' Committee of the Department of Labor reached this same conclusion (Consultant's Report 1959).

During World War II, the United States established the War Manpower Commission to coordinate and recruit workers for war industries and other critical economic activities — including agriculture. The entire U.S. Employment Service, including the Farm Placement Service, became part of this effort. The Government tapped a variety of sources in its attempts to increase the farm labor supply.³³ These included "in-school nonfarm youth, women, men from the armed services in off-duty hours, Japanese in relocation centers, aliens and foreign farm workers, prisoners of war, conscientious objectors, Social Security beneficiaries, and Indians on reservations" (USDOL 1963:29).

The end of World War II saw the dissolution of the War Manpower Commission, the renaming of the Farm Placement Service to the Farm Labor Service (and its return to the Department of Labor), and the joining of the U.S. Employment Service with the Unemployment Compensation Program to form the Department of Labor's Bureau of Employment Security. By that time, the increasing scope and responsibilities of operating the Mexican farm labor program were overshadowing much of the Farm Labor Service's other activities. Nevertheless, the Farm Labor Service continued to recruit and

place domestic farmworkers and developed an annual worker plan designed to help migrants schedule their itineraries jointly with employers in both supply and demand states.

Criticisms of the U.S. Employment Service

The Farm Labor Service operated continuously until it became the Rural Manpower Service in 1970. This and subsequent changes signalled the broadening of that agency's mandate beyond simply the recruitment of farm labor, to include the enforcement of work standards and the overall treatment of farmworkers. This effort, however, soon came under attack. A petition filed with the Secretary of Labor in 1971 accused the Rural Manpower Services of exploiting migrant farmworkers, and asked that it be dissolved and the funds utilized for a migrant-staffed and oriented "Worker Service." The essence of the complaint was that state employment service offices treated farmworkers differently than other clients, provided them with only minimal services, and directed them only to agricultural jobs — jobs whose wages and working conditions were often in violation of federal and state statutes.

An investigation by an internal Department of Labor review board substantiated many of these charges, documenting discrimination and condemning the agency's administration of laws intended to protect farmworkers. The review board identified a "self-reinforcing cycle" created under the existing system whereby "foreign workers tend to depress wages; depressed wages discourage domestic workers from taking the jobs; and inability to recruit domestic workers is used to justify the use of foreign workers. The result is the continuation and expansion of the use of foreign workers despite an oversupply of domestic workers" (USDOL 1972:37). When the Department of Labor, despite its own review board's findings, did not change its methods of operation substantially, a lawsuit, *NAACP v. Brennan*, was brought against the Secretary of Labor. In 1973,

³³ A year later, responsibility for the recruitment, placement, transfer, and utilization of agricultural workers was temporarily transferred from the Employment Service to the Department of Agriculture.

district court Judge Charles Richey issued a memorandum opinion charging that state Rural Manpower Services and Employment Services agencies engaged in, among other practices, the following: (1) denying minority farmworkers the full range of employment services including testing, counseling, and job training and up-grading services; (2) subjecting minority farmworkers to racial, national origin, sex, and age discrimination in recruiting and referring applicants for local, intra- and interstate employment; (3) processing discriminatory interstate clearance orders that allowed employers to predesignate farmworkers by race, national origin, sex, and age; (4) processing misleading, inaccurate, and incomplete job orders for agricultural labor; (5) referring migrant farmworkers to employers who violated minimum wage and child labor laws; (6) referring farmworkers to employers who failed to make social security payments to the workers' accounts; (7) referring migratory and seasonal farmworkers to jobs where the living and working conditions violated housing, health, and sanitation laws; and (8) referring farmworkers to unlicensed crew leaders or to crew leaders who operated illegally.

The memorandum opinion was followed by a consent order, signed by both parties, whose goal was to reform all farmworker functions of the U.S. Employment Service. Under this order, the Employment Service was to offer the full range of its services, benefits (including counseling, training, and testing), and protections to farmworkers and to refer all violations to enforcement agencies. These services, benefits, and protections were to be "qualitatively equivalent and quantitatively proportionate" to those offered to non-farmworkers. In addition, the order established a monitoring system whereby each state was required to have at least one monitor advocate to oversee the system's operation and advocate on behalf of farmworkers.

Termination of the Bracero Program, compliance with the 1974 Judge Richey court order, and the dismantling of many offices previously devoted exclusively to providing a parallel employment services system for farm work dramatically changed the role of the U.S. Employment Service in the farm labor market. Large numbers of growers

simply stopped using the system. Facilitating this change has been another development: for the past 20 years, the labor supply has been adequate, allowing employers to make their own arrangements with farmworkers and labor contractors, thereby avoiding the scrutiny and legal liabilities that arise from the use of the Employment Service.

Legislative Initiatives Protecting Agricultural Workers

During the 1960s, the plight of farmworkers became a national concern. A 1958 Thanksgiving showing of the television documentary *Harvest of Shame* brought migrant farmworkers' living and working conditions to the attention of a wide audience and allowed advocates to gain widespread public support for their efforts. Annual extensions of the Bracero Program kept the issue of seasonal farm labor at the forefront of policy debates. The results were the enactment of legislation protecting certain agricultural workers and the initiation of several special programs to serve the needs of migrant and seasonal farmworkers.³⁴

Extending Coverage of the Fair Labor Standards Act

In 1966, Congress amended the Fair Labor Standards Act to extend minimum wage³⁵ and child labor protections³⁶ to certain types of farmworkers. The minimum wage coverage, however, was limited to larger farms. Only employers using more than 500 man-days of agricultural labor in any calendar quarter of the preceding year came under the ambit of the FLSA. As noted in the legislative

34 See Martin, David A. and Philip Martin (1992) for a discussion of these programs.

35 Fair Labor Standards Amendments of 1966 (Public Law 89-601, 80 Stat. 830, sec. 302), current provision is at 29 U.S.C. sec. 206(a)(5). The minimum wage for agricultural workers was set to increase less than that for other newly covered workers. Compare sec. 302 with secs. 301, 303. Previously covered workers had higher minimum wages and the minimum wage for agricultural workers was capped after 3 years while that for all other newly covered workers was set to keep increasing for 2 more years.

36 Fair Labor Standards Amendments of 1966 ((Public Law 89-601, 80 Stat. 830, sec. 203(d)), codified at 29 U.S.C. sec. 213(c).

history,³⁷ "[t]his new coverage is intended to provide protection to the employees of large agribusiness enterprises. Only 1 percent of all U.S. farms would be covered by the bill.... it would generally require that a farm have seven or more full-time employees, a considerable enterprise in farming, before the employees receive minimum wage protection."³⁸ In 1974, the FLSA was amended again to bring agricultural minimum wages up to general industry levels by 1978.³⁹ The FLSA⁴⁰ sets a general 16-year minimum age for employment in any occupation other than agriculture.⁴¹ In agriculture, where restrictions are less stringent, hazardous work is prohibited until age 16; there is a minimum age requirement of 14 years, generally for employment in agriculture outside school hours. However, a minor 12 or 13 years of age may be employed on a family farm with parental consent.⁴²

Regulation of Farm Labor Contractors

Prior to the 1966 FLSA amendments, Congress enacted the Farm Labor Contractor Registration Act of 1963⁴³ (FLCRA) to regulate the relationship between workers and labor contractors.

Congressional hearings had revealed that crew leaders, also known as farm labor contractors, were engaging in practices which resulted in the exploitation of farmers and serious abuses to their crew members.⁴⁴ Among them were misrepresenting the nature and availability of work, providing false information on the terms and conditions of employment, forcing workers to buy goods and services from the contractor at excessive prices, payroll irregularities, and supplying inadequate housing. Evidence was also presented about farm labor contractors failing to honor their contractual agreements with their employers. For example, Department of Labor surveys had revealed that crew leaders collected transportation expenses from employers but never reported for work, collected transportation expenses from *both* employers and workers, and overcharged workers for transportation advances. Other abuses found included collecting wages from employers but abandoning crews without paying them or providing them transporta-

tion, and reporting to a work site with a smaller crew than contracted for.⁴⁵

The Act was amended in 1974, twice in 1976, and again in 1978. The most significant amendments were those of 1974 which sought to strengthen the enforcement provisions of the Act: both intrastate and interstate activities were regulated; coverage was extended to contracting activities without regard to the number of workers contracted out; penalties were increased; and a private right of action was added.⁴⁶ While these amendments gave rise to increased litigation that focused on the Act's exemption scheme,⁴⁷ both employers and employees felt that the Act was not meeting its purpose of providing the necessary protections for any of the parties involved.

Shared unhappiness over the Act eventually led to its replacement by the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) which

37 S. Rept. 1487, reprinted in 1966 U.S. Code Congressional and Administrative News, 3002, 3011.

38 S. Rept. 1487, *supra*. The amendments excluded from coverage certain other types of employees: members of an agricultural employer's immediate family; certain hand harvest laborers; 16-year-old migrants who work on a piece-rate basis with their parents; and employees engaged in the range production of livestock. Some of these exemptions parallel the small establishment exemption established under FLSA for certain retail or service establishments.

39 Fair Labor Standards Amendments of 1974 (Public Law 93-259, 88 Stat. 55, sec. 4.) This parity has been retained. See 29 U.S.C. sec. 206(a)(5).

40 29 U.S.C. 203(l)

41 There are two exceptions: (a) the Secretary of Labor may provide by regulation for the employment of employees between the ages of 14 and 16 years in occupations other than manufacturing and mining under conditions which will not interfere with their schooling or with their health; and (b) the Act prohibits employment in any hazardous nonagricultural occupation for anyone under 18 years.

42 29 C.F.R. 570.2(B)

43 7 U.S.C. sec. 2041 *et seq.*

44 1964 U.S. Code Congressional and Administrative News, 3690.

45 S. Rept. 202, 88th Cong., 1st sess., reprinted in 1964 U.S. Code Congressional and Administrative News, at 3690 and 3692.

46 The 1974 amendments are summarized at 128 Cong. Rec. S11739 (daily ed. Sept. 17, 1982) (statement of Sen. Hatch).

47 See 1982 U.S. Code Congressional and Administrative News, at 4548-4550; see *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F. 2d 225 (7th Cir. 1983) (finding only a limited class of entities qualified as farm labor contractors); *Jenkins v. S & A Chaissan & Sons, Inc.*, 449 F. Supp. 216 (D.C.N.Y. 1978) (finding growers' association to be a farm labor contractor for purposes of FLCRA); *Soltz v. Plunkett*, 615 F. 2d 272 (5th Cir. 1980) (finding supervisory employee of exempt agricultural employer to be a farm labor contractor even though he did not personally contract with workers and workers were recruited by crew leaders who were farm labor contractors.)

was signed into law by the President on January 14, 1983.

As part of this compromise, grower and other fixed-site employers were freed from the requirement that they register as farm labor contractors.⁴⁸ In exchange, agricultural employers and associations became responsible for complying with the substantive requirements of the AWP. Thus, compliance with worker protection requirements relating to disclosures, payroll practices, and other legal dispositions is no longer related to the question of whether a person is required to register as a farm labor contractor — and only farm labor contractors and their employees would now be required to register.

Significantly, AWP deliberately adopted the “joint employer” doctrine.⁴⁹ Under the joint employer concept, a single farmworker simultaneously may have two or more employers for purposes of AWP. For example, a farmworker may have an employment relationship with several employers and an independent contractor. In this way, Congress hoped to focus the inquiry “on each employment relationship as it exists between the worker and the party asserted to be a joint employer” while keeping in mind “the special aspects of agricultural employment.” The framers of AWP hoped “to make clear that it is the economic reality, not contractual labels, nor isolated factors which is to determine employment relationships” under AWP.⁵⁰

Other Legislation

During the 1960s and early 1970s, some agricultural workers were provided coverage under various protective state and federal laws. For example, more than 40 years after the 1935 Social Security Act⁵¹ established the unemployment compensation program, the Unemployment Compensation Amendments of 1976⁵² extended coverage, on a limited basis, to agricultural labor.

In the case of agricultural labor, the term “employer” is defined more restrictively — any person who (a) during any calendar quarter in the calendar year or the preceding calendar year paid wages of \$20,000 or more for agricultural labor, or (b) on

each of some 20 days during the calendar year or the preceding calendar year, each day being in a different calendar week, employed at least 10 individuals in agricultural labor for some portion of the day.

Many jurisdictions establish the same criteria for determining the eligibility for unemployment benefits for both covered farmworkers and other employees. Other jurisdictions have special seasonal worker provisions which often adversely affect a claimant’s eligibility for benefits, as well as the amount and duration of such benefits. For example, in Colorado, a worker filing a claim who has any earnings from employment in an industry designated by the state as “seasonal” may not collect benefits based on those earnings outside the normal employment season for the industry in which the wage credits were collected. Similar rules are found in Arkansas, Maine, North Carolina, and Ohio. In contrast, a Minnesota provision which restricts unemployment insurance benefits for many seasonal workers does not apply to agricultural workers. Several states also enacted legislation that included agricultural employees under more comprehensive minimum wage, disability and unemployment insurance, and workers’ compensation schemes.⁵³

48 See AWP sec. 3(7).

49 See 1982 U.S. Code Congressional and Administrative News at 4553, [citing *Real v. Driscoll Strawberry Assn. Inc.*, 603 F.2d 748 (1979)].

50 1982 U.S. Cong. and Admin. News at 4553-4554.

51 Social Security Act of 1935, sec. 907(c)(1), Title XI, 49 Stat. 620, 643, codified as amended at 42 U.S.C. sec. 301 *et seq.*

52 Public Law 94-566, 90 Stat. 2667, secs. 111, 112, and 114 (a)(2). The House version of the Amendments “would have required the States to extend coverage of their unemployment programs to include agricultural work performed for an employer who has 4 or more employees in each of 20 weeks in a year or who pays wages of at least \$10,000 in any calendar quarter. The [Senate] committee bill [did] not contain any provision extending unemployment compensation to agricultural employment.” S. Rept. 1265, 94th Cong. 1st sess., reprinted in 1976 U.S. Code Congressional and Administrative News 5997, 6002. As enacted, the Amendments raised the wages threshold to \$20,000 or more. See 26 U.S.C. 3306.

53 In 11 states (AZ, CA, CO, CT, HI, LA, MA, MT, NH, NJ, OR) agricultural workers are provided the same coverage as are all other workers. Twenty-five states (AK, DE, FL, GA, IL, IO, KS, ME, MD, MI, MN, NY, NC, OH, OK, PA, SD, TX, UT, VT, VA, WA, WV, WI, WY) provide farmworkers limited coverage. Finally, 14 states have no mandatory coverage for farmworkers (AL, AR, ID, IN, KY, MS, MO, NE, NV, NM, ND, RI, SC, TN).

Organizing Farmworkers

The farm labor system was changing in other ways as well. In addition to legislative and public opinion strategies, advocates followed a "grass-roots" approach of organizing farmworkers to improve their wages and working conditions, primarily through unions. While there had been repeated attempts at organizing farmworkers since the 1930s, these had met with limited success. During the early 1960s, however, this began to change.

The AFL-CIO⁵⁴ now showed a renewed interest in organizing farm labor. This interest, however, was short-lived. More significant were the efforts of an urban-based Mexican-American organization called the Community Service Organization (CSO). Members of this group formed the Farm Workers Association (FWA, later the National Farm Workers Association or NFWA) in 1962. Rather than taking a standard union organizing approach, this group initially served farmworkers' needs by developing a sense of community in addition to lobbying for their needs on many fronts.

In 1965, the NFWA became affiliated with the AFL-CIO through that organization's Agricultural Workers Organizing Committee (AWOC), creating an organization called the UFWOC. The UFWOC was led by Cesar Chavez and a few key Filipino organizers. Jurisdictional disputes with the Teamsters, however, continued to cloud the arena of farm labor organizing. The possibility of Teamster control offered growers the alternative of signing "sweetheart contracts" so as to undermine the influence of a truly farmworker-based union.

By 1970, UFWOC had secured 150 contracts in California, primarily through its table grape boycotting activities.⁵⁵ In 1972, UFWOC was granted a union charter and was renamed the United Farm Workers (UFW), but by this time many growers had either already switched or planned to switch from UFW to Teamsters contracts (Jenkins 1985). Shortly after the charter, the UFW negotiated a successful contract with Minute Maid in Central Florida. This contract was won easily because of the high vulnerability of Minute Maid and Coca Cola products to boycotts.

The disputes with the Teamsters laid the groundwork for prolonged court and political involvement in union matters, opening the door for injunctions against boycotts, strikes during crucial periods, and speaking to potential recruits on grower property. Despite these internal difficulties, farm labor strikes and boycotts throughout the 1960s and early 1970s received widespread publicity and broad-based support. This resulted in numerous contracts between the UFW and California growers that raised employee wages and benefits, while motivating legislative reforms beneficial to farm labor. By the late 1970s, however, changes in the political climate and the reappearance of labor surpluses, caused at least partially by illegal immigration, undercut these advances.

CONCLUSION

Agricultural development in the United States is a story of the fundamental changes in and restructuring of the relationship between the farm and nonfarm sectors of the economy and of the role government has played in this process. It began with a long period of frontier settlement that forged an industry based on abundant land and scarce labor. In that setting, increasing the productivity of labor, rather than of land, was of paramount concern. The immense labor demands of rapid industrial development made urgent the need to substitute capital for labor on the farm. Overproduction, due in part to technological developments, interspersed with labor shortages during times of war, forced the federal government to provide increasing support for the agriculture industry. At the same time, improvements in biological and chemical technologies and the spread of irrigation led to huge increases in the productivity of land while technological developments in other areas allowed the transport of farm products to distant markets. Together, these forces have shaped an agriculture

⁵⁴ By this time, the American Federation of Labor had joined with the Congress of Industrial Organizations, or CIO.

⁵⁵ Ironically, such activities could be successful in agriculture because the industry was not covered by the National Labor Relations Act.

industry in which, over time, fewer and larger farms have come to dominate.

In fruit, vegetable, and horticultural specialty production — the portion of the industry that remains the most labor intensive — this concentration has been accompanied by changes in the structure and nature of the work force. While machines have replaced people in many tasks, fewer and larger farms have meant that the proportion of farm work done by hired workers, rather than family members, has increased. Finally, the growth of “factories in the fields” has resulted in the agricultural sector of the economy increasingly coming to resemble the nonagricultural sector.

From the early era of land distribution and allocation, through the crisis periods of economic depressions and world wars, and continuing today, the U.S. Government has attempted to promote and protect agriculture. Only recently has this protective attitude begun to extend to agricultural workers.

Government intervention on behalf of farmworkers has been defined by three types of actions: (1) coordinating the domestic labor supply with available farm jobs; (2) gradually extending workplace protections to farmworkers while providing scattered support services to those who remain in the occupation; and (3) adding to the agricultural labor supply through programs admitting both immigrant and nonimmigrant farmworkers. Neither of these latter two sets of policies have made substan-

tive changes in the economic circumstances of farmworkers, however, and inevitably the message became clear: to get ahead, farmworkers should move out of agricultural work. It is thus not a coincidence that the agricultural industry has become increasingly dependent on new immigrant workers to fill its seasonal labor needs.

The effectiveness of such government policies, however, is open to question. The number of full-time, mid-size producers has declined rapidly over the past few years as these types of operations have become less economically viable. At the same time, the majority of agricultural workers continue to live in poverty.

Of course, regulation of the marketplace by the U.S. Government is not unique to the agricultural industry. Farming, farmers, and farmworkers, however, have often been granted a special status. This status has been based on the premise that U.S. agriculture, consisting largely of family farms, is as much a way of life as a business. However, only a few segments of the agricultural industry today exhibit a structure and organization that differs markedly from that of other businesses. This is particularly true in the case of fruit, vegetable, and horticultural specialty production. Nevertheless, the vulnerability of an industry dependent on large numbers of seasonal employees has persuaded lawmakers to continue to focus on the need to provide agriculture an affordable and legal supply of workers.

CHAPTER II

THE STRUCTURE OF U.S. AGRICULTURE

BACKGROUND

A typical U.S. farm can no longer be viewed as an independent operation. Rather, it is enmeshed within a network of firms, each of which plays a different role in supplying basic production needs, manufacturing processed food items, and distributing and selling those items to consumers.

The overall agricultural industry thus consists of three sectors or phases: (1) the provision of farm inputs — ranging from machinery, fertilizers, fuel, and seeds to the financial infrastructure to support the industry; (2) farming — the raising of food and fiber; and (3) transporting, processing, and marketing farm products. More than 21 million people are employed in agriculture and its related industries (USDA 1991a), representing nearly 25 percent of the civilian labor force. However, only a small proportion of these workers are in farm production — 2.1 million are farm operators, and according to the U.S. Department of Agriculture, there are slightly over 1 million jobs for hired farmworkers at peak season. The majority (57 percent) of those working in agriculture-related industries are involved in the marketing of farm products, many in food stores and public eating places (USDA 1991a). Others are employed in the processing and transporting of farm products.

Total farm labor productivity is at an historic high. In 1989, one U.S. farm worker¹ produced farm products for 98 persons. This ratio has grown over the years. In 1965, one farm worker produced enough farm products for 37 persons, while in 1975 the ratio was one farm worker producing enough for 58 persons (USDA 1991a). These data reflect increases in both agricultural productivity and economic specialization, as many farm activities have shifted to nonfarm enterprises. For example, the majority of farmers no longer produce their own seed and fertilizer or market their own crops. They depend instead on others who specialize in these particular functions. In turn, those who continue to work on farms specialize in the actual raising and harvesting of food and fiber.

As farm labor productivity has increased, the number of people employed as farmers and farm-

workers has decreased — largely as a result of improved technologies and the substitution of capital for labor. This process, however, has not affected all types of farms equally. Despite labor-saving innovations ranging from electronic eyes in packing sheds to conveyor belts in the fields, many fruit, vegetable, and horticultural specialty (FVH) growers continue to rely on large numbers of hired workers, particularly during the harvest.

Economic specialization also permeates the second phase of agriculture — the business of farming. While farms and farmers throughout the country have much in common, farmers who specialize in particular types of commodities share certain distinctive characteristics that present them with unique problems and opportunities. For instance, farm size and degree of product seasonality and perishability shape the extent of both risk and profitability and influence the level of government assistance.

But perhaps the most far-reaching distinction is the degree to which different types of farms rely on hired labor. Many farmers with several hundred acres of land raise crops which can be mechanically planted, tended and harvested, and need only one or two “hired hands” to maintain their operations. In contrast, FVH-producing farmers are likely to need hundreds of seasonal employees to accomplish the same tasks. The production of such labor-intensive commodities thus turns farmers into employers — imposing on them challenges, costs, and responsibilities which can easily overshadow their farming operations.

This distinction is critical for understanding the unique position of farmers who specialize in FVH production. All farmers are keenly interested in technological innovations and issues of export opportunities and import competition, and are affected by land use conflicts and overall farm policy. In addition, however, FVH farmers are critically concerned with issues surrounding agricultural labor.

1 Here the term is used to refer to a farm operator or hired worker.

THE NATURE OF FARMING

Farming resembles other types of businesses in many ways. Like manufacturers, farmers buy raw materials, transform them through a capital-intensive process, and sell their finished products. Yet there are certain characteristics that distinguish agricultural production from other types of manufacturing.

The most obvious is the fact that farming depends on a biological, rather than an engineering, production process. Raising crops and animals, farmers are unable to respond quickly to changing market conditions. In addition, factors such as weather and disease add an element of uncertainty to the volume and quality of their finished products.

There are also limits to the geographic distribution of farming. Farming is a land-based business, with farming units distributed across the country on the basis of different climates and soils which limit what can be produced in each location. Because land is a fixed commodity, it tends to appreciate rather than depreciate over time, increasing the wealth of its owners as well as the entry costs for new farmers (Economic Report of the President 1984).

Finally, the business of farming is subject to a higher degree of government involvement than are most other businesses. A combination of the need to protect a critical industry — food production — with a continuing desire to protect an historical legacy — family farmers — has made agriculture the focus of a disproportionate amount of government intervention.

FARM STRUCTURE IN THE UNITED STATES

Farm Size

According to the Census of Agriculture, a farm in the United States is a place which sold, or could have sold, at least \$1,000 worth of agricultural products in the prior year. This means that some farms are small operations, generating an income that could not support an individual for a year, while others are multi-million dollar operations,

employing thousands of individuals and controlling thousands of acres.

For the past two decades, the general trend has been for the number of mid-sized farms to decrease in comparison to the number of both small and large operations (Figure 2.1). This “disappearing middle” means that traditional full-time, family-farming households — in which members own most of the assets, provide most of the labor, and derive most of their income from farming — are declining in both absolute and relative terms (Madden and Baker 1981). One explanation for this phenomenon is the general trend in the United States and other advanced economies toward multiple job holdings, which is seen in the growth of small-scale, part-time farmers. These farmers include both new “hobby” farmers who work their small farms on evenings and weekends, and traditional farmers who have had to seek outside employment to supplement their farm earnings.

A competing trend is leading to the concentration and centralization of capital. This is seen in the increasing numbers of highly capitalized, large-scale units. At the same time, there has been a weakening of family businesses nationwide — reflected in the agricultural sector in the relative decline of mid-sized farms (Buttel and LaRamee 1991).

This last trend has not occurred among farms specializing in FVH production. In fact, with the exception of farms specializing in horticultural products (where the number of all but the smallest farms has increased substantially), this sector has seen the exact opposite occur: an increase in the number of mid-sized farms (Figures 2.2 through 2.4).²

Based on the official census definition, a majority of the nearly 2.1 million farms in the United States in 1987 were classified as “small” — 60 percent had fewer than 180 acres, while almost 50 percent sold less than \$10,000 worth of agricultural products. These farms, however, accounted for an insignificant share (2.5 percent) of the total agricultural products sold. Most farm commodities in the United States are thus produced by large,

2 Note that the acreage categories used by the Census of Agriculture for FVH farms (Figures 2.2 through 2.4) do not match exactly those used in Figure 2.1 for all farms.

**Figure 2.1 Number of Farms
All Farms 1978 - 1987**

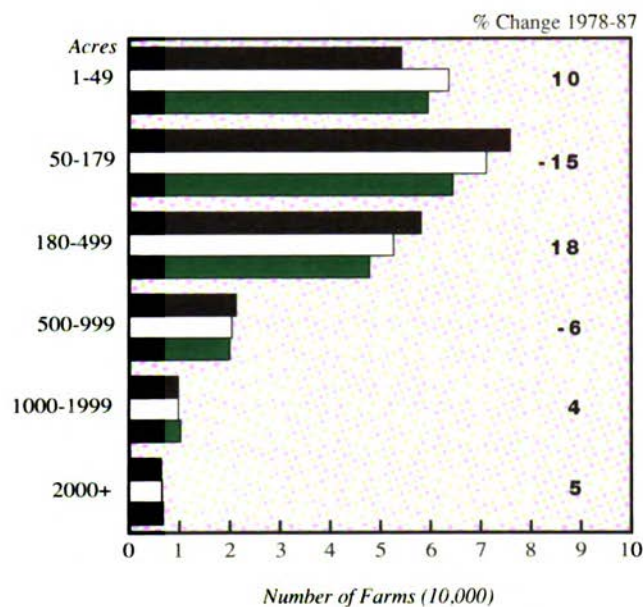


**Figure 2.3 Number of Farms
Fruit and Tree Nuts 1978 - 1987**

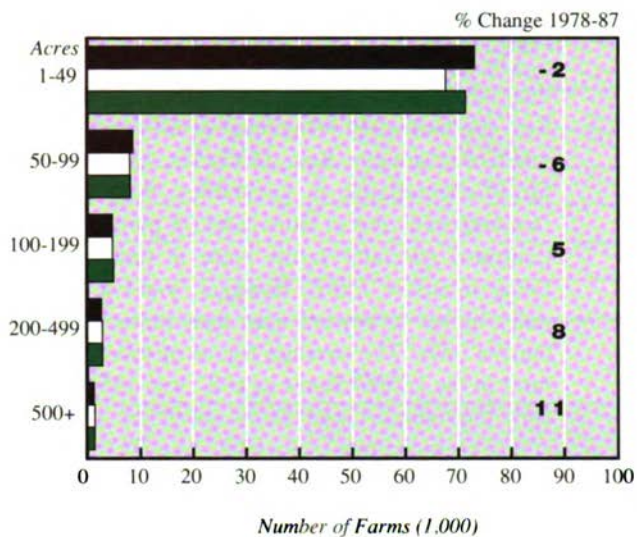


**Figure 2.2 Number of Farms
Vegetables and Melons 1978 - 1987**

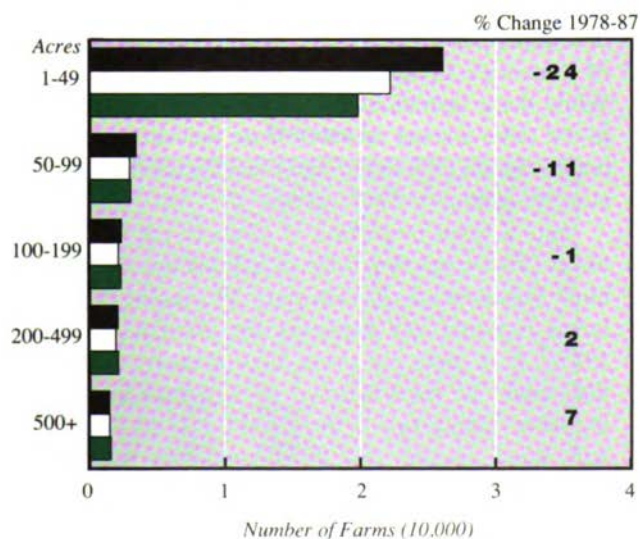
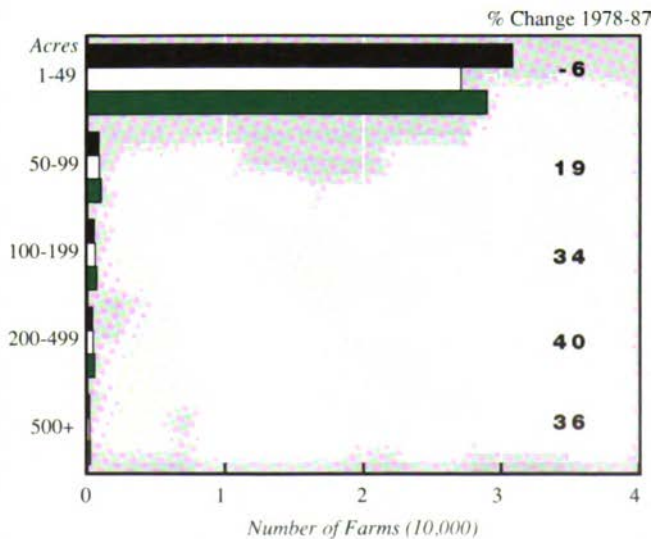


**Figure 2.4 Number of Farms
Horticultural Specialties 1978 - 1987**



1978 1982 1987

Source: 1987 Census of Agriculture, USDC.

capital-intensive farming units. In 1987, the largest 1.5 percent of all farms (based on value of sales) accounted for 38 percent of the value of all agricultural products sold.

On average, FVH farms in 1987 were smaller than other farms (Figure 2.5). While, as noted earlier, approximately 60 percent of all farms nationwide were smaller than 180 acres, 79 percent of farms specializing in vegetables, 90 percent of farms specializing in fruits, and 94 percent of horticultural specialty farms were in that category. Labor-intensive farms, however, yield a substantially higher return per acre than more capital-intensive ones. The average figure of total sales per farm in the United States in 1987 was \$65,165. Despite their smaller size, farms specializing in vegetables averaged total sales of \$154,837, fruit farms \$79,263, and horticultural specialty farms \$182,604.

Ownership Patterns

In 1987, nearly two-thirds of U.S. farms were individually or family owned, with a much smaller number organized into partnerships or corporations. The economic influence of the latter, however, was disproportionate to its numbers — a function of the fact that corporations control a substantial percentage of agricultural land and generate the majority of agricultural products sales (Figure 2.6).

Disaggregating farms producing fruits, vegetables, and horticultural specialty products shows partnerships and corporations playing an even more important role, especially in the production of horticultural specialties (Figures 2.7, 2.8, and 2.9).

Families and sole proprietors continue to own the majority of farms in the United States. Even they, however, have increasingly lost independent control over their farm operations. Such factors as who owns the land, buildings, and machinery; who performs the farm work; who provides the working capital; and who makes the day-to-day and long-term decisions have reduced the autonomy of the independent family farmer (Vogeler 1981).

Furthermore, as farming has become increasingly capital-intensive, debt financing, tenancy, contract production, and off-farm employment have

increased. More than one-half of all farmers had jobs off the farms at some point during 1987, while more than one-third worked for at least 200 days off the farm. Almost one-half of all farmers did not list farming as their principal occupation. However, full-time, rather than part-time, farmers controlled the majority (79 percent) of agricultural land.

With one exception, this situation is similar within FVH agriculture. Farmers who produce primarily vegetables are more likely to list farming as their principal occupation than are other farmers (61 as opposed to 46 percent for the national average). Full-time farmers control 90 percent of the vegetable acreage. This tendency is less pronounced for farmers producing primarily fruit and nuts, where the 46 percent who list farming as their principal occupation control 75 percent of orchard land.

Use of Hired Labor

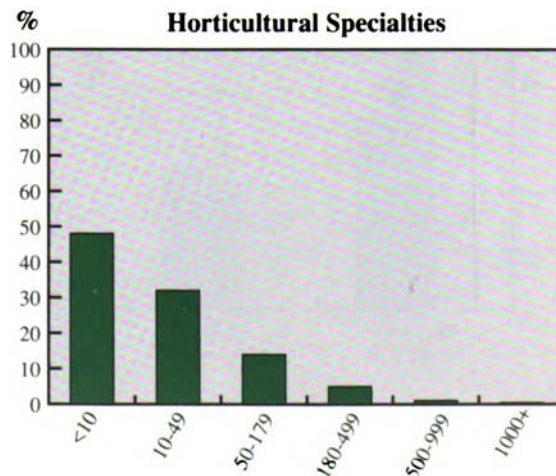
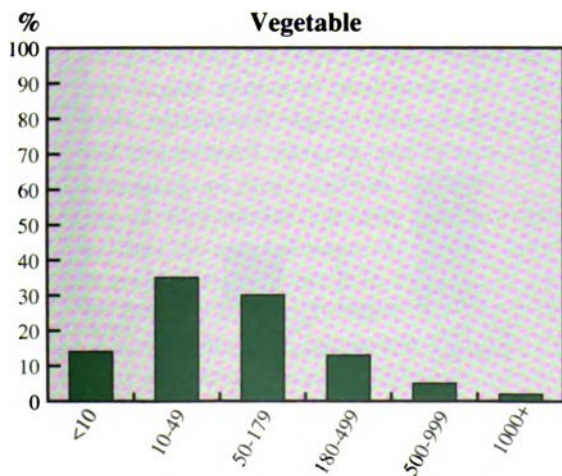
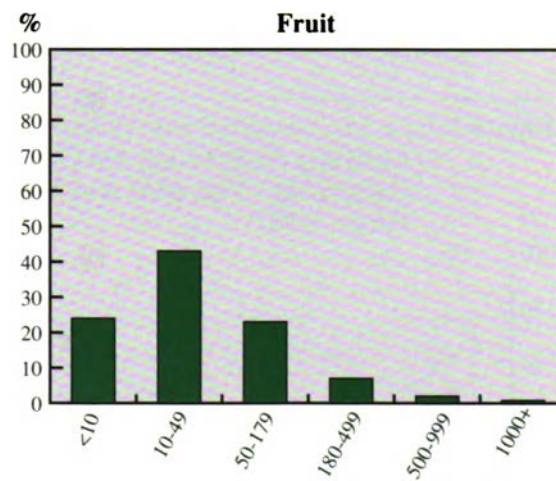
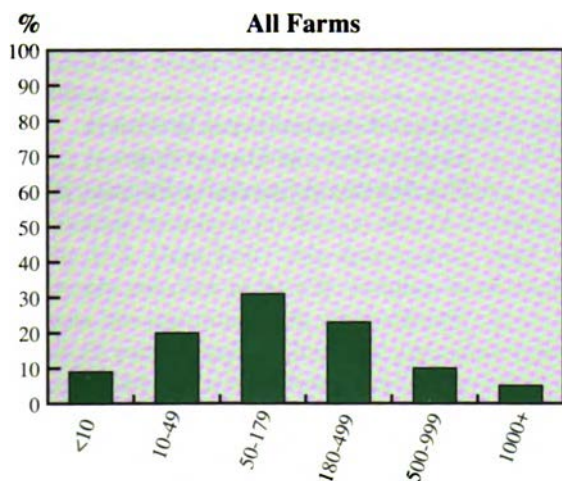
A decline in the number of farms, combined with an increase in economic specialization within the agricultural industry, has meant an overall decrease in the number of farm operators and unpaid family workers. However, large farms specializing in FVH products continue to require large amounts of seasonal labor. Such farms represent the epitome of “factories in the fields” (McWilliams 1939). While these operations are increasingly organized in the same manner as many large industries, they remain agricultural in the sense that seasonality and climate determine their success.

Only a small proportion of farms in the United States grow crops requiring significant numbers of hired farmworkers. In fact, only 39 percent of all farms reported any expenses for hired labor in 1987.³ It is precisely these labor-intensive farms that would be most affected by any reduction in the labor supply or the increased costs associated with hired workers that the Immigration Reform and Control Act (IRCA) might have brought about. Further, most hired farmworkers are employed on

3 About three-quarters of all farms were engaged in some livestock and poultry production, while approximately the same fraction had harvested cropland. The single commodity grown on nearly half of all farms was hay.

Figure 2.5 Number of Farms Specializing in Fruit, Vegetables, and Horticultural Specialties 1987

Acres	All Farms	Fruit	Vegetable	Horticultural Specialties
<10	183,257	21,059	4,075	15,049
10-49	412,437	38,019	10,103	9,966
50-179	644,849	20,042	8,491	4,367
180-499	478,294	6,282	3,690	1,430
500-999	200,058	1,741	1,411	435
1,000+	102,078	719	662	144



Source: 1987 Census of Agriculture, USDC.

Figure 2.6 Land Controlled and Value of Agricultural Products Sold by Type of Ownership - All Farms (1987)

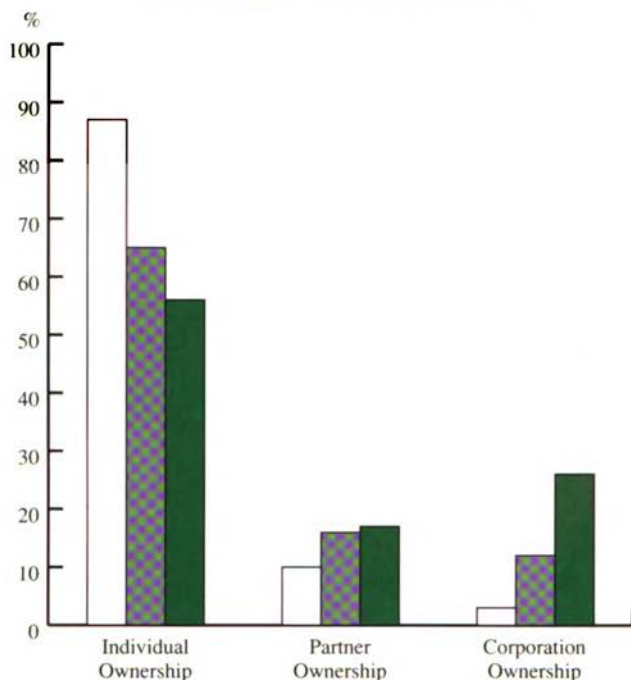


Figure 2.8 Land Controlled and Value of Agricultural Products Sold by Type of Ownership - Fruit and Tree Nut Farms (1987)

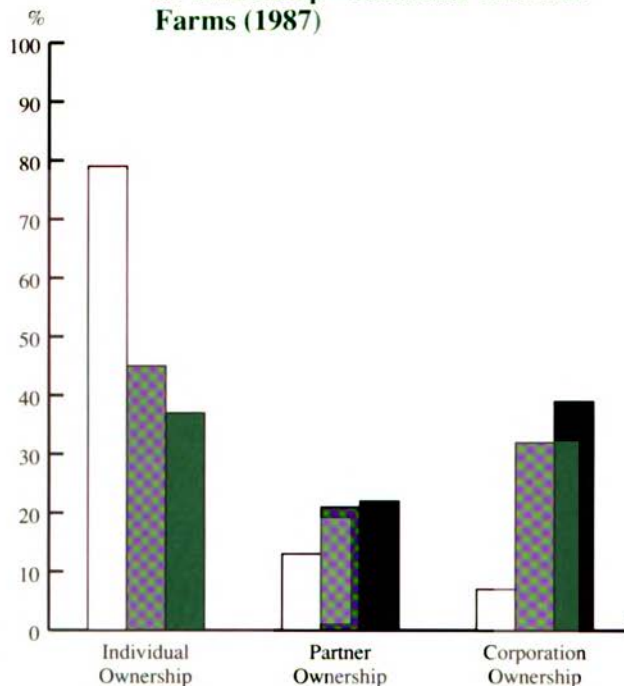


Figure 2.7 Land Controlled and Value of Agricultural Products Sold by Type of Ownership - Vegetable and Melon Farms (1987)

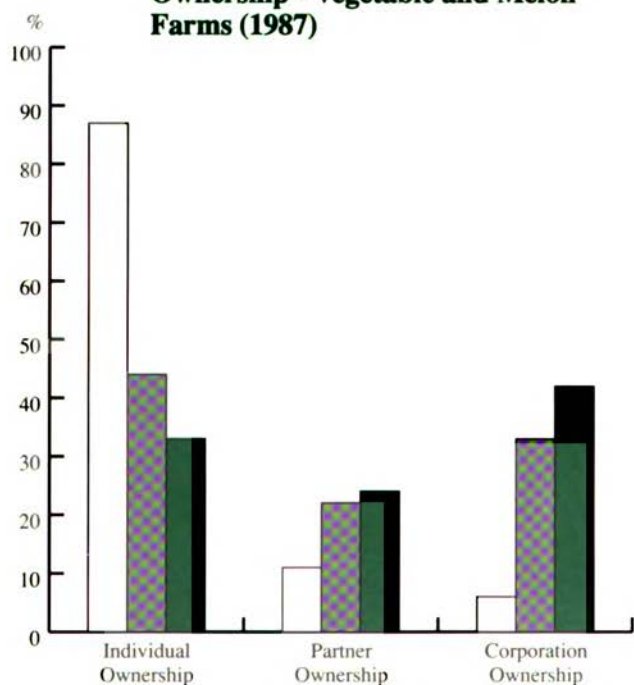
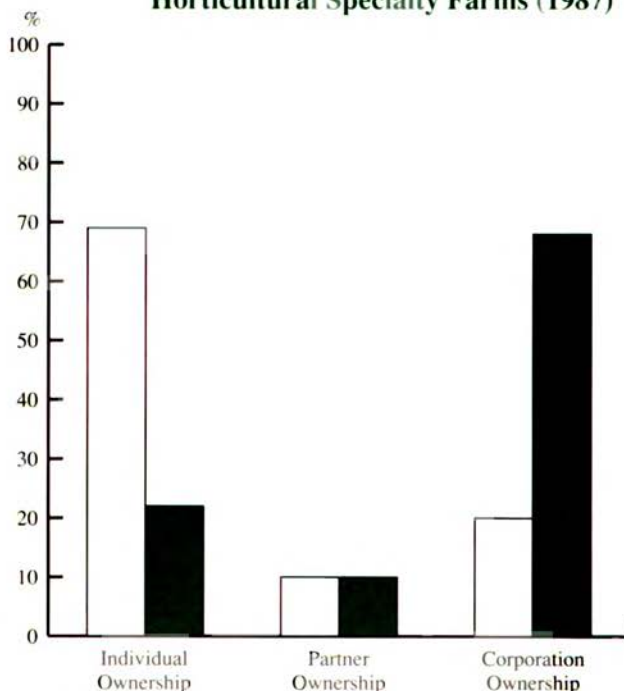


Figure 2.9 Value of Agricultural Products Sold by Type of Ownership - Horticultural Specialty Farms (1987)



□ % of all farms ▨ % of land controlled ■ % of market value of agricultural products

* Other types of ownership include cooperatives, estates or trusts and institutions. These are not included in this table, accounting for the fact that the percentages do not always equal 100.

Source: 1987 Census of Agriculture, USDC.

farms with high annual sales. In 1987, 88 percent of labor expenditures were reported by farms with annual sales of \$100,000 or more.

FVH PRODUCTION COMPARED TO OTHER TYPES OF FARMING

Crop Production Areas

On a national scale, farmers produce a wide variety of commodities (the Census of Agriculture lists more than 200) yet there are patterns within this diversity. Using cluster analysis, specific crop production areas have been identified and classified based on farm enterprise, farm resources, and farm-nonfarm sector interaction (Sommer and Hines 1991).

According to this method of clustering, the largest farming region in the United States, based both on total farm sales and number of farms, is the corn/soybeans/hog production area of the Midwest, the U.S. Corn Belt. This area typifies what most people consider to be U.S. farming. Non-labor inputs are intensive, with approximately 30 percent of all commercial fertilizer and agricultural chemicals used nationwide being applied in this region. At the same time, hired labor is of minimal importance, accounting for only 5.6 percent of total farm expenses (Sommer and Hines 1991).

Cattle/wheat/sorghum production composes another major agricultural region, located in the Great Plains and Rocky Mountain states. Registering the second largest amount of total farm sales, this is a strongly agricultural region where farming is the largest employment category, and farm households obtain much of their income from their farms. Farms in this production area are substantially larger than the national norm. As a result, sales per farm are higher. Sales per acre, however, are much lower than for most U.S. farms. The use of hired labor is again minimal, accounting for only 5.5 percent of all farm expenses (Sommer and Hines 1991).

This same method of grouping by commodity divides FVH agriculture into two clusters — fruit and vegetable/nursery. These sectors are relatively small in terms of their share of all farms (3 percent

for fruit and 10 percent for vegetable and nursery products), but are highly concentrated geographically.

Fruit production is dominant in central California, the Pacific Northwest, and central Florida, with scattered areas of production throughout the Northeast. Fruit-producing areas have a high percentage of farms with fewer than 10 acres, but sales and net cash returns per farm are substantially above the U.S. average, regardless of size. Within fruit production areas, 46 percent of the farms have total annual sales of less than \$10,000. However, production is so dominated by large operations that 79 percent of sales are from the 10 percent of farms with total sales greater than \$250,000. Hired labor plays a crucial role on these farms. The share of total farm expenses accounted for by hired and contract labor for farms in fruit-producing areas is the highest of any of the farming-defined clusters — 28 percent. This contrasts with 11.5 percent for the national average (Sommer and Hines 1991). Vegetable and nursery production areas are more widely dispersed than areas of fruit production. They are found throughout the Southwest and along the coast of California, in the Northwest, throughout Florida, in scattered areas along the Eastern Seaboard, and around the Great Lakes. As with the fruit production cluster, many farms growing vegetables and nursery products have fewer than 10 acres. Located near metropolitan areas, more than one-half of these small farms have total sales of less than \$10,000 per year. As in the fruit-producing areas, a relatively small percentage of farms with total sales of more than \$250,000 (5.7 percent) account for the vast majority of production (72.5 percent of all sales).⁴ As in the fruit-producing areas, hired and contract labor accounts for a large share of farm expenses — 25.3 percent (Sommer and Hines 1991) (Table 2.1.).

⁴ Nationwide, in all types of farming, 4.5 percent of farms have total sales over \$250,000 and account for 53.1 percent of all sales.

Table 2.1 – Selected Characteristics of Farms in Fruit and Vegetable/Nursery Growing Areas, 1987

	All Farms	Fruit	Veg./ Nursery
<i>Percent</i>			
Sales from farms with total sales:			
less than \$10,000	2.6	1.0	2.0
\$10,000 to \$39,999 . .	7.4	3.2	4.5
\$40,000 to \$99,999 . .	13.7	6.0	7.2
\$100,000 to \$249,999 .	23.2	10.9	13.8
Over \$250,000	53.1	78.9	72.5
Farms with total sales:			
less than \$10,000	49.2	45.9	58.4
\$10,000 to \$39,999 . .	22.8	21.3	19.0
\$40,000 to \$99,999 . .	13.8	13.1	9.5
\$100,000 to \$249,999 .	9.7	9.7	7.4
Over \$250,000	4.5	9.9	5.7
Farms with:			
less than 10 acres . . .	8.7	20.1	19.0
500 acres or more . . .	17.7	9.7	7.7
<i>Dollars</i>			
Net cash returns			
Average per farm . . .	12,636	30,782	16,716
Farm expenses			
Average per farm . . .	51,671	108,332	65,945
<i>Percent</i>			
Hired farm and contract labor	11.5	28.1	25.3

Source: Adapted from Sommer and Hines 1991.

Factors Affecting Production Patterns

The concentration of fruit and vegetable farming in California, Florida, and a few other areas largely reflects both the environmental opportunities (in terms of soils, water, and climate) and the existence

of transportation links which allow easy access to markets. While simple environmental determinism does not explain the distribution patterns of different crops adequately, environmentally imposed constraints cannot be overlooked. For example, citrus production requires relatively warm winters; apple production requires colder winters with few spring freezes; and lettuce is best grown in cool, moderate climates.

Climate also determines the marketing windows available to growers — a critical element in a competitive system. For the past 20 years, winter tomato production has offered Florida growers an essentially open market.⁵ In general, the increasing internationalization of agriculture and reduction in trade barriers is changing the marketing environment for a range of commodities, posing competitive challenges to many U.S. producers of labor-intensive crops.

Other factors, too, influence agricultural production. Farmers' markets and other mechanisms that allow direct sales to customers support small-scale and part-time farm operators near urban areas. High land values, again near urban areas, encourage the planting of crops yielding high returns per acre — primarily fruits, vegetables, and horticultural specialty products. Finally, proximity to transportation links and urban markets, despite improvements in storage and transportation, continues to be a critical factor in determining where highly perishable commodities are produced.

Production Contracting

In addition to relative size and the use of hired labor, the fruit and vegetable industry differs from other agricultural sectors in another way: the significant role that production contracting plays. Under production contracts, processors pay farmers to produce a particular commodity. Arrangements between farmers and processors within these contracts vary, but processors often specify how the commodity will be

5 The current growth of the Mexican tomato industry is providing increased competition for this particular niche. An opening of trade as a result of a North American Free Trade Agreement, or a liberalization of trade with Cuba, would do likewise.

grown, what the price will be; in many instances, processors also provide some of the inputs.

Virtually all processing vegetables are grown under contract. Production contracts for fresh market fruits and vegetables are less common, but still significant. In 1989, 25 percent of the value of all fruit production and 43 percent of the value of all vegetable production was under contract (USDA 1991g).

The practice of contract production has far-reaching implications for the autonomy of individual farmers, and ultimately affects the relationship between hired farmworkers and their employers. In fact, Midwest farm labor organizers have used the unique structure that develops under contract production to improve hired farmworkers' working conditions by negotiating with the large umbrella corporations rather than the individual farmers.

CURRENT GOVERNMENT ASSISTANCE TO GROWERS

Most current farm programs are based on those developed to address the problems of farming during the 1930s although the agricultural industry has changed substantially since then. Farming has become increasingly specialized, capital intensive, and high-technology based. It has also become more economically viable. Farm family income in the 1930s was less than 40 percent of that for nonfarm families. Today, farm family income exceeds income for the nonfarm sector, partially as a result of the increasing ability of farm operators to supplement their incomes with nonfarm jobs.

Price Supports and Government Payments

Most U.S. government crop subsidy programs have been directed toward crops that currently require a relatively small amount of hired labor. Growers of wheat, rice, feed grains, and cotton, as well as dairy and livestock, receive several billion dollars in direct government payments each year. In addition to providing direct economic benefits, these subsidies increase land values, and thus the overall wealth of the farm owner. As the amount of support is directly related to the quantity a

farmer produces, the average payment per recipient increases along with farm size and productivity.

Tobacco is one exception to the low labor inputs characteristic of crops eligible for commodity price support programs. Since the 1930s, a range of support programs have been in place for tobacco. These currently take the form of poundage quotas and acreage allotments that must be adhered to in exchange for price supports. These programs provide both price stability and a high return per acre for tobacco.

The other exception is sugar. The price for U.S. sugar is set by Congress and maintained by the Department of Agriculture's Commodity Credit Corporation, which also controls the level of imports. While the harvesting of sugar beets is largely mechanized, sugar cane harvesting in Florida remains a labor-intensive operation. Five large sugar producers and producer cooperatives harvest most cane.⁶ For years, the Florida sugar industry employed approximately 10,000 Caribbean harvesters through the H-2 and H-2A temporary foreign worker program.⁷ These workers continue to hold nonimmigrant status in the United States, as they were excluded from the Special Agricultural Workers provisions of IRCA.

With the exception of those raising sugar cane, farmers who specialize in fruit and vegetable production earn less of their gross farm income from direct government payments than do other farmers. In 1989, fruit and vegetable farms earned approximately 2 percent of their gross income from government payments,⁸ compared to 6 percent for all farms (USDA 1991g). While not eligible for direct crop subsidies, fruit and vegetable growers do benefit from certain government programs, such as the increased purchasing resulting from the food stamp and the federal school lunch programs.⁹

6 These are Atlantic Sugar Association, Okeelanta Corporation, Osceola Farms Company, Sugar Cane Growers Cooperative, and U.S. Sugar Corporation.

7 By 1991, this number had dropped to approximately 6,000.

8 Government payments refer to direct cash or generic commodity certificate payments to the farm operator.

9 A 1935 amendment to the Agricultural Adjustment Act of 1933 (Section 32) set aside 30 percent of customs receipts for the purchase of surplus farm products. In 1990, approximately \$128 million was used to purchase fresh, frozen, and canned produce for the federal school lunch program.

Agricultural Research

An additional type of government assistance to agriculture takes the form of research conducted by the U.S. Department of Agriculture (USDA) and the land-grant college system. This research benefits all growers, including those in FVH agriculture as it is often directed to increasing overall yield per acre and overall grower productivity. Its results also benefit farm employers by reducing their reliance on hired labor. A lawsuit brought in 1979 challenged the role of state-supported schools in using public funds to promote mechanization in the harvest of fruits and vegetables. And critics of USDA's emphasis on technology have noted that, throughout the years, mechanization has accelerated the development of monopolies in food production, the dispossession of family farms, and the displacement of large numbers of hired farmworkers.

Irrigation

Some western fruit and vegetable growers benefit directly from the Department of Interior's Bureau of Reclamation irrigation projects that provide water for irrigation. Long-term contracts for water transformed many parts of the arid West into prime agricultural areas. Current water shortages, however, have led to conflicts over such access, causing increased scrutiny of agriculture's preferred status. The trend in recent legislation has been to attempt to recover more of the costs involved in providing such water. The U.S. General Accounting Office recently reported that, by the end of fiscal year 1990, irrigators in the Central Valley of California had repaid only \$10 million of the more than \$1 billion in capital costs associated with the construction of irrigation facilities (USGAO 1991b).

Promotion of Fruits and Vegetables

Marketing orders allow growers to use collective action to increase sales, develop more marketable products, and reduce marketing costs for a variety of fresh fruits and vegetables (USDA 1990b).¹⁰ Most marketing orders include regulations for funding promotion, designed to increase consumer

demand, and research. Orders are also used to control both quality and volume through such mechanisms as minimum sizing and grading standards, restriction of new production, or holding a percentage of a year's crop in reserve.

In addition to promotion through marketing orders, approximately one-third of the funds the federal government spends for promoting agricultural products abroad are directed toward produce, while import tariffs on certain fruits and vegetables limit competition from abroad.

Labor Policy

Farm labor policy has played a critical role in supporting the labor-intensive portions of the agriculture industry. As discussed in Chapter 1, employer costs have been reduced by the partial or total exclusion of agricultural workers from coverage under key labor laws. The extent to which this is the case has declined over the years, however, some exclusions still remain. Finally, the authorized importation of foreign workers for agricultural work, by adding workers to the pool of available labor, has helped keep wages for agricultural workers, and thus labor costs for agricultural producers, below what they would have been without such interventions.

PROBLEMS OF U.S. FARMERS

The Farm Crisis of the 1980s

For the past 100 years, the farm economy has experienced repeated cycles of extreme boom and severe bust. The most recent farm industry recession occurred during the 1980s. These difficult years followed a decade of expansion, fueled primarily by enormous increases in the value of agricultural land. During that time, capital gains, rather than income, accounted for a large part of farmers'

10 The Agricultural Marketing Agreement Act of 1937 (AMAA) stemmed originally from the Agricultural Adjustment Act of 1933 and authorized federal marketing orders for specific fruit, vegetable, and specialty crops. In 1990, federal marketing orders covered 45 crops. The annual farm value of the crops covered was approximately \$4.5 billion, or roughly half of the total sales in the commodity markets that the crops enter (USDA 1990b).

increased wealth (Friedberger 1988). Higher net worth, in turn, encouraged farmers to borrow money to expand, purchasing more land and larger machines, as well as upgrading their buildings and homes. The debt incurred ultimately spelled disaster for the many farm operators who were unable to meet their financial commitments.

The effects of the 1980s farm crisis were not evenly distributed throughout the farm sector. Figures from the Census of Agriculture between 1982 and 1987 show that approximately three-quarters of the 7 percent decline in the number of overall farms occurred in farms between 50 and 499 acres. Total farm acreage fell only 2 percent during this period. Wheat and corn farms decreased substantially in both numbers and acreage. FVH-producing farms fared somewhat better. While the number of FVH farms fell slightly, FVH acreage increased. Between 1980 and 1990, the largest declines in the number of farms were in the Delta region (Louisiana, Mississippi, and Arkansas) and Appalachia (Tennessee, Kentucky, West Virginia, and Virginia). Apparently immune to the effects of the national farm crisis, the number of farms in the Pacific states (California, Oregon, and Washington) increased by 3 percent during the decade (USDA 1991c).

Despite the financial stress felt by many farm operators and the media attention to farm foreclosures, the actual decline in the number of farms during the 1980s was lower than in each of the preceding four decades. Between 1950 and 1960, and again between 1960 and 1970, the number of farms declined by more than 25 percent. And between 1970 and 1980, a time of general prosperity for the agricultural sector, the number of farms still declined by 12 percent — the same rate as that for the decade of the 1980s (USDA 1991c). One major difference between other recent declines and that of the 1980s was that a generally healthy economy in the 1950 to 1980 period was able to absorb farm families leaving agriculture much more successfully than was the case in the 1980s.

Community Conflicts

Financial solvency is not a farmer's only concern. The U.S. occupational distribution has changed from one in which most of the population lived on farms to the current situation where less than 3 percent do so. Urban encroachment has led to conflicts with new neighbors over a range of such "nuisances" as noise, odors, and dust — standard elements of a normal agricultural operation. In addition, farmers currently face conflicts with environmental groups concerned about agriculture's contribution to water and soil contamination.

A final set of conflicts for farmers who hire seasonal workers stem from community sentiment against migrant farmworkers. This often intense sentiment is expressed through such activities as local opposition to the building of labor camps to house seasonal workers or discrimination toward the workers themselves.

Compliance Documentation

Over the years, the government has assumed an increasing role in monitoring U.S. businesses. Farmers, like many business operators, are encountering more government regulations as a result.

The number of such regulations and the resulting paperwork increase substantially for farmers who are also employers. Accurate, legal payroll operations require a relatively sophisticated accounting system. The passage of IRCA, with its enactment of employer sanctions, requires verification of each worker's employment authorization. As many farms have high turnover rates, this can be a continuous process throughout the harvest season. Many growers have turned their bookkeeping over to farm labor contractors, but the lack of accountability shown by many contractors has complicated such decisions.

THE ECONOMIC VIABILITY OF FARMING IN THE UNITED STATES

Farm Income

Despite the farm crisis of the 1980s and the general sluggishness of the economy, farming continues to be a lucrative venture for many. In 1987, more than one-half of all farms showed net financial gains, while more than three-quarters of farms with sales of \$10,000 or more showed net profits (USDC 1989).

Fruit and vegetable farm households had higher net incomes than other farm households. In 1989, net income averaged \$48,729 for fruit growers and \$56,426 for vegetable growers. The average income for other farm households was \$33,461 (USDA 1991g), while that for all U.S. families stood at \$28,906.

U.S. farmers currently receive approximately 30 cents out of each consumer dollar spent on food. The difference between what farmers get and what consumers pay at the food store — referred to as the farm-retail price spread — covers all processing, transportation, and marketing charges incurred after the products leave the farm. Over the past 10 years, the average farm-retail price spread has risen — and the proportion of each consumer dollar spent on food that goes to a farmer (the farm share) has declined. In 1980, the average farm share was 37 cents out of every dollar. It had fallen to 30 cents by 1990. For fresh fruit, the farm share declined from 26 to 23 cents.

There have been two notable exceptions to this trend. For fresh vegetables, the farm share increased from 27 cents in 1980 to 30 cents in 1990, and for processed fruits and vegetables, from 23 to 26 cents (USDA 1991d).

Food Costs

During the first half of the 1980s, the consumer price index for food lagged behind that of nonfood items. This trend reversed in 1986, and for the next 4 years the consumer price index for food overtook that for nonfood items (USDA 1991e). Prices for fresh and processed fruits and vegetables generally

rose more steeply than did the average costs for all foods.

Nevertheless, U.S. consumers continue to spend a smaller proportion of their disposable income on food than do consumers in any other country. This is due primarily to the high productivity of the U.S. agricultural sector, the availability of vast tracts of arable land (which reduces the country's reliance on food imports), and government support for the domestic agricultural industry. In 1986, the last year for which comparable data are available, U.S. consumers spent only 8.5 percent of their personal consumption spending for food to be eaten at home. This compares to 12 percent for Canada, 14 percent for the United Kingdom, and 19 percent for Japan. In many less developed countries, at-home food expenditures account for a substantially higher percent of the household budget — for instance, 33 percent for Mexico and 54 percent for India (USDA 1991e).

Land Values

An additional factor to consider in assessing the financial viability of the agriculture industry is the worth of its assets, especially the land. The economic volatility of the late 1970s and early 1980s is reflected in the average market value of land and buildings reported in the Census of Agriculture. Farmland values climbed steadily for more than a decade, peaking in 1982. Subsequent to that time, values fell for 5 years, at which point they began to rebound, although they are still far from the record levels of 1982. The value of U.S. farmland and buildings averaged \$681 per acre in 1991, 14 percent above the 1987 low of \$599, but 17 percent below the 1982 high of \$823 (USDA 1992). The values for land utilized in FVH production, while generally higher, followed this same general trend.¹¹ Farm real estate debt has also fallen since its 1983 peak, indicating a stronger financial position for many producers (USDA 1989).

11 For example, the land value for raisin grape vineyards in the San Joaquin Valley peaked in 1982 at \$10,840 per acre. This dropped to a post-1982 low of \$4,000 in 1986, a decrease of 63 percent. By 1991, land value had increased to \$5,900 per acre, a rise of 47 percent since 1986, but still only 54 percent of the 1982 value.

Farmland values are not even across the country. The highest farmland values per acre are in the northeastern states, partly because of their proximity to urban areas. Values in several midwestern states have shown the highest rate of rebound over the past few years. In all areas, however, there continues to be a great deal of variability in the value of farmland, due primarily to its use and specific location.

Export Markets

As agricultural productivity has increased, the health of U.S. agriculture has come to depend heavily on access to export markets. In contrast to overall U.S. trade, the agricultural trade balance is positive. The United States exported approximately \$40 billion worth of agricultural products and imported about \$22.5 billion in fiscal year 1990. Production from approximately 40 percent of U.S. cropland was destined for the export market.

The primary farm products shipped abroad continue to be grains, oilseeds, and cotton. However, the overall make-up of U.S. agricultural exports has shifted over the last 10 years from a strong emphasis on feed grains and oil crops toward more fresh vegetables, fruits, nuts, and such processed foods as meat products and canned fruits and vegetables (USDA 1990a). Developed countries, with higher per capita incomes, tend to import high-value products, such as fruits and vegetables, while less developed countries are more likely to import food grains.

In fiscal year 1990, FVH exports (referred to as horticultural trade) were valued at slightly over \$5 billion — a growth of more than 50 percent since fiscal year 1986 (Chadwick 1991). Fresh fruits — primarily apples, pears, and peaches — are the main U.S. exports; frozen concentrated orange juice, fresh grapes, cut flowers, and frozen broccoli and cauliflower are the primary imports.

In addition to rising demand in many countries, technological improvements in transportation methods, storage facilities, and the development of new product varieties able to withstand the rigors of handling and shipping have expedited the increase in horticultural trade. The United States has been

able to capture a significant share of this trade based on its high labor and crop productivity, high-quality produce, and well-developed infrastructure combined with its aggressive marketing efforts. Despite its growth, the fact that FVH agriculture is the most labor-intensive type of agricultural production makes this sector the most vulnerable to import competition from developing countries — where labor costs are a fraction of those in the United States.

Beginning with the post-depression economic policies of the 1930s, import controls and export-enhancing subsidies have been important elements of U.S. agricultural policy. These policies will come under increasing scrutiny in view of the persistent U.S. trade policy push toward reducing tariffs and liberalizing trade.¹²

CONCLUSION

As in other sectors of a modern economy, economic specialization and segmentation, accompanied by a high degree of interdependence among the network of operations, characterize U.S. agriculture. A farm today is less a self-sustaining productive operation and more like a land-intensive factory with backward linkages into banking and agricultural input industries and forward linkages into processing and retailing firms. Yet different types of farms have developed distinctive structures. In large part, this has been in response to the range of problems and opportunities unique to a particular agricultural sector.

Fruit, vegetable, and horticultural specialty production is one such sector. While the average FVH farm is small in comparison to other farms in the United States, intensive production means that profits are more likely to be higher. Corporations control a high percentage of the land in the FVH sector and account for most of the value of agri-

12 The current U.S. market is more open than most European and Asian markets. Nevertheless, a range of tariff and non-tariff barriers, as well as export-enhancement programs, continues to be in place. There are tariffs of up to 35 percent on a range of vegetables and melons. In addition, the United States imposes controversial phytosanitary barriers designed to protect plant and animal health, while engaging in market promotion programs for FVH products (Chadwick 1991).

cultural products sold. However, FVH producers also face a series of problems. Most of their products are both highly seasonal and perishable — making handling, transportation, and exploiting marketing windows (which are usually brief) especially important. The sector's overriding distinctive feature, however, may be that most of FVH agriculture continues to be highly labor intensive. Labor accounts for a major proportion of agricultural production costs, so FVH farmers' roles as employers are central to their operations and define their interests in agricultural policy.

The agriculture industry, and the FVH sector specifically, has been on a path of consolidation and internationalization in recent years. Simultaneously, technological developments have raised per-acre productivity, while other developments have replaced human labor. However, the widespread expectations of an almost complete mechanization of the FVH industry have not materialized. Rather than mechanization, a surplus of workers, an increase in the use of intermediaries, such as labor contractors, a reduction in real wages, and a de-

crease in union activity (Martin 1990b) has characterized the agricultural labor market for the past decade.

The strength of the FVH sector remains closely tied to greater production — encouraged by an upsurge in domestic demand and the continued development of export markets. Large farms, closely aligned with industrial capital, have controlled the export market throughout the century. Domestic production is also beginning to follow this course. While many farm units continue to be family owned and operated, there is a trend for bringing production under contract, thereby reducing the individual farmer's autonomy. This is particularly true for FVH production destined for the processing market. The forces of consolidation relate to changes in international markets, the economies of large-scale processing, technology, fiscal policies, and increases in the real interest rate. In response to these forces, farmers are either expanding their operations, remaining small and supplementing their income with off-farm work, or leaving agriculture entirely (Gladwin and Zabawa 1986).

CHAPTER III

AGRICULTURAL WORKERS IN THE UNITED STATES

BACKGROUND

Crops that remain labor intensive, primarily fruits, vegetables, and horticultural specialty (FVH) products, continue to require a large work force at different times during the growing season. The farmworkers' need for work and farmers' need for workers, however, has not led to cooperative labor management relations in the industry. Instead, the goals of employers who hire seasonal agricultural workers and those of their employees have often continued to be in conflict.

As the outcome of a brief harvest window determines a year's profit, FVH employers cannot risk losing a crop for lack of workers. They thus strive for as much "insurance" against potential labor shortages as possible. And because labor costs represent a significant share of total production costs, employers also want to keep such labor costs low. In other words, the goal of employers is to reduce both risks and costs associated with the employment of seasonal workers.

In contrast, seasonal farmworkers are struggling to piece together as much work as they can, coordinating a series of jobs that will allow them to maximize their earnings during the limited season in which their labor is needed. It is far better for seasonal farmworkers to have fewer workers competing for these short-term jobs. It is not uncommon, then, for agricultural employers to anticipate a labor shortage at the same time that farmworkers are concerned about a labor surplus.

Government has not played a role in attempting to extend the period of employment for seasonal farmworkers.¹ Instead, a series of individual planting decisions determines the demand for labor in a particular region. The major government intervention is an attempt to coordinate the matching of workers with jobs — by placing domestic workers, importing foreign farmworkers, or adjusting school schedules (Martin 1984).

Most "matching," however, is accomplished through informal network migration from Mexico — stimulated periodically by formal recruitment efforts. The result of this process has been the "lat-inization" of the U.S. farm labor force. While Mexican-born workers were initially dominant only

in the West and Midwest, by the 1960s, Mexican and Mexican-American workers had become diffused into eastern U.S. labor markets — a process which has continued largely unabated. In fact, by the late 1980s, Mexicans had become the largest single ethnic group among seasonal farmworkers throughout the country. Their presence in the farm labor force, in contrast to that of U.S. citizens, has been increasing as many employers prefer to hire young, highly productive workers willing to work for lower wages.²

At the same time, seasonal farmworkers' living and working conditions remain among the poorest in the nation. Annual earnings are low, housing is scarce, and access to health and education services is limited. Widespread improvements, despite recurring attempts by policy makers, union organizers, and many others to change this, remain elusive.

Since the early days of this century, scores of federal and state investigations into the living and working conditions of seasonal, and especially migrant, farmworkers, have identified the problems — but little has been done to effectively legislate and enforce the solutions. This does not mean that solutions are impossible, however. Throughout the country, there are instances of farmworkers earning wages above the mandated minimum, living in clean, comfortable housing, and working for an employer or farm labor contractor who, through conscious labor management decisions, provides extended periods of work by minimizing the wasted time common to the occupation.

MEXICAN MIGRATION TO THE UNITED STATES

Mexican-born workers have long served as a major source of labor for U.S. agriculture. Economics and geography explain both the history of Mexican migration into the U.S. agricultural labor market and set the stage for its continuation for the

1 Such intervention could take the form of encouraging the coordination of planting decisions, supporting multiregional companies, or facilitating diversification of individual farms.

2 A shift to Mexican-born workers has been accompanied by a decrease in families and older workers among the farm labor force as new arrivals are more likely to be young and, at least initially, to travel without their families.

foreseeable future. Economic opportunities are limited in Mexico and available in the United States. As a result, workers with or without legal documents continue to make the decision to migrate north. The 2,000-mile U.S.-Mexican border has proven to be extremely difficult to control. Where unauthorized immigration from noncontiguous countries consists primarily of illegal visa overstayers (nonimmigrants), unauthorized Mexican immigrants simply enter the United States without inspection. From the perspectives of both many U.S. employers and many Mexican workers, the political border separating the two countries does little to interfere with the de facto binational labor market that history and tradition have created (Chavez 1992).

The History of Mexican Migration

Some of the early waves of Mexican immigrants were fleeing the political, economic, and social upheaval that followed the 1910 Mexican revolution as much as responding to the U.S. demand for low-wage labor. Two U.S. sectors offered Mexicans plentiful opportunities. Railroad construction, which benefitted from the development of the Mexican railroad system, provided transportation to the border and an easy occupational transition into the U.S. labor market. Agriculture, aided by governmental policies and looking for a ready supply of labor, actively recruited Mexicans to work in California and the Midwest. As a result, by the 1920s Mexican settlements were firmly established in many agricultural areas in the United States.³

During the 1920s and 1930s, U.S. policy regarding the northward migration of Mexican agricultural workers fluctuated, as it had for previous groups of immigrant workers. In the 1940s, the Bracero Program formalized prior migration patterns. Almost 30 years after that program's termination in 1964, many older farmworkers, most of them now "green card holders" or permanent resident aliens, trace their initial entry into the U.S. labor market to their recruitment as braceros. The older relatives of many current U.S. farmworkers also worked as braceros. Fueled by the desire for economic mobility and the availability of U.S. jobs,

this history of northward migration has provided a social, cultural, and psychological link facilitating the entry of new Mexican migrants into the United States.

Mexican Sending Areas

The overwhelming majority of Mexican migrants entering the U.S. farm labor force have come from the traditional sending states of Michoacan, Jalisco, Guanajuato, Zacatecas, and Durango, as well as the northeastern Mexican states of San Luis Potosi and Nuevo Leon. In addition to these regions with long histories of northward migration, the past 10 to 20 years have seen increasing northward movement from more peripheral areas in Mexico, predominantly Oaxaca, and, to a lesser degree, the states of Guerrero and Nayarit on Mexico's Pacific Coast. The new migrant-sending networks have also come to include emigrants from urban areas of Mexico.

U.S. MIGRANT FARMWORKER STREAMS

Most seasonal farmworkers live in southern parts of the United States, where several months of farm employment is possible. In the spring, a portion of this work force travels north to follow the seasonal cycle of agricultural work. As in international migration, recruitment is often responsible for establishing the initial internal migration patterns. "Pioneer" movements are also spurred by such economic conditions as droughts, floods, or freezes that cost workers their jobs in the sending areas, continuing immigration that increases competition for those jobs, and changes in patterns of agricultural production. Once established, migration patterns tend to become self-sustaining and continue for years.

3 As examples, the rapid increase in south Texas citrus production coincided with the first wave of Mexican settlement on cheap land in the lower Rio Grande Valley. Likewise, a Mexican labor camp in Parlier, California, a contemporary farmworker community in the Central Valley, was already well established by the late 1920s.

Students of migrant farm labor traditionally identify three primary streams of workers that supply the seasonal labor needs of agriculture throughout the United States. The first stream originates in Florida, where workers travel up the Eastern Seaboard each year, finding work in the Carolinas and Virginia. Later, joined by workers from Puerto Rico, this stream continues northward into Pennsylvania, New Jersey, and New York. A second stream begins in Texas, with workers fanning out through the Midwest, finding work as far north as Michigan and Minnesota. A third stream originates in California and Arizona, with workers traveling northward through California, with many ending up in Washington and Oregon.

While this classification scheme captures broad patterns, the reality has always been much more complicated. As they have in the past, Florida-based workers also move through the Midwest; Texas-based workers travel both to Florida and California; and California-based workers can be found throughout the country. Migratory patterns become even more disorderly during times of labor surpluses, as is now the case, as workers travel long distances in the hope of finding jobs.

ETHNIC SUCCESSION IN FARM LABOR MARKETS

Historically, successive waves of immigrant groups have met the labor needs of fruit, vegetable, and horticultural specialty agriculture. As a result, the seasonal agricultural labor force has mirrored the ethnic and racial background of immigrants to the United States. The U.S. farm labor force, however, had become increasingly Latin by the 1960s. Early recruitment of workers from Mexico provided U.S. employers with an immediate labor supply and established migration patterns to the United States which continue today.

Among the most important factors affecting the dynamics of the latest phase of ethnic succession throughout the country are the following: (1) Mexico's economic crisis and its accompanying growth in urban unemployment (which diverts internal migration northward); (2) excellent communication links between U.S. immigrants and Mexican send-

ing villages as well as improved transportation within Mexico (which decreases migration costs); and (3) the existence of well-established Mexican receiving communities in the United States that ease the transition for newcomers.

California

In the second half of the 19th century, Chinese immigrants provided needed labor to California farmers. The Chinese were succeeded by Japanese, Hindustanis, and Filipinos. Mexican and Mexican-American workers, however, have provided most of the labor for California's farms since the beginning of the 20th century.

In 1983, nearly three-quarters (73 percent) of the California farm labor force was born in Mexico. The next largest group of workers, making up about 10 percent of the labor force, was Mexican-American workers born either in California or other southwestern states (Mines and Martin 1986). What has changed in recent years is the increasing proportion of workers from Indian towns and villages in Mexico, primarily Mixtecos from Oaxaca.

The East Coast

Until very recently, east coast agriculture had relied on its own sources of farm labor. For example, European immigrants in the 1920s, were employed extensively in New Jersey truck farming, while Appalachian whites were recruited for the New York apple harvest, and southern-born African-Americans made up the bulk of the farm labor force in Delaware and Maryland. Puerto Rican workers replaced many of these groups.

The large-scale dispersion of Mexican-born workers into eastern U.S. labor markets did not begin until the 1960s. While there were influxes of Haitian workers in the early 1980s and Guatemalan workers in the mid-1980s, by the end of that decade, Mexicans had become the largest single immigrant

group in South Florida as well as throughout much of the East Coast.⁴

The increase of Mexican and Mexican-American farmworkers in the East coincided with the dramatic decline in the number of U.S.-born African-American farmworkers. Increasing educational and job opportunities allowed some children of domestic farmworkers to obtain other work. Other African-American families chose to stay in Florida instead of following the crops north for a variety of reasons. These included housing problems, workers' reluctance to uproot children during the school year, shortened work itineraries due to the mechanization of some crops, and the availability of social services in Florida. African-Americans who choose to stay in farmwork have found increased competition for their long-held jobs by relatively recent immigrants from Mexico and Central America.

The Midwest

The ethnic and racial composition of the farm labor force in Minnesota, Illinois, Wisconsin, Michigan, and Ohio has also changed. As Eastern European immigrant workers abandoned farm work for manufacturing jobs in the Midwest, they were replaced by U.S.-born workers from the southeast, both blacks and whites, and later by Mexican workers, primarily from Texas.

THE ORGANIZATION OF SEASONAL AGRICULTURAL WORK

Accurate analysis of the contemporary agricultural labor system requires going beyond the model of one farmer and a few hired hands to one that incorporates the complexity and dynamics of agricultural production. The result is much closer to McWilliams' (1939) categorization of FVH agriculture as "factories in the fields" than the model of "family farms" depicted on the movie screen or in some agricultural publications.

Shifting Patterns of Labor Demand

The nationwide ratio of the average hours worked in agriculture by self-employed farm operators, unpaid workers, and hired farm laborers is approximately one-third each. Regionally and by states, however, this ratio varies. Hired farmworkers in Iowa and Missouri supply about 30 percent of the average hours worked, while in California they supply more than 43 percent. In terms of their share of the total farm labor force, hired farmworkers comprise only 8.5 percent of farmworkers in the Midwest, but 57 percent of the farmworkers in California — a reflection of the uneven concentration of labor-intensive FVH production in the two regions (USDA 1991f).

Technological innovation has also resulted in significant changes in the demand profile for seasonal agricultural labor. Seasonal labor demand has been almost eliminated in some formerly labor-intensive crops, such as sugar beets. In other crops, such as tart cherries and cotton, mechanization has reduced, although not eliminated, the need for seasonal labor. In contrast, some hand-harvested crops have seen new production techniques, such as the deleafing of grapes, that have increased off-season labor demand. Limitations on the use of a variety of chemical compounds — fungicides, pesticides, ripening agents, and thinning materials — are likely to also add to off-season labor demand. Finally, new ways of structuring production operations, such as field packing of lettuce and other row crops, further change labor demand profiles.

Market forces, too, can change labor demand. Increasingly stringent quality standards for produce, for example, create a greater demand for checkers and field supervisors.⁵

4 By 1975, the Florida citrus labor force, previously dominated by U.S.-born African-American farmworkers, was 60 percent Texas migrants, most of whom had immigrated from Mexico's traditional sending areas (Hudson 1979). A 1979 study found that approximately 50 percent of the migrant labor force on the Eastern Shore of Virginia was Mexican and Mexican-American (Heppel 1982).

5 A specific example is wine grape production on California's north coast which requires very high levels of supervisory labor. The reason is that minuscule variations in climate require that wine grapes be sampled continuously and harvest crews move frequently from plot to plot.

The Organization of Agricultural Work

The industry's typical response to the constantly shifting labor demand of perishable crop production has been to hire a multi-tiered work force. The tiers are composed of: (1) a core of permanent workers; (2) a preferred work force of regularly returning workers; and (3) a peripheral work force of temporarily contracted or hired workers.

This internal segmentation of the work force cuts across occupational boundaries and reflects less a skill-based hierarchical structure than the strength of attachment between a specific employer and particular workers. Core workers include managers, equipment mechanics, irrigators, and even some unskilled workers. Regularly returning workers typically include truck drivers, supervisory workers, and harvest and packing-shed workers filling positions requiring no specialized skills. Finally, the peripheral or temporary work force includes occasional farmworkers who work only one or two short-term agricultural jobs per year and periodic workers who piece together several short jobs each year. Farm labor contractor employees form an important group among this temporary labor force.

Multiple tiers of workers at a particular establishment have fostered the development of specialized terms of employment for each tier. Core workers and regularly returning workers, for example, almost always have priority in employer-provided housing over peripheral workers, even if the tasks of all three groups during the harvest are similar.

Multiple tiers also provide the framework for a set of worker incentives. Workers hired as part of the peripheral work force are motivated to work reliably and rapidly in the hope that they can become regular returnees. Even though the transition from peripheral worker to regularly returning worker may not result in a wage increase, it does result in improved job security and preference in continued employment during the brief downturns in harvest activity. This preference, in turn, results in increased annual earnings and the possibility of moving into less physically demanding work. Furthermore, the better paid core workers are often

recruited from among the group of regularly returning workers.

This multi-tiered structuring of the agricultural work force relies heavily on a form of post-employment worker screening. While it is difficult to determine if a prospective job applicant will be a reliable and skilled worker, agricultural employers and their on-site supervisors have ample opportunities to observe the on-the-job performance of a constantly replenished pool of peripheral workers. Recruits from this pool of workers offset attrition from the more stable tiers of workers. It is this group of peripheral, temporary workers who are most commonly associated with stereotypes of migrant farmworkers.⁶

The use of multiple worker tiers also minimizes employer fringe benefit costs. Only a small core group of workers needs to be retained for tasks that require some measure of continuity and background knowledge and be provided with some employer-provided benefits.⁷ The tier of regularly returning workers is motivated to work reliably year after year, with simply the promise of another season's employment, and in many upstream labor markets, of employer-provided housing. Finally, the tier of temporary workers can be tapped by relying on referrals from core or regularly returning workers or, alternatively, a farm labor contractor.⁸

6 These workers play an important role in filling peak harvest demand and in buffering an agricultural employer from crop losses in the event of a sudden weather- or market-induced need for additional workers.

7 The core work force of permanent workers on FVH farms is responsible for a wide range of off-season tasks, including post-harvest clean-up, equipment repair, orchard or vineyard maintenance, soil preparation, and worker recruitment. During peak activity, such as the harvest time or some pre-harvest periods, these core workers often add supervisory tasks to their duties as general laborers.

8 Most farmworkers, whether part of the peripheral work force or regularly returning workers, are neither casual, occasional workers nor follow-the-crop migrants. The bulk of the harvest labor force consists of workers who work year after year in the same crop and region. Seasonal farmworkers who are regularly returning workers include several distinct subgroups of workers: cyclical Mexican migrants who return regularly to Mexico; U.S. migrants who return regularly to a home base in Texas, California, or Florida; and local workers who, despite residing in the area, have not developed strong enough ties to one producer to work there year after year.

Labor Demand Profiles

The size of the core work force relative to that of the peak season work force varies greatly among establishments, crops, and regions.⁹ At one end of the continuum are crops, such as raisin grapes, that are extremely labor intensive, requiring large numbers of workers for only a 3- to 4-week period. At the other end of the continuum are nursery and mushroom operations with almost year-round production. Even when the labor demand in this latter type of operations declines for 1 or 2 months, arrangements can be made for core workers to be furloughed, returning to their regular job after a month or two of unpaid vacation. Some orchard operations have a relatively high demand for off-season work in pruning and thinning, thus making it possible for producers to maintain a larger core labor force than in other types of production. Finally, on small farms, the farmer and his or her family may make up the core work force, hiring workers only for the harvest.

Proportions of Core and Contracted Workers

While a typical labor demand profile can be developed for each crop, an employer's particular labor management strategy affects actual staffing patterns. Some producers rely on part of their core work force for pruning and other non-harvest season work. Alternatively, others rely more heavily on labor contractors and maintain only a skeleton core labor force, even where there is high demand for non-harvest labor.

An important incentive for a producer to maintain a sizeable core labor force is that by relying on family and village networks, core workers can efficiently and predictably provide a relatively steady supply of regularly returning workers and, during peak periods of labor demand, a supply of temporary workers. Establishing a solid core labor force has many other advantages. Minimizing worker turnover cuts costs associated with training and supervision, builds loyalty, improves on-the-job safety, and allows a manager to draw on an internal labor pool for supervisors.

The principal disadvantage to such a labor management strategy is the cost associated with retaining full-time workers. Such workers often receive a package of fringe benefits including health insurance, housing, and sick leave — almost never provided to either regularly returning or temporary workers.

Many producers are also reluctant to build a core work force because they consider labor management too burdensome. They argue that their attention is better directed instead to marketing considerations or technical aspects of production. These farmers prefer to rely more heavily on temporary workers for both specialized tasks, such as pesticide application, and unskilled tasks, such as harvesting and trucking produce to a packer.

Farm Labor Contractors

The economic factors that underlie decisions to contract for labor rather than hire and maintain workers directly have received recent attention (Vandeman 1988; Vaupel 1991). Much of this attention has focused on labor contractors and their role in organizing the peripheral work force by recruiting and managing temporary workers for peak labor periods. While the majority of seasonal farmworkers in the United States are employed directly by a grower, for many, the relationship with the grower is indirect. Increasingly large portions of the seasonal agricultural work force are employed by farm labor contractors who are, in turn, hired by growers.

Farm labor contractors are thus used both to recruit workers and to organize the work place. In addition to providing jobs and serving as supervisors, contractors often involve themselves further with workers' lives by supplying or helping them arrange for housing, transportation, meals, loans,

9 A set of labor input tables for California prepared by Mamer and Wilkie (1990) provide a rough measure of the seasonal variation in labor demand for crops, including information on whether crop tasks typically are assigned to core or temporary workers. Each acre of spring cantaloupes produced in Imperial County, for example, requires 1 to 2 hours of "regular" labor per month in the off-season, but 180 hours of "temporary" labor at peak harvest — in part due to reliance on field packing. In contrast, the labor input for pears in Sacramento County varies only from 10 hours of labor per acre per month in the off-season to a high of 42 hours during the peak harvest month.

and a variety of other services. These functions are particularly valuable to new immigrants or those without means of transportation and with limited knowledge of the English language and culture.

The history of farm labor contracting is one that highlights the contractors' role in ordering an essentially unstructured labor market, as well as the systematic exploitation of vulnerable workers by some contractors. Transporting workers in unsafe vehicles, withholding workers' pay, and keeping workers in debt peonage are just some of the abuses that have been documented in court cases and Congressional testimony.¹⁰ Such mistreatment has led both the federal and state governments to attempt to regulate farm labor contractors' activities through federal licensing requirements, and at the state level, through the posting of bonds and passing of exams.

SEASONAL AGRICULTURAL WORK

Wage Structures

Agricultural wages consistently have been only a fraction of non-agricultural wages. During the early part of this century, farm wages were approximately two-thirds of factory wages. This ratio dropped to its lowest level around 1940, when farm wages were one-quarter of factory wages. By 1950, the proportion had increased to about 40 percent. For the past 15 years, farm wages have hovered between 50 and 54 percent of nonfarm wages.¹¹ Periods of unemployment depress annual earnings for hired farmworkers even further.

Hired farmworkers are paid either an hourly or piece-rate wage. Agricultural tasks involve a succession of pre-harvest, harvest, and post-harvest tasks and, within the harvest, both field work and a variety of support tasks — such as hauling, packing, and shipping.¹²

Most nonharvest tasks are paid on an hourly basis. There are exceptions, however. In many areas, orchard pruning is paid on a piece-rate basis. Other easily quantifiable tasks, such as tying tomatoes or grape vines, are often paid by the piece. In some isolated cases, a task that is almost universally paid

by the hour is paid by the piece, as is the case for irrigators in Idaho.

Most harvest tasks, in contrast, are paid on a piece-rate basis. Agricultural producers place a premium on speed, despite the fact that the unit cost of harvesting is the same irrespective of the worker's productivity. This is particularly the case when rain or unseasonably hot weather threatens, or when growers race to take advantage of a particularly strong market. Thus, highly productive workers are the most valued under any pay scheme.

In almost all crops, workers' production and piece-rate hourly earnings at any single establishment vary substantially. Meeting quality standards are, however, from a producer's point of view, often as important as are those involving worker speed.

Harvest support tasks, such as truck driving, loading, sorting, packing, and supervising, pay only slightly better than field work, but are less physically demanding and generally provide more reliable employment. Support tasks are often paid on an hourly basis, but may involve a piece-rate-based component. Farm labor contractors, for example, are sometimes paid a piece rate based on the production of their entire crew. Sometimes the "fringe benefits" of a supervisory position include longer work days. Workers who load and haul produce to a collection point and return bins to the field after the other workers' day is over will average 1 or 2 hours more work than field workers.

10 See Senate Rept. 202, 88th Cong., 1st sess. reprinted in 1964 U.S. Code Congressional and Administrative News at 3690.

11 See chapter VII for a discussion of farmworker wages and earnings.

12 While the definition based on the Immigration Reform and Control Act (IRCA) of seasonal agricultural services (SAS) workers attempts to capture the full range of the farm activities required for the production of perishable crops, the actual farm labor force includes a significant number of seasonal employees (mostly workers employed in off-site packing and shipping operations) who are not SAS workers.

Agricultural Tasks

Pre-Harvest Work

Pre-harvest tasks include soil preparation for annual vegetable and melon crops and pruning and maintenance for orchards, groves, and vineyards.¹³ Other important pre-season tasks include planting, irrigating, applying fertilizer and pesticides, cultivating, thinning or pruning, and weeding. Many crops have specific pre-harvest tasks that are not found in other crops.

Producers have a great deal of flexibility in managing labor demand in some pre-harvest chores, such as pruning, where there is a fairly wide "window" of time in which the tasks can be completed. Other tasks, such as applying pesticides or thinning, must be accomplished within a very brief time period. Weather conditions can also affect total off-season labor demand, as well as the window of opportunity for doing certain tasks. Rainy or cold weather during pollination, for example, decreases fruit set in orchard crops and the subsequent demand for thinning labor. In general, however, because pre-harvest tasks occur over a longer period than harvest tasks, they require a smaller work force than might be expected from the proportion of the total labor input allocated to pre-harvest tasks.

Pre-harvest tasks typically make up a greater proportion of total labor demand in tree crops than in row crops.¹⁴ Local farmworkers often perform such tasks because they take place during the winter and early spring. However, nonharvest tasks requiring high levels of labor input, such as tomato tying and fruit thinning, often lead to large influxes of migrant workers. Semi-skilled tasks, such as operating machines that prepare the soil, plant, or irrigate, are usually filled by year-round core workers or by regularly returning workers. In some areas of multi-crop production, high levels of harvest labor demand in early maturing crops, such as spring strawberries and asparagus, draw large numbers of migrants who are then available for pre-harvest tasks in later-maturing crops.

Harvest Tasks

Harvest tasks include cutting vegetables or picking fruit, plus a wide range of support tasks. Bins or buckets must be brought to the field, loaded onto trucks for transportation to a packing shed and, if reusable, returned to the field. Field packing operations, particularly those that are partly mechanized, require machine operators, sorters, and packers.¹⁵

Harvest labor tasks are specialized in a manner analogous to the specialization in nonharvest tasks.¹⁶ In some areas of the country, harvest tasks requiring little physical strength, such as berry picking, may involve more older workers and children. In virtually all areas of the country, women are the primary workers in sorting, packing, and processing jobs.

Harvest tasks in some crops require high levels of crew coordination, resulting in greatly different rates of productivity. Celery and lettuce cutting, for instance, are cases of harvest operations in which experienced crews can move much faster than inexperienced ones. In tree fruit, even when tasks do not require a high level of coordination, workers often form pairs, with one doing ladder work and the other dumping picking bags into a field bin. In vegetables, it is common for family crews to work together, with the head of the household informally supervising the family workers.

Harvest work is not unskilled labor. More accurately, it is labor that requires no formal education. Even tasks that appear to be simple require a certain

13 Pre-harvest tasks generally are more gender-segregated than harvest tasks. Women are seldom found in pruning, irrigating, and tractor work, but are better represented than men in hoeing.

14 For example, in California, pruning and thinning is estimated to make up 62 percent of total seasonal labor demand in Fresno County plum production, 52 percent in Sutter County peach production, and 58 percent in Sacramento County pear production. In contrast, all Kern County seasonal labor demand in potatoes is for harvest tasks. Some operations, such as California strawberry production, may generate substantial demand for non-harvest tasks (estimated at 200 hours per acre) even though this makes up only about 15 percent of the total seasonal labor input of 1,200 hours per acre (Mamer and Wilkie 1990).

15 Field packing operations involve some degree of specialization. The lettuce harvest, for example, uses cutters, packers, carton makers, loaders, and supervisors.

16 Women and teenage children are more likely to be found working in row crops, while men are more likely to be the main labor force in tree crops.

amount of judgment, experience, and physical dexterity. Cutting asparagus, for example, requires workers to make certain the spears are the correct size, cut the spears at the proper height, and discard any spears that suffer from any one of a variety of defects or are frost-bitten. As a result, employers tend to emphasize workers' attitudes, reliability, and flexibility more than any specific competencies.¹⁷

Tension Over Labor Management

When wages are piece-rate based, quality control inevitably involves some tension between supervisors and workers. Crew leaders or checkers constantly monitor workers for quality standards and may threaten to fire or not pay workers for failing to meet these standards. Conflict in field work also occurs over unit quantities. Tomato foremen may require workers to fill their buckets to the brim, while workers have been known to shake the buckets up and down to make it appear that the tomatoes are piled high. In the raisin grape harvest, there are frequent disagreements about the way grapes are spread out on continuous paper rolls used as "trays," since workers are paid per linear foot.

The efficiency of work place organization is also a source of tension. Workers paid on a piece-rate basis understandably are concerned about how far they must carry buckets of produce to dump into field bins. The quality of equipment provided to workers can also be the cause for disagreements. In some orchard operations, less favored workers may be given heavy wooden ladders, while more favored workers receive lighter aluminum ladders. Similarly, there can be favoritism in assigning workers good or bad plots.

LIVING CONDITIONS

Farmworker Communities

As is the case in recruitment, family and village networks also play an important role in many farmworkers' nonwork experiences. Immigrant farmworkers tend to settle in clusters and rely extensively on

friendship/kinship networks in a variety of non-work interactions. These often include arrangements for child care, loans, conflict resolution, advice, and support in times of hardship or personal crisis.

Most traditional farm labor communities are extensions of family and village networks in Mexico. As a result, family connections and other support networks facilitate the movement of newly arrived migrants into the U.S. farm labor force. These networks rely on "anchor" households to provide newcomers with shelter, job contacts, and other assistance. For workers without these contacts, alternative "support" networks may include landlords, labor recruiters who hire even inexperienced workers to fill-in crews, pawnbrokers and loan sharks, and *raileros* (workers who provide rides to the fields for a fee). These networks provide workers with transportation to work or other parts of the country, as well as connections with employers, and are an indispensable part of the farm labor market.

The U.S. farm labor market has come to rely on cultural patterns and labor market processes unfamiliar to non-farmworkers. While geographically located in the United States, farm labor supply communities — such as Immokalee, Florida; Parlier, California; Weslaco, Texas; and Granger, Washington — are essentially binational communities. These communities' languages, interpersonal relationships, and overall culture reflect as much the characteristics of the migrant-sending communities where the majority of their residents were born and raised, as they do local culture and mores. Life in these areas is organized on the basis of patterns of reciprocal obligations, fees for services such as writing letters and filling out documents, and work- and cost-sharing arrangements, which reflect a characteristically Latin American pattern. The positive side of these adaptations is that they provide a wealth of mechanisms for mutual support. The negative side is that they provide op-

¹⁷ Typically, harvest workers are "post-screened." That means that workers not meeting such minimum expectations as picking an apple without bruising it or working at a rate that guarantees earning the minimum wage are laid off.

portunities for exploitation and abuse by the minority of labor contractors, landlords, *coyotes*, and *raiteros* who skillfully manipulate workers while providing them with indispensable services.

Housing

Whether in labor supply communities or upstream areas, the number of farmworkers in need of housing exceeds the available housing stock. The result is overcrowding, the occupation of substandard units, and homelessness.

From an economic perspective, the linchpin of farmworkers' economic strategies is access to affordable housing. When low-cost housing is not available, newly arrived workers find it more difficult to cope with the uncertainty and intermittent employment of farm work. Farm labor supply communities in the United States, like their corresponding migrant-sending communities abroad, allow migrants a chance for rest, recreation, and some earnings in the community's informal economy (such as fixing cars or helping friends with construction projects) during periods of low labor demand. In addition to controlling housing costs, these densely packed communities of farmworkers also facilitate labor recruitment by farm labor contractors and crew leaders.

In some communities, earlier immigrants managed to acquire land and houses before the advent of modern zoning laws. The resulting *colonias* allow residents who own land to subdivide it or add rooms to existing structures — making it possible for additional workers to settle with them. As zoning laws and housing codes become more stringent, however, these “third world” housing patterns become increasingly infeasible, encouraging more farmworkers to engage in back-and-forth migration by returning to their home villages in Mexico during the winter.

For migrant workers particularly, work place and lifestyle are closely linked. In regions where it is customary for employers to provide housing for migrant workers, most workers' lives are defined by the labor camp's boundaries. The availability,

quality, and cost of employer-provided housing are thus key aspects of an employer's work offer for almost all migrants, but particularly those who have traveled with their families. Also important is the employer's flexibility and willingness to provide employment and housing for a potential worker's traveling group.

CONCLUSION

Successive waves of immigrants from various cultural backgrounds have entered the U.S. labor force through the agricultural sector. Through the years, this diversity has diminished as immigrants from Mexico have come to dominate the seasonal agricultural work force.

While the overall agricultural labor market remains unstructured, seasonal agricultural work itself is much more structured than is commonly recognized. The work force is divided into three tiers: core workers, regularly returning seasonal workers, and a peripheral work force engaged during peak labor needs. Each of these tiers has a different degree of attachment to the employer — with farm labor contractors being hired increasingly to recruit and manage the peak season work force. Whether by employers, supervisors, or farm labor contractors, however, recruitment largely depends on the use of social networks.

Living conditions, too, reflect distinctive economic and social patterns. Farmworker communities, both in regions to which farmworkers migrate, as well as in labor supply areas, reinforce the importance of these social networks.

Seasonal agricultural work is becoming more akin to work in other industrial sectors due to the concentration of production and the increasing size of farms. Nevertheless, it continues to be distinctive in terms of the combination of its reliance on an immigrant work force, its use of piece-rate payment methods, its reliance on labor market intermediaries such as farm labor contractors, and its infrequent provision of such standard fringe benefits as sick leave, vacation pay, and health insurance.

PART II — FINDINGS

BACKGROUND

Part II of this report evaluates the Special Agricultural Worker (SAW) provisions and responds to the Congressionally-mandated questions, highlighting interrelationships among these questions as they relate to different facets of the labor market. The SAW legalization program, for example, went beyond changing the immigration status of a large number of agricultural workers; it also influenced patterns of farmworker migration, thus influencing how different geographic regions met their labor needs. Thus Part II also describes the overall characteristics of the post-IRCA farm labor market.

The absence of comprehensive systematic data on the farm labor market has meant that the Commission has had little baseline data from which to work. The very same data void has also hampered legislators in their attempts to deal with agricultural labor issues effectively.

The Commission's overall observation is that IRCA has not caused significant changes in the U.S. farm labor market. The SAW program exceeded expectations on the size of the pool of farmworkers who would apply for legalization, thus providing employers with access to a large legal work force. The magnitude of the SAW program, the recession which fueled high unemployment in low-wage urban labor markets, thus denying agricultural workers a traditional route out of agricultural work, and continued illegal migration into the United States, has meant that no labor shortages triggering implementation of the Replenishment Agricultural Worker (RAW) program have occurred. It has also meant that IRCA has not led to a tighter labor market, with resulting improvements in farmworkers' wages and working conditions. Yet, despite the lack of direct effects that many had anticipated, IRCA has had a number of important indirect, and largely unanticipated, effects on the U.S. farm labor market.

This part of the report reviews IRCA, beginning with a description and evaluation of the SAW provisions. Next, it offers a broad overview of how the Act's legalization provisions affected farm labor supply and post-IRCA migration flows. The

review continues with an examination of the wages, working conditions, and labor management practices within the industry. Finally, it considers the effects of IRCA, as well as other factors, on the dynamics of the agricultural labor market.

This introductory presentation offers a summary response to the Congressionally-mandated questions. The statutory order has been rearranged to facilitate presentation.

SUMMARY OF FINDINGS

1. To what extent does the agricultural industry rely on the employment of a temporary work force?

Much of labor-intensive, seasonal agriculture consists of a succession of short-term jobs. On highly diversified farms, workers can move from task to task yet be employed throughout the year on the same operation. On specialized farms, however, particularly those engaged in labor-intensive fruit, vegetable, and horticultural specialty (FVH) production, large numbers of workers are employed for only a very short time. The practice is that many move from employer to employer to piece together a series of jobs.

The labor force at a commercial FVH farm typically includes a small tier of year-round workers. On larger operations, this includes laborers, supervisors, and professional managers and marketers. This "core" labor force is supplemented by a larger group of regularly returning workers who, for a few weeks or months, performs a characteristic mix of crop tasks. Although these seasonal workers generally make up the bulk of the labor force, they do not necessarily account for the largest number of hours worked or wages earned. The majority of the work is usually done by a third group of workers, a tier of "peripheral," or temporarily hired workers who are relied upon to meet labor demand spikes, particularly during the harvest. The last two groups of workers include both local and migrant farmworkers.¹

1 See the discussion in Chapter III for an elaboration of the labor force structure of FVH agriculture.

The proportion of the hired agricultural work force that employers expect to employ for fewer than 150 days varies throughout the year. The range is from a low of approximately 20 percent in January to a high of 40 percent in July (USDA 1991f). Using a different measure, the U.S. Department of Labor (USDOL) estimates that approximately 50 percent of seasonal agricultural service (SAS) workers are employed in at least one "short-term job" per year. That Department defines a short-term job as 6 weeks or less (USDOL 1991a).

2. What has been the impact of the Special Agricultural Worker provisions on the adequacy of the supply of agricultural labor?

The SAW program received 1,277,514 applications for legal resident status. As of August 15, 1992, 1,076,650 of these applications had been approved, with 18,370 still pending. Although the SAW program's eligibility criteria required a history of field work in perishable commodities, there is no way to know whether applicants were actively engaged in such work at the time their applications were approved. It is generally accepted that the SAW program successfully legalized a large portion of the 1985-1986, formerly undocumented, agricultural labor force.

The SAW program has facilitated legalized farmworkers' continued participation in the U.S. labor force — by making it easier to live and work in the United States for those who settle in the country, and making it easier to travel back and forth to Mexico for those who remain cyclical migrants.

In addition to changing the legal status of many foreign farmworkers, the SAW program is also thought to have increased the supply of agricultural labor. The legalization program appears to have formed the foundation for continued illegal immigrations through the following factors: (1) by facilitating the settlement of immigrants in the United States, thereby increasing the number of "anchor" households whose presence facilitates the transition into U.S. work and society for future authorized and unauthorized immigrants; (2) by facilitating cyclical migration, thereby reducing the costs for unauthor-

ized immigrants to journey north and enter the United States with legally returning SAWs; (3) by stimulating unauthorized family unification in the United States as spouses join their husbands in the agricultural labor force; and (4) by "sending the message" that the route to legal status comes through illegal entry into the United States.

The Departments of Labor and Agriculture (USDA) have monitored the supply of agricultural workers since 1989 as required by the RAW provisions and found no national farm labor shortage.² USDOL's National Agricultural Workers Survey (NAWS) estimates that in 1990, 29 percent of the SAS work force and 39 percent of the harvest work force was SAWs. The NAWS also reports the increasing migration of SAWs into agricultural labor markets throughout the Northeast and Midwest. Commission case studies, conducted in 1990 and 1991, found between 28 and 77 percent of the harvest labor work force in different regions and commodities to be SAWs.³

3. What has been the impact of the IRCA general legalization program on the supply of agricultural labor?

The general legalization (pre-1982) program received 69,405 applications by undocumented aliens who listed their occupation at the time of filing as farming, forestry, and fishing. The NAWS indicates that about 3 percent of the 1990 SAS work force were pre-1982 legalization recipients.

Although the general legalization program legalized relatively few active agricultural workers, its overall size (3,031,848) and composition (70 percent Mexican) suggest that it may have significant implications for agriculture. In a process similar to that accompanying the SAW program, the increased numbers of newly legal anchor households created by the general legalization program have and will be the attraction poles for additional migration. Some of these new migrants will likely

2 This calculation includes the 13,000 to 14,000 H-2A jobs certified in seasonal agricultural services (SAS) crops during those years.

3 This excludes those areas where H-2A workers were a significant part of the work force.

follow the traditional labor force entry path of earlier cohorts of Mexican immigrants into agriculture. A survey of the population legalized through the pre-1982 program shows that agriculture was the first job in the United States for 16 percent of that population (USDJ 1992).

4. What has been the impact of employer sanctions on the supply of agricultural labor?

Employer sanctions have been ineffective at preventing, or even significantly curtailing, the employment of unauthorized workers in agriculture. This is principally due to the availability of fraudulent work-authorizing documents. The number of unauthorized workers in agriculture appears to be significant and increasing. Six percent of the SAS workers responding to the NAWS admitted to being unauthorized in 1989; 12 percent did so in 1990. That year, USDOL found that 17 percent of the harvest work force was unauthorized.⁴ Commission-sponsored case studies reported the proportion to vary from 0 to 35 percent in different commodities and areas. Unauthorized workers are largely young men, traveling alone. Their presence clearly increases competition for entry-level jobs in the harvest labor work force.

A consequence of the failure of employer sanctions to significantly reduce the supply of unauthorized immigrants in U.S. agriculture is the diffusion of unauthorized farmworkers from such traditional immigrant settlement areas as California and Florida — which have been experiencing pronounced labor surpluses — to the Midwest and Eastern Seaboard — which have been more likely to provide jobs for migrants. This diffusion is facilitated by farm labor contractors who link workers being “pushed” out of traditional settlement areas with jobs in new destinations. The ready availability of a labor pool of newly arrived, unauthorized workers has thus increased the migration of workers within the United States.

5. To what extent have SAWs continued to work in seasonal agriculture?

Different data sources provide conflicting answers to this question. A large proportion of SAWs who were identified as working within agriculture after obtaining legal status appear to continue to work in seasonal agricultural services. The primary mechanism designed to make this determination was the ESA-92 reports filed by employers of SAW workers. However, these reports identify only 357,345 approved SAW workers in the agricultural labor force between fiscal years 1989 and 1991.⁵ Other data sources point to substantially higher numbers.

It is likely that SAWs will continue to participate in the farm labor force due to such factors as limited English-speaking ability, low educational levels, personal preferences, and few opportunities in other industries. The majority of SAWs interviewed through the Commission-sponsored case studies plan to remain in farm work. In addition, during most of the time since the completion of the SAW legalization period (November 1988), the poor state of the U.S. economy has curtailed SAWs’ movement out of agriculture. However, as with all cohorts, a gradual attrition from agricultural work from the overall group of workers who adjusted their legal status under the SAW provisions is natural.

Generally, worker decisions regarding post-IRCA work patterns and employment options are greatly affected by such factors as family considerations, length of experience in the U.S. labor market, and occupational history. As a result, there is no typical post-IRCA work adaptation but, instead, a broad spectrum of working and living patterns.

⁴ See the report by USDOL in Appendix I.

⁵ See the report on ESA-92 data in Appendix I.

6. Is the supply of agricultural labor in the United States adequate, and does this supply need to be supplemented further with foreign labor?

Despite an expanding FVH industry, there has been an overall surplus of agricultural labor for the past several years. However, a significant portion of the harvest work force is unauthorized in many parts of the country.

With the current agricultural labor supply, it is difficult to envision a need to supplement the farm labor supply with additional foreign workers beyond those available through the H-2A program. Questions regarding the long-term adequacy of the agricultural labor supply, persist. For example, more effective enforcement of employer sanctions would affect the supply of unauthorized farm labor and require that the industry invest further in mechanization, effect wage and other work place adjustments, and/or increase its reliance on additional legal foreign workers. It is crucial, therefore, to continue monitoring the evolution of the FVH industry and the adequacy and composition of the agricultural work force.

7. What has been the impact of the Special Agricultural Worker provisions on the wages of domestic farmworkers?

It is impossible to determine the precise effect of the SAW program on wages.⁶ To the extent that the SAW program increased the supply of agricultural labor, it has been one factor pressuring wages downward. In general, farm labor wages have stagnated in the post-IRCA period. While average nominal wage rates have risen, most agricultural workers' real (adjusted for inflation) hourly, weekly, and annual earnings have fallen. The discrepancy in agricultural wage rates between western growers, who paid higher average wages prior to 1986 than eastern growers, has been reduced. This is the result of western growers having held wages steady while eastern growers have seen theirs rise — largely due to increases in the federal minimum wage.

Earnings for Western seasonal harvest laborers, particularly those hired through farm labor contractors, have seen the sharpest decline. The post-IRCA national farm labor market has experienced a sustained labor surplus. That surplus, in turn, has been the biggest contributor to the stagnation of agricultural wages. The largest ongoing contributor to the labor surplus, finally, is continuing unauthorized immigration, which has been inspired, in part, by the SAW program.

8. What has been the impact of the special agricultural worker provisions on the working conditions of domestic farmworkers?

The SAW program has had little direct impact on working conditions for farmworkers. Since IRCA, labor surpluses have contributed to stagnating, at times deteriorating, working conditions, particularly for harvest workers. There has also been increased crowding in farmworker settlement areas. Because most employers have had no difficulty attracting and retaining workers, there has been little incentive for them to increase benefits or generally improve working conditions for farmworkers. In addition, the labor surplus-induced increase in internal migration by SAWs, together with the increase in solo male migrant workers, increased regulations, and community resistance, have reduced incentives for agricultural employers to upgrade and expand farmworker housing.

9. What has been the impact of the Special Agricultural Worker provisions on the ability of agricultural workers to organize?

There are fewer agricultural workers under union contract now than there were when IRCA became law. This comports with the general downward trend in union membership that began approximately 15 years ago in U.S. industries, including agriculture. However, there have been in-

6 Because most sources of data on farm labor wages do not distinguish among farmworkers based on legal status, the following three questions are answered with reference to all, not simply domestic, farmworkers.

creases in union membership in the public and service sectors.

Legal status has certainly led some workers to become more vocal in an attempt to improve their working conditions. However, changes in the general economy, the political climate, and such management decisions as an increasing reliance on farm labor contractors, all of which predate IRCA, have negatively affected the ability of farmworkers to organize.

10. To what extent are citizen and permanent resident farmworkers unemployed and underemployed?

The extent of farmworker unemployment and underemployment is a function of labor surpluses, ineffective mechanisms for matching available workers with jobs, crop size and prices, and one's place in the organization of farm work. Different tiers of agricultural workers experience different levels of unemployment and underemployment. Core workers, both skilled and unskilled, are employed for the full year. Virtually all groups of legally authorized farmworkers (citizens, pre-IRCA permanent residents, and IRCA-legalized residents) who are regularly returning workers or members of the peripheral work force, by definition, hold seasonal jobs. As a result, they are unemployed at some point during the course of the year.

The USDOL-sponsored Farm Labor Supply Study (FLSS) found that since IRCA, unemployment rates among farmworkers in typical labor supply communities ranged between 20 and 45 percent during the off-peak season. Naturally, there is a great deal of variance in access to work, depending on the extent of an individual farmworker's connections. Even in areas with the greatest amount of year-round work, about one-third of workers found less than 6 months of farm work during the course of the year. And even during peak labor demand periods, many workers were unemployed at some point. Underemployment in peak season was also common. About 20 percent of the farmworkers employed during the peak season reported that they were unable to work full time at some point during the month. As a result, the survival strategy of

farmworkers often includes periods of non-farm work, reliance on unemployment insurance, and/or visits abroad.

11. To what extent are agricultural employers' problems in securing labor related to the lack of modern labor-management techniques in agriculture?

The abundance of labor has meant that most agricultural employers are not experiencing problems in securing an adequate supply of labor. As a result, there have been few incentives to adopt such modern labor management techniques in recruitment, compensation, and retention as benefits packages, seniority systems, mechanisms for dispute settlement, or techniques to reduce the size of the work force while increasing efficiency and the amount of work available per worker. Instead of such practices, growers seem to be relying increasingly on labor market intermediaries for much of their direct labor management.

12. Do certain geographic regions need special programs or provisions to meet their unique needs for agricultural labor?

The demand for labor in different geographic regions varies greatly as a result of climate, cropping patterns, and size and structure of farms.⁷

Since IRCA, growers generally have been able to make planting decisions and assume that workers would be available. However, some regions, or individual producers within a region, may experience spot labor shortages. To respond to these situations, better systems for matching workers with jobs, transporting workers to these jobs, and providing housing are necessary. When these efforts are ineffective, utilization of the H-2A program remains available.

⁷ For example, some crops, such as raisin grapes, have an extremely short harvest window, while others, such as citrus, have less extreme labor demand spikes. Likewise, upstream states rely more heavily on migrants, thus employers in these areas are under more pressure to provide housing for seasonal workers than are employers near settled farmworker communities.

13. What impact have the Special Agricultural Worker provisions had on the ability of crops harvested in the United States to compete in international markets?

The SAW provisions have had no direct impact on the ability of U.S.-harvested crops to compete in international markets. Under the current labor supply conditions, producers have experienced no labor-induced increases in production costs. The export of labor-intensive, perishable commodities

reached an all-time high in 1991. The short-term positive impacts of a labor surplus on the industry's export performance may be offset, in the long run, by their tendency to dampen the industry's commitment to technological and organizational improvements which could increase production efficiency. The ability of U.S. agriculture to compete successfully with other nations, particularly Mexico, rests on a strong infrastructure, high-quality produce, and the ability to offset higher labor costs with greater productivity.

CHAPTER IV

EVALUATION OF THE SAW PROVISIONS

BACKGROUND

The Select Commission on Immigration and Refugee Policy (SCIRP), the bipartisan body impaneled in 1978 to review U.S. immigration policy, called the control of illegal immigration the country's most pressing immigration issue. Three years later, that Commission recommended a three-pronged approach to stem the flow of illegal immigrants. The first consisted of more effective border controls, a goal apparently as elusive today as it was when SCIRP recommended it more than a decade ago. The second focused on impeding the access of undocumented workers to lawful employment. The Commission proposed to do so by requiring that employers legally hire only individuals who could establish their right to work in the United States. Employers would risk substantial fines, and civil and criminal prosecution, for failure to comply.¹ To date, this objective is also proving to be much more elusive than most thought it would. The proposal's third prong was the legalization of longer term undocumented aliens.

Legalization was intended to "bring out of the shadows" longer term, undocumented immigrants who had been contributing to society and had often developed significant social and economic "equities" in the process. The case for legalization thus rested on both humanitarian and economic grounds. The humanitarian argument was based on the conflicting signals emanating from the legal loophole which had made unauthorized entry, but not unauthorized employment, illegal, coupled with an equally inconsistent and largely ineffective border control policy, that had in fact "encouraged" illegal immigration. The economic argument responded primarily to the concern that the new measures would not disrupt the economy.

Bills introduced in three successive Congresses followed the Select Commission's blueprint to a remarkable degree. They did so despite recognition in many quarters that the proposed law's impact would be felt disproportionately by employers in certain labor intensive industries and in certain regions of the country. While many employer groups opposed the proposed legislation, only perishable

crop growers, who openly admitted their reliance on undocumented workers, were effective in gaining specific relief for their industry.

PERISHABLE CROP AGRICULTURE AND IMMIGRATION REFORM

The Select Commission discussed a new temporary worker program as a partial solution to the problem of illegal migration, but instead recommended a streamlining of the existing H-2 program. This program allowed employers to bring in foreign workers as nonimmigrants for temporary or seasonal jobs if the U.S. Department of Labor (USDOL) found that their importation would not displace workers in the United States or adversely affect their wages and working conditions. Labor Department regulations required the employer to recruit in the United States for up to 80 days before the work was to begin, offering a contract with wage rates set by the Department. Housing had to be provided without cost and meals at minimal cost. Work had to be guaranteed for three-fourths of the contract period, compensation for employment-related injuries assured, and, in general, the terms and conditions of employment could not be less than local prevailing practice. If U.S. workers could not be found in response to this offer, the employer was certified to bring in foreign workers under the same contract provisions. The employer was then bound to hire any qualified U.S. worker who applied during the first half of the contract period.

Worker advocates had long been opposed to the program in spite of these labor protections. A foreign worker who could remain in the country only so long as he or she was employed by the certified employer was, they argued, easily subject to exploitation. Western growers believed that the program

1. Employer sanctions, the statutory prohibition of the employment of aliens who were not authorized to work, were the centerpiece of the Select Commission's strategy for stemming the supply of illegal workers in the United States. As a result, while only one of three concurrent major SCIRP recommendations in this regard, sanctions came to be viewed as the "... only credible deterrent to the flow of ambitious men and women who will spend a lifetime of earnings and take great personal risks to find work in the United States ..." (SCIRP 1981:565).

Growers wanted an adequate supply of legal workers with a minimum of red tape. Worker advocates would not accept any restrictions that tied foreign workers to a particular employer, region, or industry. Common ground was found in the notion of granting employment authorization without restriction to undocumented workers upon whom some growers had come to rely.

was too inflexible to meet the unpredictable demands of a variety of perishable crops. Lawmakers found that it was not possible to gain consensus for a major "streamlining" of the program and, in the end, IRCA essentially reflected the Labor Department regulations with only modest changes.²

The regulatory scheme of the H-2 and H-2A program has been thoroughly litigated by worker advocates, employers and their associations, and the Department of Labor.³ The litigation has been filed on behalf of both domestic and foreign workers.

As immigration reform was debated, western growers had been promoting a guestworker program sponsored in the House in 1984 by Leon Panetta (D-Cal.) and Sid Morrison (R-Wash.) and in the Senate in 1985 by Pete Wilson (R-Cal.). Under each of these proposals, foreign workers would be admitted temporarily to seek field work in perishable crops within designated regions. Although workers would not be tied to specific employers, and worker protections were included (more so in the Senate version), labor advocates remained adamantly opposed. Potentially large numbers of temporary foreign workers would be admitted and restricted in the location, duration and type of employment they could pursue. Such conditions, they argued, would preclude any improvements in wages and working conditions and would lead to displacement of domestic workers.

The resulting standoff threatened the passage of IRCA itself. In the fall of 1985, Representative Charles Schumer (D-NY) began working with his colleagues from California, Representatives Panetta and Berman, on the compromise solution which eventually created the Special Agricultural Worker (SAW) program.⁴ Growers wanted an adequate supply of legal workers with a minimum of red tape. Worker advocates would not accept any restrictions that tied foreign workers to a particular employer, region, or industry. Common ground was found in the notion of granting employment authorization without restriction to undocumented workers upon whom some growers had come to rely.

From the labor perspective and in an ideal world, the domestic work force would not be supplemented at all by foreign labor. However, these

potential SAWs were already in the labor force and, because of their undocumented status, were easily abused. This situation would likely continue should IRCA fail. Labor hoped that, with control of illegal immigration and the rights that legal status would give formerly undocumented workers, the agricultural labor market would stabilize, with upward pressure on wages and working conditions.

From the industry perspective, the SAW program offered growers access to an experienced, legal labor force.⁵ The program, however, failed to address a crucial grower concern: If enough SAWs sought employment outside of agriculture, labor shortages could ensue. It was in response to this apprehension that the Replenishment Agricultural Worker program became a central element of the political compromise.⁶

The RAW program was designed to balance the supply of legal workers with the labor needs of

2 USDOL labor certification for nonagricultural jobs also required a contract, but prevailing practices for the occupation determined employment terms and conditions. While IRCA codified most USDOL regulatory provisions for agricultural certification in a new sub-section (H-2A), it set no standards for the nonagricultural program in a new subsection (H-2B).

3 This copious, extended, and expensive litigation has been cited by apple growers in West Virginia as the reason to depart from the use of H-2A workers in the 1992 apple season after many years of the practice.

4 As the proposal worked its way through the legislative process, the essential elements of the compromise remained intact but some specific provisions were changed. The number of days of qualifying work making one eligible for SAW status, and the number of days RAWs would be required to work in agriculture, went from 20 in the original proposal, to 60 in the House, to 90 in the statute. (These increases were driven by a desire to placate members who were dismayed by the relative ease with which agricultural workers would gain legal status, not by agricultural labor market considerations.) Similarly, a period in temporary resident status was introduced to conform the structure of the main part of the SAW program more to that of the general legalization program.

5 The SAW program had two tiers. Group 1 SAWs were composed of workers with 90 days of qualifying work during each of the 3 years prior to May 1986. These workers would gain permanent resident status 1 year after achieving temporary resident status. Group 2 SAWs were required to have had 90 days of qualifying employment during the 12 months ending May 1, 1986. These workers would have to remain in legal temporary status for 2 years before adjusting to legal permanent status. Group 1 was capped at 350,000; there was no cap on Group 2. Adjustment from temporary to permanent resident status would be automatic for all SAWs. As it turned out, many SAW applicants went directly to permanent resident status because the automatic adjustment date passed before the adjudication of their applications.

6 Eventually the RAW program was reduced from a potential life of more than 20 years in the original proposal to 4 years in the statute. The impetus for this change came from criticism that the program would be, in effect, a "rolling amnesty."

The SAW provisions of the statute broadly defined the eligible population and were written so as to encourage and facilitate the filing and approval of applications.

perishable crop agriculture between 1990 and 1993 by admitting additional workers as needed. RAWs would be legal temporary residents with access to U.S. permanent residence tied to fulfillment of a work obligation in perishable agriculture for 3 continuous years following their admission. Their access to U.S. citizenship depended on an additional 2-year stint in that sector.⁷

Congress' inclusion of these agricultural provisions was consistent with a history of exceptional treatment for agriculture, allowing for the industry's reliance on seasonal foreign labor. Perishable crop producers also won both a 6-month delay in the enforcement of employer sanctions in their industry and a provision requiring the Immigration and Naturalization Service (INS) to obtain warrants before entering open fields in search of undocumented workers.

THE SAW PROGRAM

During the IRCA debate, opponents of the legalization provisions of the law had argued that amnesty would not only erode respect for the law, but would be grossly unfair to those visa applicants who had been waiting abroad for years for their visas. A more specific criticism directed to the SAW provisions was that U.S. immigration laws should not be used to provide foreign labor for specific industries. The problems that arose in the implementation of the SAW program were almost unavoidable given the nature of such a program.

The political compromises reflected in the SAW/RAW provisions that allowed IRCA to become law reflect the interests of the protagonists in the debate. The perishable crop industry had the straightforward objective of assuring access to an adequate and legal work force. It was also in the interest of the industry to have as large a population of SAWs as possible, since the cap on RAW admissions was directly related to the number of SAWs. The SAW provisions of the statute broadly defined the eligible population and were written so as to encourage and facilitate the filing and approval of applications. The legislative history confirms this.

Statutory Provisions

While the final negotiations on the SAW provisions resulted in more restrictive SAW and RAW programs than were proposed originally, legalization for agricultural workers was more generous than the general legalization program. SAWs would eventually gain permanent resident status by proving only that they had performed 90 man-days⁸ of seasonal agricultural services (SAS) during the 1-year period ending May 1, 1986. Permanent resident status under the general legalization program required proof of continuous residence in the United States from January 1, 1982, and a second application demonstrating knowledge or proof of the study of English and the history and government of the United States.

Seasonal agricultural services were defined as field work relating to the production of "fruits and vegetables of every kind and other perishable commodities." SAW applicants had 18 months to apply for legal status versus 12 for general legalization applicants. They could apply for the program at consular posts abroad and were authorized to travel outside the country freely. Potential applicants for general legalization who were apprehended by the INS prior to the application period could be granted a stay of deportation and work authorization if they presented a "prima facie" case of eligibility for the program. Potential SAW applicants had only to make a "non-frivolous" declaration of eligibility to obtain these benefits. The authority of the government to terminate temporary resident status was more limited in the case of SAWs than in the general legalization program. Individuals legalized under the general program were excluded from receiving many forms of public assistance for 5 years. SAWs were only denied Aid to Families with Dependent Children for the same period.

7 For RAWs to be admitted, the U.S. Departments of Labor and Agriculture jointly had to find that there would be an agricultural worker "shortage" in the upcoming fiscal year. Growers had the opportunity to make "emergency requests" for RAWs anytime during the course of the year if they could demonstrate that a shortage had developed.

8 Following the Fair Labor Standards Act (FLSA), man-day was defined in the regulations as any day in which 1 or more hours of work was performed.

SAW applicants had only to present evidence of employment from which 90 days of qualifying work could be reasonably inferred. Once that minimum standard was met, the burden shifted to the Attorney General to disprove the applicant's evidence.

To encourage undocumented aliens to come forward, both the general legalization and SAW provisions assured strict confidentiality of information presented in an application, and authorized the Attorney General to designate qualified voluntary and public entities to receive and assist in the preparation of applications. These became known as Qualified Designated Entities (QDEs). The SAW provisions specifically authorized farm labor organizations and associations of agricultural employers as eligible to become QDEs.

The most significant difference in the treatment of SAW applicants concerned the burden of proof in establishing eligibility for the program. SAW applicants had only to present evidence of employment from which 90 days of qualifying work could be reasonably inferred. Once that minimum standard was met, the burden shifted to the Attorney General to disprove the applicant's evidence. The statute required procedures to credit work performed under an assumed name. Flexible evidentiary standards were derived from Fair Labor Standards Act case law which documents unique problems in proving employment in agriculture, such as the absence, falsification, or destruction of records. The Conference report on the bill concludes that "fairness dictates . . . a presumption in favor of worker evidence." Thus, the statute attempted to minimize impediments to establishing eligibility for the SAW program.

Regulations of the Immigration and Naturalization Service

The Immigration and Naturalization Service made a preliminary working draft of its regulations available for public comment before publishing a proposed rule. Thus, by the time final regulations were published on May 1, 1987, many potentially troublesome issues had surfaced and been resolved. Several of the policies adopted were designed to enhance applicants' ability to establish eligibility. For example, the regulations provided that eligibility could be established with a single affidavit by a co-worker, and they recognized that a document showing payment for work to a principal family member might in fact represent work done by a

spouse or child. However, there were still several major areas of controversy over the final regulations and the INS policy.

The statutory provisions required a stay of exclusion or deportation and issuance of work authorization (1) in the case of an alien apprehended prior to the application period who made a nonfrivolous declaration of eligibility and (2) in the case of an alien who, during the application period, submitted a non-frivolous application.⁹ The administration, concerned that without the threat of deportation aliens would cross the border to obtain work permits, determined that these provisions would not apply to aliens who had entered the United States subsequent to enactment. Agricultural interests had urged INS to accept applications at the border. This was opposed by labor interests, led by the United Farm Workers. The INS rule made no provision for "border processing."

These policies were viewed by many program proponents as restrictive and contrary to the spirit, if not the letter, of the statute. There was a general concern that INS' preoccupation with its enforcement responsibilities would keep it from fairly administering the legalization provisions.

Agricultural employers were particularly worried that SAW-eligible aliens in Mexico would not be able to obtain evidence of qualifying employment, and that processing time in Mexico would preclude their admission to the United States in time for the 1987 harvest. Although claims of worker shortages were exaggerated, there were low SAW application rates in Mexico, declining illegal entry rates, and predictions of bumper crops in several regions. The INS, therefore, instituted a temporary "transitional" program, in cooperation with the State Department, to avert possible crop losses. This program was to run from June 26 to November 1, 1987. SAW applicants filing at consular offices in Monterey and Hermosillo in northern Mexico and at the port of entry at Calexico, California were given work authorization and admitted without the normally required evidence of qualifying employ-

9 INS defined a non-frivolous application as a complete application, including documentary evidence of qualifying employment.

The INS broadened its "commuter" regulations to allow SAWs who had migrated annually from Mexico to the United States in undocumented status to continue the same practice as legal residents.

ment. They were allowed 90 days to complete their applications in the United States.¹⁰

Toward the end of the transitional period there was considerable pressure by agricultural interests to continue border processing through the end of the SAW application period. Negotiations on this issue resulted in an amendment to the statute in December 1987. Border processing was to be resumed and continued through the end of the application period with applicants allowed to work and complete their applications in the United States. Three ports of entry were designated to accept the "preliminary applications." Any alien was permitted to file a SAW application in the United States regardless of last date of entry. However, the INS' definition of nonfrivolous application was incorporated in the amendment, which also clarified that apprehended aliens were subject to deportation notwithstanding a claim to SAW eligibility.

In addition, the INS broadened its "commuter" regulations to allow SAWs who had migrated annually from Mexico to the United States in undocumented status to continue the same practice as legal residents.¹¹

Regulations of the U.S. Department of Agriculture

The statute provided that qualifying work for SAW status could be performed in the production of "... fruits and vegetables of every kind and other perishable commodities as defined in regulations by the Secretary of Agriculture."

The U.S. Department of Agriculture published regulations on June 1, 1987, defining "fruits," "vegetables," and "other perishable commodities." These regulations described perishable commodities as having critical and unpredictable labor demands for seasonal field work. An exclusive list of such commodities, including Christmas trees, horticultural specialties, and Spanish reeds, was included in the definition. The specific exclusion of cotton, hay, sod, and sugar cane cited in the USDA rule was challenged in separate legal actions. The court found that cotton met the definition of fruit, and cotton workers were made eligible for SAW status. The court upheld the exclusion of hay.

The cases of sod and sugar cane involved extended litigation in the course of which the Government was ordered to accept "skeletal" applications from sod and sugar cane workers prior to the end of the application period.¹² Some 1,000 applications were filed by sod workers, and over 8,000 sugar cane workers filed applications in the United States and West Indies.

The District Court decided in June 1990, that sod would be included in the definition of "other perishable commodities." The USDA appealed the ruling but published a final rule implementing the court's decision in November. INS began adjudicating the sod workers' SAW applications that it had been holding. Approved applicants automatically became permanent residents with all other Group 2 SAWs on December 1, 1990, the automatic adjustment date. In December 1991, however, the Appellate Court overruled the District Court, allowing for the rescission of permanent resident status granted to the sod workers under the immigration law.

In the case of sugar cane, the District Court ordered USDA to reconsider its regulations. In response, USDA amended its rule adding to the definition that vegetables are eaten "... either cooked or raw, chiefly as the principal part of a meal, rather than as dessert." The District Court upheld these regulations, and the Circuit Court affirmed that decision.

This definition was written with the apparent intent of excluding sugar cane workers from the SAW program. In defining the eligible population, the statute focuses on the nature of the work ("...performance of field work related to planting,

10 These regulations also advanced the entry cut-off date, for the second time, to June 26, 1987. The first time it was advanced to May 1, 1987 by the regulations published that date. The purpose both times was to avoid the deportation of agricultural workers who had recently entered, while seeking to discourage future illegal entry for the purpose of applying within the United States.

11 Under the existing regulations, permanent resident aliens could reside in a bordering country and commute to work in the United States. Resident status would be lost, however, if the alien was without regular employment in the United States for 6 continuous months. Under the change, resident status could be retained on a showing of employment in the United States for a minimum of 3 months in a 12-month period.

12 A "skeletal" application was an incomplete application to be pursued pending the outcome of litigation.

The INS planned on 800,000 SAW applicants. The more than 1.27 million SAW applications filed during the 18-month application period overwhelmed the system.

cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities"...). Clearly, all individuals who performed the type of field work described in the production of fruits and vegetables *of every kind* were meant to be eligible. The purpose of adding the phrase "other perishable commodities" was to include persons who did that same work even if the crop was not a fruit or vegetable. The intent, then, of Congress was to be inclusive.

SAW Program Operations

SAW and general legalization program operations were co-located in more than 100 Legalization Offices (LOs) within 33 INS Districts and in 4 Regional Processing Facilities (RPFs). Applications were taken at the LOs directly from applicants or through Qualified Designated Entities. These offices were separate from other INS facilities so that undocumented aliens would not be discouraged from coming forward by the presence of uniformed enforcement officers.

The procedure was to screen applications at the LO for completeness and statutory eligibility before the fee was taken. Applicants who clearly failed to meet the statutory criteria were so advised. Following acceptance of a complete application and interview, Legalization Offices could either deny applications for statutory ineligibility or admitted fraud or forward them with a recommendation to grant or deny to the RPF to adjudicate. All applications sent to the RPF for adjudication were considered non-frivolous, and the applicants were issued a work authorization by the LO. The basis for denial, whether by the LO or RPF, was to be set forth in writing with specificity, and the applicant offered opportunity to rebut and appeal the decision.

Twenty-two percent of all SAW applications were filed through QDEs. Most QDEs were traditional immigrant serving agencies such as the Migration and Refugee Service (MRS) of the U.S. Catholic Conference, which aided both general legalization and SAW applicants. Some organizations set up QDEs specifically to assist agricultural workers. Notable among these were the United Farm

Workers; the Association of Farmworker Opportunity Programs, an organization of federally funded farmworker serving agencies; and Alien Legalization for Agriculture (ALFA), a broadly based organization of western agricultural employers established specifically to assist applicants. MRS and ALFA had QDEs operating both in the United States and jointly in Mexico. In all, more than 1.27 million applications were made through the SAW provisions of IRCA (Table 4.1).

Because large backlogs quickly developed, applicant interviews were often scheduled months in advance, and 6-month work authorizations were issued. These temporary work authorizations were often extended again and again as backlogs grew both at LOs and RPFs.

The principal reason for backlogs in the SAW program was that the number of applications filed far exceeded all planning assumptions. The official administration estimate of the number of undocumented workers in agriculture was 300,000-500,000, developed by USDA during the IRCA debates in 1983. Most other estimates fell within that range. The INS planned on 800,000 SAW applicants. The more than 1.27 million SAW applications filed during the 18-month application period overwhelmed the system.

The INS is a decentralized organization with a relatively high degree of autonomy given to District Directors in the management of work flow and staff resources. There was during the SAW program a great deal of variance among districts in the priorities given to legalization as opposed to other INS functions, among the several legalization activities, and in the autonomy allowed LO directors. In several instances, procedures established by the district offices were found in violation of the regulations.

The most notable case, *Haitian Refugee Center, Inc. v. Nelson*, was ultimately settled in June 1992. In this case, the District Court found that "... during the first months of the program, affidavits sufficed to corroborate the applicants' claims of employment Suspicion of widespread fraud in the application process, however, led to the LO's decision to deny many applications accompanied only by affidavits." The court found that denial notices were defective, adverse information was

Many aliens who did not qualify for either the general or the Special Agricultural Worker legalization programs, but were nonetheless intent on maintaining or gaining the ability to live and work in the United States, chose to probe the more "vulnerable" of the two programs. They opted for filing a SAW application.

Table 4.1 – SAW Applications

SAW Applicants by Group

Group I (90 days of farm work in each of three years)	67,308
Group II (90 days of farm work in one year)	1,210,206
Total	1,277,514

SAW Applicants Outside the United States

At Consulates (all but 2 in Mexico)	10,906
Presented themselves at the U.S.-Mexico Border	139,959
Of those presenting themselves, admitted to complete their applications .	102,945

SAW Applicants by State of Residence (percent)

California	52
Texas	11
Florida	8
Arizona	4
New York	4
Illinois	3
Washington State	2
Oregon	2
Georgia	1
New Jersey	1
Other	12

SAW Applicants by Country of Citizenship (percent)

Mexico	82
Haiti	3
El Salvador	2
Guatemala	1
India	1
Pakistan	1
Philippines	1
Dominican Republic	1
Colombia	1
Peru	1
Other	6

considered by INS without applicants' knowledge or opportunity to rebut, and that applications were adjudicated with an incorrect burden of proof. The court required a review and readjudication of approximately 20,000 cases filed in the INS Southern Region.

A similar case, *UFW v. INS*, affected applications filed in the INS Northern and Western Regions and was settled when INS agreed to re-examine all cases denied in those regions and to specify in all future denials the specific reasons for denial, including any adverse information relied upon in the decision.

Another case, *Lopez v. Ezell*, involved improper confiscation of documents along the border and at checkpoints in Texas and California. Border patrol agents were charged with coercing hundreds of SAW applicants into withdrawing their applications or signing confessions that they committed fraud in the application process and confiscating their work authorization documents. The INS agreed in settlement to replace all confiscated documents, to reopen denied cases for appeal, and to provide photocopies of any evidence of fraud in the files to applicants for rebuttal.

The Question of Fraud

The enactment of employer sanctions placed a premium on gaining legal status both for undocumented workers within the country and for those who hoped to enter and work here. Many aliens who did not qualify for either the general or the Special Agricultural Worker legalization programs, but were nonetheless intent on maintaining or gaining the ability to live and work in the United States, chose to probe the more "vulnerable" of the two programs. They opted for filing a SAW application. With some luck, eventual U.S. permanent resident status could be gained through the purchase of a single fraudulent affidavit and the ability to maintain one's composure in an interview. In time, even the interview faded as a deterrent as it became known that a work permit could be obtained merely by filing the application.

Mindful of the potential for fraud, the INS established several mechanisms for its detection and

deterrence.¹³ Despite these precautions, however, and the often aggressive prosecution of fraudulent document vendors, the Government was sorely taxed by its burden of disproving the evidence presented in each application.¹⁴ There is widespread consensus among observers and analysts, regardless of political persuasion, that there was significant fraud in the SAW program.¹⁵ Assessing the magnitude of this fraud—or even its range—is an inherently difficult exercise. Because of the many and well-known methodological difficulties associated with dealing with an underground population, projections must rely on indirect observations and assumptions which, ultimately, can neither be proved nor disproved.¹⁶

A demonstration might highlight this point. Some analysts who specialize in the agricultural industry have arrived at a theoretical upper range of eligible workers by estimating the total number hours of agricultural work performed during the 1985-86 season. These calculations place the probable number of eligible aliens at only about one-third of the number who eventually applied. Such estimates, however, rely on assumptions about the likely average number of hours such workers worked each “man-day”—a man-day defined as a day during which at least one hour of agricultural work was performed. Different sets of assumptions about this variable alone can lead to widely fluctuating estimates. The point is simple: The SAW program was subject to significant amounts of fraud, as a result of both its conception and its implementation.

THE RAW PROGRAM

Growers had been concerned that newly legalized SAWs might eschew agricultural work as soon as they gained legal status. In addition, they feared that the employer sanctions provisions of the law would dry up their traditional supply of workers. The RAW program was an effort to assure growers that if a shortage of labor should ensue, they would have access to legal foreign workers.

The USDOL estimated the supply side of the equation (persons who leave agricultural work and new entrants into that work force); USDA esti-

mated the demand side. The two Departments consistently agreed that the supplies of agricultural labor were adequate to meet the demand for such workers. As a result, no additional foreign workers were authorized under this program.

Statutory Provisions

Section 303 of IRCA authorizes the admission or adjustment to temporary resident status of aliens in each of 4 fiscal years beginning with 1990 in a number equal to the “shortage number” for that year. The shortage number is determined by the USDA and DOL with the aid of the Census Bureau.¹⁷ RAWs are required to perform seasonal

13. These included gathering information about local agricultural practices and compiling lists of workers from employers to verify claimed employment.

14. Congress was slow to recognize the fraud potential in the SAW program and did not provide the Government with a means of terminating an alien's temporary resident status if that status had been gained through fraud or willful misrepresentation until after the program ended—in December of 1988.

15. Many types of fraud were possible through the program's eligibility and procedural requirements. Applicants obtained fraudulent affidavits and employer documents affirming that they had met the activity and duration requirements of the law. Some of the latter fraud was done by farmworkers who were eligible for the SAW program but could not produce the documentation to prove so, while some was by workers with experience in U.S. agriculture who failed to meet the time periods specified in the statute.

16. The USDA had estimated that 300,000-500,000 unauthorized workers were employed in agriculture in the early 1980s. USDA further estimated that 800 million hours of labor were required to produce all U.S. fruits, nuts, and vegetables in 1985. SAW applicants, each working 90 days, were projected to account for approximately 700 million of these hours. One analysis of California's Unemployment Insurance records estimated that fewer than 200,000 workers (not all of whom were undocumented) performed enough work in 1985 to qualify for SAW status, yet more than 650,000 SAW applicants were received from California (Martin 1990b). This analysis, however, could not determine the number of individuals who used several social security numbers, the number who worked under the same social security number — a practice felt to be relatively common (Villarejo 1987) — or the number of workers who supplemented their hours worked in California agriculture with qualifying work in other states.

17. The statute describes the process for determining a declining numeric limitation, or cap, on the number of RAWs who may be admitted each year and the process for determining the shortage number for each year. This number is derived by dividing the difference in man-days between the estimated need for, and supply of SAS labor in the United States by a “man-day per worker factor.” This factor is the average number of man-days of SAS performed the previous year by SAWs as determined by the Census Bureau from required reports of SAS employers. The statute specifies how the shortage number may be increased during a program year upon request by employers and public notice in an emergency procedure. It also provides for the number of man-days of SAS labor required of RAWs to be decreased for a program year upon request by RAWs and public notice.

agricultural services, the same work that was qualifying for SAWs, for 90 days in each of the first 3 years following their admission. Upon fulfillment of this obligation, RAWs would be adjusted to permanent resident status. Failure to perform this work in any of the 3 years would result in loss of temporary resident status and deportation.

The Shortage Number Calculations

The USDA estimated the demand for SAS labor based on data obtained in the Farm Labor Survey of the National Agricultural Statistics Service (NASS). Although this survey was in existence before IRCA, the USDA had to increase its sample size in certain regions of the country to ensure a sufficiently precise or reliable estimate of the change in annual required SAS labor.

The USDA was to then make adjustments in SAS hours for expected future change in production of SAS crops, change in technology and personnel practices affecting labor productivity, and crop losses in the preceding year most likely due to unavailable SAS labor.

The USDOL carried out its task of estimating available SAS labor by creating a new survey, the National Agricultural Workers Survey (NAWS), concentrating on 73 counties where relatively intense SAS activities were being conducted. More than 2,000 SAS workers were interviewed each year to determine the extent of new entries into, and exits from SAS work, as well as persistency and continuation in it. The data were used in estimating available SAS labor, including adjustments for changes in supply due to SAS employers paying higher wages and improving working conditions and recruiting efforts.

The Census Bureau had the responsibility for computing the "man-day per worker factor" to be used in translating days of SAS labor into the shortage number. However, since the estimated supply has exceeded the demand each time, the calculation was inconsequential.

This process has two inherent problems: (1) the utility of calculations on a national and annual basis for a seasonal agricultural labor market where local peak labor demand moves geographically over the

course of the year is questionable, and (2) the inclusion of hypothetical conditions in such an equation provides an artificial sense of precision to an inherently unprecise issue.

The USDA and USDOL regulations were challenged in *Garcia v. Yeutter*. Worker advocates sued the Departments of Labor and Agriculture, claiming that instead of merely announcing "no shortage," they should have published a negative shortage number indicating the size of the surplus. They argued that U.S. workers would be harmed if RAWs were admitted on an emergency increase of a zero shortage number when there might in fact still be a surplus of U.S. workers. The judge dismissed the case ruling that, although the Government may have been required to publish the actual shortage number, the "claims of threatened injury are not ripe for judicial consideration."

Regulations of the Immigration and Naturalization Service

Whereas the statute describes the process for determining the shortage number and other numeric factors in the program, it says nothing about qualifications for RAW status or how applicants might be selected. These were to be determined through the regulatory process.

Eligibility criteria had to be established and a mechanism set in place for the admission or adjustment of RAWs. It would not be known until just before RAWs were to be admitted beginning October 1, 1989, whether or not there would be a program, and if there was, how many RAWs would be authorized. If there were a program, it was expected that RAWs would be needed as soon as possible for the 1989 harvest.

The regulation provided for a selection process to proceed in two stages. First, there would be an opportunity, prior to the beginning of fiscal year 1990, for interested aliens, worldwide, to register for the program. Registration required self-certification of eligibility and willingness to perform the required work, but conveyed no benefits other than a possible opportunity to apply. Second, if RAW admissions were authorized, a number of randomly selected registrants equal to the shortage number

Agricultural labor shortages occur at specific times and places, yet the RAW program was designed to provide workers on an annualized basis at the national aggregate level.

would be called. A work permit would be issued to prospective RAWs upon filing an application. In theory, it would have been possible with this system to issue work permits within the first week of the fiscal year.

The rule established basic eligibility criteria and four priority classifications. One would have to be 18 years old and have performed 20 days of any type of agricultural work in the United States during a 12-month period from May 1985 through November 1988 to become a RAW. Registrants in the United States would have priority in selection over those abroad, and within these groups, those with immediate family members legalized under IRCA would have priority. In the event of a shortage, registrants would be randomly selected from the groups in priority order. More than 611,000 applications were made through the RAW provisions of IRCA (Table 4.2).

The statute requires RAWs to perform 90 days of SAS during a year. In cooperation with USDOL, the INS arranged to provide RAW applicants with regional maps showing the location and dates of significant crop harvests and to refer them, upon request, to state employment service agencies for job placement.

**Table 4.2 – RAW Registration by Priority Group
September 1, 1989–November 30, 1989**

Group	Number
Group 1: Residents of the U.S. who claimed they were immediate relatives of IRCA legalization applicants or beneficiaries . . .	84,810
Group 2: Other U.S. residents	447,769
Group 3: Residents of other nations claiming Group 1-type relatives	8,404
Group 4: Other residents of other nations	70,395
Total	611,378

The Operation of the RAW Program

The RAW program was to have alleviated labor shortages by the introduction of foreign workers; it would have been an imperfect solution to the problem. Agricultural labor shortages occur at specific times and places, yet the RAW program was designed to provide workers on an annualized basis at the national aggregate level.

Consider the possibility of a labor shortage for the fall harvest in the upper Midwest. Even if such a shortage was predictable from USDA and USDOL data, there could be a “no shortage” determination and no RAWs because of a labor surplus in the national aggregate. Would unemployed workers from California or Florida, where current data indicate the largest surpluses are, migrate to the Midwest for a few weeks of work? Commission research indicates that some would, but there is no labor exchange mechanism available to facilitate the orderly migration of thousands of workers who might be needed.

The law provides for an increase in the shortage number in the event of “extraordinary, unusual, and unforeseen circumstances.” If the shortage was predictable, this remedy would not be available. If there were a statutory emergency, the shortage number could be increased only after request by employers, notice in the Federal Register with opportunity for interested parties to submit information, and a joint decision by the USDA and USDOL that there was a true emergency and that “reasonable recruitment efforts” had been made. Assuming a genuine emergency, several questions arise: First, what would be considered reasonable recruitment efforts under the circumstances? Should wage rates have been increased, housing and travel advances offered? Second is the question raised but not answered in *Garcia v. Yeutter* of whether the increase should be applied to a negative shortage number, possibly yielding a new number still below zero. Finally, even if the first two issues are resolved to the satisfaction of the petitioners, there is the question of whether RAWs would arrive in time. The emergency increase procedure cannot by law take more than 21 days, but that is a long time in an emergency. Then there is the problem of the RAWs

getting to where they are needed. RAWs could be told where the jobs were, but not compelled to go there.

This last problem arises even if a positive shortage number had been determined and RAWs admitted. Local or regional labor shortages are not resolved by adjusting the national aggregate supply of labor to meet the national aggregate demand. What is missing from this equation is an effective job matching service. This is a very serious problem now, in the absence of a RAW program, and is discussed later in this report. The lack of such a service would be felt more acutely in a tighter national labor supply situation. Employers facing shortages need an effective means of long distance recruiting. The hypothetical RAWs would need an effective job placement service to help them meet their work obligation. It would have been a shame indeed if some RAWs were deported for not finding enough work, while some SAS employers lost crops for a lack of workers.

CONCLUSION

Notwithstanding fraud in the SAW program and the paucity of data on the size of the perishable crop work force, it appears that the number of undocumented workers who had worked in seasonal agricultural services prior to IRCA was generally underestimated. However, the majority of eligible

workers gained legal status through the SAW program, adding substantially to the number of legally available agricultural workers. Nevertheless, due to the continuing participation of unauthorized workers in the farm labor market, the objective of a legal work force has not been achieved and agricultural employers still face the possibility of having needed workers removed from their fields at critical times. Likewise, the labor surpluses, due in large part to the presence of unauthorized workers, have frustrated the development of a stable farm labor market with improved wages and working conditions.

In retrospect, the concept of a worker-specific and industry-specific legalization program was fundamentally flawed. It invited fraud, posed difficult definitional problems regarding who should or should not be eligible, and ignored the longstanding priority of U.S. immigration policy favoring the unification of families.

The inclusion of hypothetical questions flawed the RAW program's statutory provisions for determining the existence of a national labor shortage. The findings of "no labor shortages" in each of the 4 program years, however, comport with all other evidence. Although it was never implemented, the RAW program would not have been an efficient vehicle for dealing with local or regional agricultural labor shortages.

CHAPTER V

THE EFFECTS OF LEGALIZATION ON THE AGRICULTURAL WORK FORCE

BACKGROUND

With labor being critical to the production of fruits, vegetables, and horticultural specialty (FVH) products, access to an adequate supply of labor is a critical concern for producers of these highly perishable commodities. The hired agricultural work force included a significant proportion of undocumented workers when the Immigration Reform and Control Act (IRCA) was passed. A majority of the workers were employed in seasonal harvest work.¹ With the looming threat of employer sanctions and no possibility for winning a new temporary worker program for agriculture, the industry made the legalization of the existing undocumented agricultural workers a priority.

A related industry concern was obtaining a legislative remedy — an insurance policy of sorts — in the event that agricultural workers abandoned agriculture for other economic sectors after achieving legal status. The Replenishment Agricultural Worker (RAW) program was intended to provide that insurance. In it, the agricultural industry was granted a transition period in which to make the adjustments necessary to keep a legal labor force. Thus, while it was recognized that many factors affect the adequacy of the U.S. farm labor supply, the industry's primary focus became the "Special Agricultural Worker (SAW) exit rate," that is, the rate at which newly legalized SAWs would move into other economic sectors.

THE IMPACT OF THE SAW LEGALIZATION PROGRAM ON THE LABOR SUPPLY

SAW Applicants

When all adjudications are complete, the SAW program will have granted the right to live and work in the United States to more than 1 million undocumented workers who claimed experience in agriculture.² This number is substantially higher than was anticipated, prompting many to speculate on the degree and type of fraud that occurred in the program.³ It is clear that both fraud in the SAW

program and an undercount of workers employed in the seasonal agricultural sector were undoubtedly responsible for the discrepancy between expected and approved applications.

An accurate assessment of how many fraudulent SAW applications were approved cannot be determined. However, it is important to differentiate among the types of fraud when addressing the question of the extent to which IRCA's legalization programs affected the available supply of agricultural workers. The principal distinction must be between applicants who had no agricultural experience yet submitted SAW applications because of the less rigorous eligibility requirements, and applicants with experience in farm work who either did not meet the eligibility criteria⁴ or did, but were unable to obtain the documents to prove so. It is therefore impossible to determine precisely the extent to which the IRCA legalization programs were successful in providing legal status to all eligible — although clearly the SAW program erred on the side of inclusion.

The vast majority of SAW applicants were men (82 percent), with a median age of 30. Most were from Mexico, and more than one-half filed their applications in California. A significant percentage of SAWs were married (42 percent). Yet IRCA made no allowances either for spouses who were in the United States but did not qualify for legal status or for the reunification of families subsequent to one

1 The number of hired farmworkers, as well as the composition of this labor force, has been the subject of speculation and controversy for years. The number of workers who were undocumented prior to the passage of IRCA is necessarily even more vague.

2 Another 69,405 general legalization program applicants listed their occupation at the time of filing as "farming, forestry, and fishing."

3 For a discussion of the extent of fraud in the SAW program, see Chapter IV of this report.

4 This could be, for example, because they worked 80 days instead of the required 90, or because they had worked for many years in U.S. agriculture, but failed to work during the 1985-1986 season.

Overall, workers legalized under the SAW program are in various stages of immigrant adaptation and have adopted different economic and social strategies to balance U.S. farm work with ties to their home countries.

family member gaining legal resident status in the United States.⁵

Categories of Immigrant Farmworkers

Data from the SAW applications provide only one perspective on the composition of that portion of the farm labor force during the mid-1980s. Another perspective is possible by inferring other important characteristics of the population retrospectively, through data collected in earlier farm labor research.⁶

Previous migration research, in combination with U.S. Department of Labor-sponsored (USDOL) Farm Labor Supply Study (FLSS) data, identify three distinct groups of workers who would have been eligible for legalization under the SAW program: (a) "settlers"; (b) "cyclical" migrants; and (c) "pioneering" migrants. "Settlers" established residence in the United States prior to the early 1980s, and many could have qualified for legalization on the basis of long-time residence. "Cyclical" migrants from Mexico came regularly to work in U.S. agriculture to support their families in Mexico from their earnings in U.S. farm work. "Pioneering" migrants had only come to work in U.S. agriculture in the 2 or 3 years before the passage of IRCA. Pioneers had not yet made the decision whether to settle in the United States or continue a pattern of cyclical migration.⁷

The 18 percent of SAW applicants who were female can also be classified in three groups. One consists of migrants' wives who had come to join their husbands and work in the United States. Another is a younger group made up of the daughters of farm working couples who were born in Mexico. These females first came to the United States as children and later worked in the fields as teenagers. The final group is made up of older, female heads of households who, like other pioneering migrants, came in search of work in the United States because they felt they had few options in Mexico.

Non-Mexican SAWs present yet another picture. The most important distinguishing characteristic of that group is that immigrants from noncontiguous countries are more likely to be settlers. They include not only pioneering migrants in search of bet-

ter lives, but also a significant proportion of those fleeing from violence. Most notable among this last group are the Guatemalan and Haitian farmworkers of South Florida (Burns 1989; Stepick and Portes 1986).

Overall, workers legalized under the SAW program are in various stages of immigrant adaptation and have adopted different economic and social strategies to balance U.S. farm work with ties to their home countries. The consequence is that virtually all policy or program conclusions regarding "the SAW population" must be understood in light of the disparate subgroups of agricultural workers, with members of each group found at different points in their life histories.

My goal is to work here and to try to do something with my work, come here temporarily and go back to Mexico where I can possibly invest some of the money that I've earned. That's the way I think, but there's still a long way to go.

Testimony of Raul Carrera, farmworker, Raleigh, North Carolina.

5 The family unity provisions of the Immigration Act of 1990 grant the spouses and minor children of IRCA-legalized aliens who were in the United States prior to May 5, 1988, (the last day of filing for general legalization applicants) stays of deportation and annual work authorization. Because the SAW application period extended through November 1988, the Immigration and Naturalization Service (INS) decided in the exercise of its administrative discretion to grant voluntary departure for a 2-year period to otherwise qualifying family members of SAWs. This will have the same effect as a grant of family unity, making it possible for the aliens to apply for employment authorization and permission to travel abroad. Family unity provisions followed INS "family fairness" guidelines utilized during IRCA's implementation that allowed indefinite voluntary departure to be granted to unmarried children under the age of 18 and spouses of legalization applicants on a case-by-case basis. This policy was applied by the INS in an increasingly liberal fashion during the years it was in effect. For family members who had not entered the United States illegally before the effective date, the only legal option is the standard visa procedure for immediate family members, a process involving a wait of several years. Beginning with 1989, the apprehension of Mexican females and children at the southern border increased significantly.

6 The research of Cornelius (1978), Goldring (1990), Massey et al. (1987), Mines (1981), and others provides a good framework for understanding Mexico-U.S. migration flows.

7 This typology of the SAW population is consistent with the findings of studies of California farmworkers conducted in the early 1980s (Mines and Kearney 1982; Mines and Martin 1986). There were no comparable studies of the pre-IRCA farm labor force in other parts of the country.

THE CURRENT FARM LABOR FORCE

Numbers of Farmworkers

According to the U.S. Department of Agriculture (USDA), in July 1990, there were 1,106,000 hired farmworkers employed in the United States.⁸ Data from the USDOL's National Agricultural Workers Survey (NAWS) indicates that the turnover rate for seasonal agricultural service (SAS) workers is 1.7 workers for each job over the course of 1 year. With many more available workers than jobs, the Commission estimates that there are approximately 2.5 million hired agricultural workers in the United States.⁹ The NAWS data indicate that 29 percent of the 1990 SAS work force was SAWs. It is not known, however, how the SAS work force compares to the overall hired agricultural work force. Data from the ESA-92 reports show only 280,500 SAWs working in seasonal agricultural services in fiscal year 1989, 255,500 in fiscal year 1990, and 219,000 in fiscal year 1991 — or 357,300 SAWs (as counted by unique SAW alien registration numbers) working in SAS sometime during the 3 years. While all indications are that ESA-92 reporting has been incomplete, it is impossible to determine the extent of the deficit.

The "Latinization" of the Farm Labor Force

A large majority of seasonal farmworkers in the United States are of Latin origin. A smaller proportion, though still a majority, are foreign-born. The NAWS refers to the process by which this has occurred as the "latinization" of the farm labor force. In 1990, 70 percent of all SAS workers (including supervisors and skilled workers) and 86 percent of all harvest workers were Latinos. Among the foreign-born farmworkers (62 percent of the SAS farm labor force) 92 percent were born in Mexico.

I have never seen an American harvesting. I've been working at this for 6 years, and I've never seen an American out in the fields. And we're out there all the time. At one point

we were told that we were taking jobs away from other people. Who are we taking jobs away from? The Americans?

Testimony of Karina Perez, farmworker, West Palm Beach, Florida.

There is even some discouragement deliberately by the farmer to keep the Southeast Asians away from the farms because they're not easily exploited by the farmer, and they usually bargain for better wages and all that stuff, so they're trying to preserve all the jobs for the Mexicans, because they have no other alternative.

Testimony of De Mean, former farmworker, Hillsboro, Oregon.

...told me he had to hire American workers who came for the jobs, but that there were too many of them, or as it's put down, "too damn many of them," and he preferred the Mexicans, because he could talk to them the way he wanted to.

Testimony of Charles Warren, farmworker, Raleigh, North Carolina.

Table 5.1 compares the demographic profile of the hired farm labor force engaged in SAS work in 1990 collected by the NAWS with the profile of SAW applicants. Of all workers interviewed for the NAWS, 29 percent had legalized their status through the SAW program, while 49 percent of all foreign-born workers were SAWs. Of the foreign-born, 11 percent were legalized under other IRCA provisions, primarily the general legalization program, while 17 percent of all foreign-born workers, or 12 percent of the overall SAS work force, were unauthorized.¹⁰

8 USDA's Farm Labor Survey is conducted during the Sunday through Saturday period that includes the 12th day of the survey month. The survey is generally conducted quarterly. July is the survey month that shows the highest number of hired farmworkers. While this survey represents the best nationwide count of farmworkers employed at a particular time, it seriously undercounts those employed through farm labor contractors.

9 See Box 1 for a discussion of the different data sources on the number of farmworkers in the United States.

10 This figure is based on respondent self-identification and is probably low.

Table 5.1 – Demographic Comparison of SAW Applicants with the 1990 SAS Work Force

	SAW Applicants	All SAS Workers
	<i>Percent</i>	
Age		
up to 24	23	30
25-34	46	35
35-44	19	19
45-64	11	15
65 + ...	1	1
Gender		
Male	82	71
Female	18	29
Place of birth		
Mexico	82	57*
Crop type		
Fruit & tree nut	36	32
Vegetable & melon	31	43
Horticulture	3	15

* 62 percent of SAS workers are foreign born; 92 percent of those were born in Mexico.

Sources: INS 1991 (first column) and USDOL 1991 (second column).

Continuing Ethnic Diversity

While the hired farm work force at the national level is primarily Latino, an examination of local agricultural labor markets shows substantially higher ethnic diversity. Non-Mexican-origin minorities are often stratified by agricultural commodity and task. For example, American Indians work in some New Jersey nurseries, while African-American migrants from Florida continue to supply the labor for some farmers in New York, Virginia, Michigan, and other northern and eastern states. In Sutter County, California, there is a concentration of Punjabis working in agriculture, while refugee groups such

as Lao, Hmong, and Cambodians also work in seasonal agriculture in different parts of the country. There are crews of Salvadorans in south Texas and Russian immigrants in Oregon.

However, it generally appears that refugees remain only briefly in farm work. The number of Haitians working in south Florida agriculture and throughout the eastern migrant stream, for example, while still significant, has fallen steadily since the early 1980s. Similarly, most Southeast Asian farmworkers in central California have left agriculture or bought their own farms, where they specialize in high-value crops. Of the three major farm labor supply states — California, Florida, and Texas — Florida is the only one that has a significant amount of ethnic diversity (Table 5.2).

Table 5.2 – Ethnicity of Current Farmworkers in Traditional U.S. Farm Labor Supply Communities

Ethnic Group	Location		
	Immokalee FL	Parlier CA	Weslaco TX
	<i>Percent</i>		
Mexican	34	74	54
Mexican-American	9	17	46
Mixtec*	5	9	—
Subtotal Mexican Origin	48	100	100
Guatemalan	21	—	—
Puerto Rican	2	—	—
Other — Cuban, Honduran, Salvadoran	3	—	—
Subtotal Other Latino	26	—	—
Haitian, Jamaican	19	—	—
African-American	3	—	—
Anglo	3	—	—
Subtotal Other Ethnic	25	—	—

* Mixtecs are members of indigenous groups, primarily from Oaxaca, Mexico

Source: Kissam and Griffith 1991.

This means not only that Mexican and Mexican-American workers make up the bulk of the labor force, but that Mexican patterns of social interaction shape the informal institutions that give rise to the characteristic dynamics of the U.S. farm labor market.

Among the many groups of refugees entering the United States in the 1970s and 1980s, Guatemalans and Haitians are the only groups that continue to have a significant presence in labor-intensive agriculture. Guatemalans continue to work in the same crops they have for more than a decade — south Florida vegetables and, to a much lesser extent, Arizona citrus. And although many Haitians have left farm work for urban jobs in south Florida, a significant number have continued to work in certain vegetable and tree crops in south Florida.

Notwithstanding these exceptions, the U.S. farm labor market remains predominantly Mexican. This means not only that Mexican and Mexican-American workers make up the bulk of the labor force, but that Mexican patterns of social interaction shape the informal institutions that give rise to the characteristic dynamics of the U.S. farm labor market. While U.S.-born workers, including Mexican-Americans, continue to play an important role as managers and technical specialists in U.S. agriculture, the bulk of the harvest labor force is born in Mexico.

Immigrant Status of the Agricultural Work Force

Post-IRCA case studies offer important information on the labor force composition of several discrete farm labor markets throughout the United States. As seen in Case Study Boxes 5.1 and 5.2, these work forces vary substantially in terms of the proportion of workers in different legal and immigrant statuses.

Distribution of Immigrant Farmworkers

The NAWS found that SAWs, and immigrant agricultural workers in general, are not evenly distributed throughout the country. In the more established Mexican-immigrant receiving areas, such as California, Texas, Florida, and the Northwest, 83 percent of SAS workers were foreign-born; 51 percent of those were SAWs. In more recently established immigrant-receiving areas, primarily the Midwest (excluding Texas) and the East (excluding Florida), only 36 percent of the SAS work force

Case Study Box 5.1 — Year Entered the United States in Various Crops and Regions*

Region/Crop	Year Entered United States	
	Before 1986 (%)	1986 or Later (%)
Oregon		
Willamette Valley		
strawberries . . . n=44	68	32
Xmas trees . . . n=34	76	24
nursery n=33	76	24
Hood River		
pears n=33	100	0
Texas		
winter veg. . . . n=90	91	9
Florida		
winter veg+ . . . n=69	65	35

* Some of the case studies obtained information on the year workers first entered the United States rather than specific immigrant status.

+ This represents only the foreign born. 22 percent of the South Florida workers interviewed were born in the United States.

Source: Commission-sponsored Case Studies

was foreign born; 45 percent of those were SAWs. Although there are fewer immigrant and Latino farmworkers in the new receiving areas,¹¹ workers there are younger and more likely to be post-IRCA (unauthorized) immigrants than in the established areas. In established areas, the predominantly Mexican and Mexican-American farmworker population is older, more likely to be married, and more likely to have legal status.

11 With the active involvement of labor contractors and crew leaders, recently arrived Mexican immigrant farmworkers are successfully spreading throughout the United States (USDOL 1991a; Kissam and Griffith 1991b).

Case Study Box 5.2 — Composition of the Agricultural Work Force in Various Crops and Regions (in Percent)

Region/Crop	No. of Workers	Citizens	Pre-IRCA Legalized	General SAW Legalized	SAW	Unauthorized
California						
Stockton ¹ tomatoes	n=25	8	52	4	28	8
San Diego Co. tomatoes	n=13	0	6	7	60	27
Fresno Co. tomatoes	n=19	0	0	0	73	27
Fresno Co. raisins	n=125	2	17	0	46	35
Tulare Co. citrus ¹	n=52	0	10	0	54	31
Washington						
Yakima Co. apples	n=43	12	0	12	60	16
asparagus	n=38	24	0	15	39	22
Arizona						
Yuma Co. citrus ¹	n=20	10	25	0	60	0
Michigan						
apples & cucumbers ¹	n=99	18	15	15	38	18
New York/Pennsylvania						
apples ^{1, 2}	n=80	31	23	0	20	1
South Carolina						
peaches	n=49	26	2	2	61	6
Georgia						
peaches ¹	n=39	3	10	5	77	0

¹ Percents may not add up to 100 based on rounding or workers belonging to another category such as having temporary work authorization based on family reunification provisions, marriage to a U.S. citizen, or refugee status.

² 19 percent of the interviewees in this case study were H-2A workers.

Source: Commission-sponsored Case Studies

Migrant Farmworkers

The NAWS data indicate that in 1990, 42 percent of the SAS farm labor force and 62 percent of the harvest work force were follow-the-crop migrant farmworkers. There are significant differences, however, in the proportion of workers who are migrant farmworkers based on immigrant status and geographic region. The overwhelming majority of SAWs (86 percent) and undocumented workers

(89 percent) working in new U.S. settlement areas were migrant farmworkers. Even in areas such as California, Texas, and Florida, migrant workers made up more than one-half of the harvest labor force.

Farmworkers have congregated in what are now traditional farm labor supply regions. These regions, primarily central and southern California, Florida, and south Texas, usually have much greater availability of winter work than “upstream”

Workers legalized through the SAW program appear neither to be moving quickly out of farm work nor to be as prone to do so as U.S.-born workers.

migrant states. Many workers, however, continue to leave these areas in search of agricultural work, returning again at the end of the season. Migrant patterns in the United States have shifted, as south Texas has diminished in importance as a migrant farmworker home base, while Florida has increased in importance. This shift is due primarily to reduced winter labor demand in Texas and increased winter labor demand in south and central Florida.

While the ESA-92 data base provides a basis for examining the question of SAWs' movement out of perishable crop agriculture, it can be used also to determine a rough measure of how much SAWs traveled to work in SAS. Over a 3-year period, slightly more than 40 percent of SAWs reported that they were working in 2 or more of the 99 zip code areas in the United States. Slightly less than 5 percent worked in four or more areas.

OCCUPATIONAL PATTERNS OF SAW WORKERS

Current Participation of SAWs in the Farm Labor Force

Case studies sponsored by the Commission show that in 1990, SAWs were represented extensively in the harvest labor forces under observation (Case Study Boxes 5.1 and 5.2).¹² The NAWS reports similar findings on the national level.

Those SAWs who have remained in agriculture continue to maintain their levels of participation. The ESA-92 data show that SAWs worked approximately the same number of days for each of the 3 reporting years. The NAWS data basically corroborate this finding by showing only a slight increase in number of days worked per SAW (4 percent over 3 years). However, there is a substantial discrepancy in the findings of these two research efforts with respect to the number of days actually worked. ESA-92 data show an average of 79 to 82 workdays each year, while the NAWS data show an increase from 183 to 191 workdays. The Commission-sponsored case studies, as well as data from previous studies, suggest that the NAWS-based estimate of the number of agricultural workdays is more accurate. The discrepancy in days worked per SAW

thus indicates the extent of ESA-92 underreporting, suggesting that the ESA-92 data capture slightly less than one-half of the SAWs' employment during the year.

SAWs' Plans to Remain in Farm Work

Workers legalized through the SAW program appear neither to be moving quickly out of farm work nor to be as prone to do so as U.S.-born workers. The NAWS found that two-thirds of SAWs nationwide plan to work in agricultural field work throughout their working lives; fewer than one-half of U.S.-born workers plan to do so.

The FLSS found a certain amount of regional variations in SAWs' attachment to the farm labor force, with the proportion of SAW workers who planned to stay in farm work ranging from 55 to 88 percent. In each of the FLSS communities, SAWs were significantly more likely to report that they plan to continue in farm work than U.S.-born farmworkers.

The Commission-sponsored case studies also show that SAWs, as well as other farmworkers in widely separated regions of the country, intend to continue in farm work indefinitely, or for as long as they are physically able (Case Study Box 5.3).

Movement Between Farm and Nonfarm Work

SAWs' movement into nonagricultural work appears to rest, to some extent, on the number of immigrant-dominated occupations and industrial sectors in nearby labor markets.¹³

The farm labor market is only one of several clusters of immigrant-dominated occupations which are distinct from the mainstream labor market. While this situation normally allows immigrant workers fairly good opportunities for occupational

12 The exception to this is in the New York apple harvest where H-2A workers play a significant role.

13 For example, the FLSS found that farmworkers in Immokalee, Florida, had the lowest attachment to farm work of any in the communities studied. In south Florida, there are numerous opportunities for immigrants to work in construction and service occupations due to the booming tourist industry on the Gulf Coast.

The strong commitment to farm work that SAWs seem to exhibit reflects the poor conditions in other immigrant-dominated occupations and a realistic appraisal of their ability to compete in the mainstream U.S. labor market.

mobility within this sphere, mobility between immigrant and nonimmigrant-dominated clusters of occupations is more difficult. The strong commitment to farm work that SAWs seem to exhibit reflects the poor conditions in other immigrant-dominated occupations and a realistic appraisal of their ability to compete in the mainstream U.S. labor market.

The process of occupational migration out of farm work often parallels employment mobility

within farm work and is shaped primarily by network ties. Clusters of workers are linked less by personal aspirations, education, work experience, and individual abilities than by personal relationships that guide their movement from job to job within each labor market.

The highest levels of mobility between agricultural and nonagricultural occupations occur in industries dominated by the same family or village labor recruitment network. Often, distinct networks

Case Study Box 5.3 — Movement Out of Farm Work

CALIFORNIA tomatoes – Interviewed workers said they did not know how to get any other type of work.

CALIFORNIA citrus – Fifty-eight percent of the respondents consider themselves to be “permanent” farmworkers while 31 percent planned to stay in farm work for the next few years.

CALIFORNIA raisins – When asked how long they anticipate doing farm work, 72 percent responded “for as long as I am able.” When asked if they planned to work in the 1992 raisin grape harvest, almost 86 percent answered affirmatively. Most of those interviewed see little opportunity for other types of employment.

OREGON – Eighty-two percent of the strawberry workers interviewed planned to do farm work in the United States in the next year, 9 percent did not, and 9 percent were uncertain. Ninety percent of pear workers interviewed planned to do farm work in the United States in the next year. Eighty-two percent of nursery workers planned to continue in farm work, 6 percent did not, and 12 percent were uncertain. Of the Christmas tree workers interviewed, 79 percent planned to be doing U.S. farm work the next year.

WASHINGTON asparagus and apples – Eighty-six percent of IRCA-legalized farmworkers interviewed planned to continue in farm work.

ARIZONA citrus – One hundred percent of all workers interviewed considered themselves to be “permanent” farmworkers.

MICHIGAN pickles and apples – Eighty-six percent of IRCA-legalized farmworkers, 83 percent of the unauthorized workers, and 56 percent of the U.S.-born farmworkers interviewed planned to continue in farm work.

NEW YORK/PENNSYLVANIA apples – Fifty-six percent of the workers interviewed said they would continue to do farm work; 24 percent plan to leave; and 20 percent were unsure of their plans.

SOUTH CAROLINA peaches – Almost all farmworkers interviewed (93 percent) intend to continue performing farm work for the next few years, and 67 percent of these plan to continue for as long as they are physically able.

GEORGIA peaches – Ninety percent of workers interviewed plan to continue doing farm work in the United States. Eighty percent say they will continue in farm work for as long as they are physically able.

FLORIDA vegetables – More than two-thirds of the workers surveyed reported having no experience outside farm work during the previous year. However, nearly one-third of the workers in the sample — all of whom were working in agriculture during the time of the interview — had occupied positions outside agriculture sometime during the year before the interview. Of the workers who had reported working outside agriculture, 43 percent worked in construction or painting jobs.

Source: Commission-sponsored Case Studies.

will "take possession" of a particular occupation in an industry segment in a specific labor market.¹⁴ This appears to be far more significant than any specific link between a particular type of occupation and farm work. As an industry comes to adopt the recruitment and supervision practices of its workers, it organizes increasingly along lines of its labor force's extended family and village networks, language, and styles of interpersonal relations. These characteristics, in turn, create effective entry barriers for those who do not share or are not familiar and comfortable with these characteristics.¹⁵

Reasons for Remaining in Farm Work

Data show that participation in the nonagricultural labor market does not weaken attachment to farm work significantly. Many farmworkers find jobs in nonagricultural occupations, yet remain committed to agriculture as their primary source of employment. The FLSS shows that over a 5-year period, between 14 percent (Immokalee, FL) and 41 percent (Parlier, CA) of all workers combined both farm and nonfarm work. And the NAWS data indicate that more than one-half of the farmworkers who also do nonagricultural work (between 51 and 60 percent, depending on the area) expected to remain in farm work until they retire.

The reasons for such attachment are many. Even when such opportunities are available, wages, working conditions, and employment stability in many immigrant-dominated industries and occupations are not significantly better than in farm work.¹⁶ With job security tenuous and prospects for upward mobility meager, relatively few workers leave agricultural work, and of those who do, many ultimately return to agriculture.

Almost anyone that can get a better job that is more stable for their family, that pays better, that is more regular in its hours, that has better conditions, is going to move to those jobs. I'd like to suggest, however, that movement may not be as rapid as some people are fearing. Most SAWs, in Oregon at least, do not speak English. Unlike areas of California and Texas that are pretty thor-

oughly bilingual, in most job sites in Oregon outside of agriculture, command of English at least at a minimal level is a demand.

Testimony of Michael Dale, Director, Farmworker Program, Oregon Legal Services.

A commitment to farm work also reflects an occupational outlook characteristic of rural sending villages in Mexico — where there is none of the stigma associated with working as an agricultural laborer that is prevalent in the United States. Cyclical migrants, who return regularly to their home villages in Mexico each winter, reinforce their attachment to agriculture by planting their own *milpas* (fields of corn and beans) or working as hired laborers (*jornaleros*) in their home villages.

Differential Access to Nonfarm Jobs

Not all agricultural workers have an equal probability of leaving farm work. Non-English-speaking workers whose work experience is primarily in agriculture are quite likely to remain in agriculture. However, gradually and over time, workers who gain experience in new occupations and whose English-speaking ability improves, historically have begun to explore other employment options. Considering that SAWs have little schooling (mean education levels of 5 to 6 years) and that very few (less than 10 percent) speak English well (Kissam and Intili 1988; Commission-sponsored case studies), their ability to gain employment outside of agriculture in either the larger labor market or even in other low-wage industries that are similarly dominated by immigrants is very limited.

Certain subgroups of workers, of course, are likely to leave farm work sooner, resulting in

14 Examples include Mixtec (Oaxaca, Mexico) domination of construction clean-up work in Riverside County, CA; Animerio (Zacatecas, Mexico) domination of steel foundry work in San Mateo County, CA; and Nuevo Leon (Mexico) domination of manufacturing work in a Chicago broom factory.

15 Martin (1986) has referred to this process as the "colonization" of the farm labor market.

16 The NAWS, for example, reports that interviewed workers received hourly wage rates for nonfarm work that were slightly lower than farm work wage rates. Furthermore, one-fourth of the sample had been laid off from their last nonfarm job.

Since the enactment of IRCA, the pull of available nonfarm jobs that would serve to draw workers out of farm work has been relatively weak.

"differential exit rates" among SAWs. There is some evidence, for instance, that SAWs who were originally only peripheral to the farm labor force moved rapidly out of farm work. A 1988 survey of SAWs enrolled in English as a Second Language/civics classes showed that only one-third continued to work in agriculture (CASAS 1989). The SAW respondents in this survey, however, differ from the overall SAW population by their median education level of 7 years, and the fact that one-quarter have 10 years or more of schooling. Education level and English-speaking ability, then, and the propensity of workers to leave farm work, appear to be correlated. By and large, however, most SAWs can be expected to remain in farm work for many years.

The Availability of Nonfarm Jobs

The health of the overall U.S. economy is another factor that needs consideration when discussing the movement of farmworkers into and out of the farm labor pool. Since 1987, the rate of new job creation has stagnated, while the unemployment rate has increased slowly. The number of people employed throughout the United States in 1987 was 121.6 million. By 1991, this had increased only to 126.8 million, a 4.3 percent increase. In contrast, the number of people employed between 1977 and 1981 increased by 9.5 percent. Between 1987 and 1991, the national unemployment rate increased slightly, from 6.1 to 6.6 percent. Unemployment rates, however, are significantly higher in rural areas.¹⁷

Since the enactment of IRCA, the pull of available nonfarm jobs that would serve to draw workers out of farm work has been relatively weak. In fact, in some cases, domestic workers have entered the farm labor force on a casual basis after they lost their jobs in other sectors of the economy.¹⁸ Historically, workers with few alternatives have often used farm work as an occupation of last resort, as there are few barriers to entry in this labor market (Matta 1984).

The Transition to Nonfarm Work

Despite the barriers preventing easy movement out of farm work, year-round work and better working conditions continue to draw some workers, and especially their children, out of agriculture and into other occupations. The transition out of this sector has been reinforced by government programs and policies which have done little to stabilize the farm labor market or upgrade the occupation. Instead, such programs and policies seem to encourage farmworkers to improve their lives by leaving the agricultural sector.

Such an admittedly simplistic view, however, does not adequately capture the current back-and-forth movement of workers among various low-wage labor markets, including agriculture. With job opportunities determined by the larger economy, rather than experiencing a straight trajectory of upward mobility, many farmworkers circulate among various niches of the larger labor market for years, performing seasonal jobs, for example, in agriculture, construction, service industries, and general day labor before ultimately shifting to long-term employment outside of agriculture.

It appears that some workers have managed to get jobs in areas other than agriculture, but they continue to do agricultural work as well. Some of the workers did not appear to stay directly in agriculture but in agriculture-related fields, such as slaughtering cattle and hogs, wholesale fresh fruits, storing perishable goods, cooking and canning seafood...In addition, it is likely that there are people who prefer agriculture and will remain in agricultural jobs.

Testimony of Marcia Eaton, Deputy Assistant Commissioner, Washington State Employment Security Department.

17 For example, the unemployment rate in Fresno County, California, hovered around 10 percent and in Imperial County around 20 percent. In Hidalgo County, Texas, the rate increased from 18 to 19 percent between 1987 and 1990.

18 See the Commission-sponsored Michigan case study.

While mobility out of agriculture by first-generation immigrants is difficult (and in these economic times fraught with uncertainty), the children of immigrant farmworkers who are reared in the United States historically have been able to achieve more occupational mobility. Some English-speaking, better-educated children, who themselves worked extensively in agriculture as teenagers, appear to abandon the occupation as their aspirations, abilities, and outlook approach that of other blue-collar groups. As happens with most immigrants to the United States, occupational mobility out of agriculture is thus more often a two-generation process in which parents tend to remain in the familiar territory of a particular labor market, while their children cross over into other occupations.

Yet despite poor conditions, I've seen many workers return year after year to do field labor. Many of these people are in family groups. I have known families who for three generations have returned to North Carolina to do labor. Most are Mexican families. They like it, but they keep believing that things will be better for their children. They believe if their children go off to school and get a better education, that they'll be able to get jobs. Yet if conditions were better, they would feel like staying. They like farm work. I have seen them leave farm work only to come back to farm work because they liked it.

Testimony of Sister Kelin Lee Bethea, Catholic Social Ministry, Migrant Ministry, Legalization.

Upward Mobility within Agriculture

While the availability of immigrant-dominated nonagricultural work affects farmworkers' occupational mobility, the range of agricultural employment opportunities influences the interest in such mobility. For example, the degree of concentration in production operations, the extent to which the local labor market is dominated by large packing-shipping firms, and the degree to which agriculture dominates the local economy, appear to be important variables in a worker's decision to leave farm work. To survive, many farmworkers depend on

the employment of all family members (Kissam and Intili 1988). Thus, the availability of packing house, processing plant, swamper, loader, and warehousing employment for SAW family members, while drawing some workers outside of field work, serves to strengthen the entire family's attachment to the sector.

The NAWS and ethnographic data from Commission and FLSS case studies show that SAWs are gradually leaving hand harvest labor to move into semi-skilled (irrigating, operating machinery, or pruning) and supervisory work in agriculture. According to the NAWS, about 57 percent of all SAWs are harvesters (compared to 71 percent of undocumented workers), while 20 percent hold such semi-skilled jobs as machine operators, pruners, sprayers, and irrigators (compared to only 10 percent for the undocumented work force). This latter figure compares favorably with that for all SAS workers interviewed for the NAWS who hold semi-skilled and supervisory positions (24 percent). The NAWS data further indicate that SAWs fill 31 percent of all the semi-skilled jobs in agriculture, twice as many as undocumented workers do.

Movement Among Agricultural Jobs

The above factors, combined with a variety of other reasons, mean that there continues to be a high rate of turnover in the farm labor market. Commission-sponsored case studies and testimony heard by the Commission seem to corroborate this.¹⁹ In some cases, worker turnover is due to a lack of housing — with some workers leaving their current employment before the end of the harvest to secure housing in another area, even though work may not begin for several weeks. Turnover data, however, should not be construed to indicate that SAWs, or farmworkers in general, are leaving

¹⁹ In Washington, for example, it was found that about one-quarter of the workers interviewed were working for their current employer for the first time. More than one-half the Michigan workers interviewed were with their current employer for the first season. One exception among the case studies was Georgia. There, peach growers who use Latino migrant labor for the harvest experience a low turnover rate. In the Georgia peach harvest, 95 percent of the workers interviewed had been working for the same grower for 3 years or longer.

farm work — simply that farmworkers leave their employers.

Of course, the higher the turnover, the more opportunities to consider alternative employment options, and the higher the likelihood of abandoning farm work. While the likelihood is that the vast majority of job moves will be from one farm labor job to another, lower turnover rates will inevitably yield lower overall attrition rates.

General Attrition from Agricultural Work

The ESA-92 data base suggests that 9 percent of the SAW work force left agriculture between fiscal years 1989 and 1990, and 14 percent did so between fiscal years 1990 and 1991. However, the accuracy of these data is open to question, and employer reporting of ESA-92 data has diminished each year (by 5 percent and 15 percent respectively in each of the last two years). Thus, part of the apparent decrease in the number of SAWs reported as working in agriculture probably stems from employer underreporting.

While opportunities for advancement within the industry and the health of the overall economy shape farmworker decisions about whether or not to seek employment outside of agricultural work, another variable may eventually be most crucial in determining how long SAWs will continue to constitute a significant proportion of the agricultural work force: age. Age affects an agricultural worker's physical ability to continue to work in the fields. Although most SAW applicants were relatively young, as of December 1991, 12 percent of SAWs were 45 years of age or older. It is thus reasonable to expect that approximately 10,000-15,000 SAWs will leave farm work each year due to age or infirmity.

A final important subgroup of SAWs who may no longer be employed in U.S. agriculture consists of workers who have returned or will soon return to Mexico — either because they have achieved their earnings goals or because they have had little success in finding regular employment. There is very little post-IRCA research on this group of workers. Based on earlier migration research in Mexican sending villages, however, one could pre-

dict that a significant number among the original 1985-1986 cohort of SAWs would have returned to Mexico. What is not known is how legalization has affected this process.²⁰

CONCLUSION

More than 1 million workers became legal residents of the United States through the SAW program. However, the question of the exact number of SAWs who remain solidly committed to farm work cannot be ascertained with any degree of accuracy. Uncertainties about the proportion of the initial SAW stock who were bona fide agricultural workers further interfere with our ability to estimate attrition rates. Finally, there are clearly differential exit rates among subgroups within the SAW population.

The "typical" SAW is a 30-year-old male from a rural migrant-sending village in Mexico who has less than an elementary school education. He is likely to remain in farm work for well into the 21st century, assuming that he finds a relatively stable niche in the constantly shifting farm labor market. Upon closer examination, however, this "typical" SAW changes depending on crop and geographic area. Changing migration patterns, worker movement between agricultural and nonagricultural work, and differential SAW exit rates confound an analysis of the effects of legalization on the farm labor market.

Yet, the many post-IRCA farm labor market research efforts that have examined the issue of SAWs' attachment to agriculture have reached a consensus that, to date, SAWs are remaining strongly attached to the farm labor force. Overall research on occupational mobility, past research on immigrant farmworkers, post-IRCA farm labor market research, and Commission testimony and case studies indicate that most SAWs are likely to remain in agriculture throughout their working lives. Thus, the expectation that many among the

20 According to research by Massey et al (1987), within 10 years of settling in the United States, 15 percent of the migrants from two villages in rural Mexico had returned to Mexico.

newly legalized workers would move immediately into nonagricultural industries has clearly not materialized.²¹

If this trend is to continue, it will require additional and sustained efforts to stabilize the farm labor force which will in turn strengthen SAWs' already considerable attachment to farm work and

decrease attrition rates. Labor management strategies designed to provide upward career ladders in agriculture, employment for SAWs' families, and efforts to decrease worker turnover all have the prospect of prolonging SAWs' participation in the farm labor force.

21 The FLSS presents a retrospective analysis of the occupational history of the group of immigrant farmworkers most similar to SAWs — "green card"-era farmworkers — which shows that large numbers remained in farm work throughout their working lives. In Immokalee, Florida, 78 percent of pre-1976 immigrant farmworkers interviewed in the FLSS continued to work in agriculture; in Parlier, California, this figure was 100 percent, and in Weslaco, Texas, 40 percent.

CHAPTER VI

UNAUTHORIZED IMMIGRATION AND THE AGRICULTURAL LABOR SUPPLY

BACKGROUND

For years, the flow of unauthorized immigrants across the southern U.S. border has replenished the agricultural labor pool. The Immigration Reform and Control Act (IRCA) was expected to curtail this movement and thus affect the farm labor supply. This expectation has not materialized. IRCA has not only failed to control illegal immigration, but after an initial period of seeming deterrence, it appears that the SAW program may actually have encouraged further illegal migration into the United States and the U.S. farm labor market.

Factors other than official U.S. policies influence the decisions of potential international migrants. The continuing opportunities for work in the United States, including those in labor-intensive agriculture, are a strong attraction. Economic and political circumstances in Mexico, Central America, and the Caribbean continue to make the option of migrating illegally to the United States desirable, while firmly established social and information networks ease the process of both illegal entry and subsequent adjustment to U.S. society for new immigrants. These factors have proven stronger than U.S. enforcement efforts.

THE CONTINUED IMPORTANCE OF PULL FACTORS

Expansion of the FVH Industry

The availability of Mexican farmworkers has long allowed U.S. employers in fruit, vegetable, and horticultural specialty (FVH) agriculture to expand without making the necessary adjustments that reliance on a domestic work force would require. This has created a demand for farm labor that, for most of this century, has drawn immigrant farmworkers from Mexico into the United States. Expansion of fruit, vegetable, and horticultural specialty production has continued unabated since the enactment of IRCA.

Two indicators of agricultural production — cash receipts and bulk production (tonnage or hundred-weight)¹ — both demonstrate that since the

enactment of IRCA, domestic FVH production has continued to expand (Figures 6.1 and 6.2). Between 1980 and 1985, cash receipts for FVH products increased in nominal terms by 21 percent — vegetables by 17 percent, fruits and nuts by 6 percent, and greenhouse and nursery products by 58 percent. This figure, however, represents a decrease of 7 percent in real dollars.² Between 1985 and 1990, on the other hand, the nominal increase was 38 percent — 34 percent for vegetables; 34 percent for fruits and nuts; and 51 percent for greenhouse and nursery products. This represents an increase of 14 percent in real dollars. Vegetable production also showed improved growth in the latter half of the decade — increasing 13 percent between 1980 and 1985, and 17 percent between 1985 and 1990. Fruit production decreased by 23 percent in the first 5-year period, but increased by 7 percent between 1985 and 1990.

Increasing production of labor-intensive fruits, vegetables, and horticultural specialty products has clear implications for employment opportunities within that sector. The Bureau of Labor Statistics (BLS) projects future changes in agricultural employment patterns. Projections published in 1989 showed overall agricultural employment³ declining by 4 percent between the years 1988 and 2000. Three areas that were projected to grow substantially, however, were employment in agricultural services,⁴ by 27 percent; and the occupations of nursery workers, by 20 percent; and farm managers, by 22 percent (USDOL 1989b). When these projections were revised in 1991, the trends were only slightly different. Between 1990 and 2005, employment in agriculture was projected to decline by 6 percent. Employment in agricultural services was

1 Acreage is less telling as a national indicator. For example, acreage devoted to the production of fruits and vegetables increased by 9 percent between 1970 and 1990. Production during that time, however, increased by 64 percent as a result of higher yields.

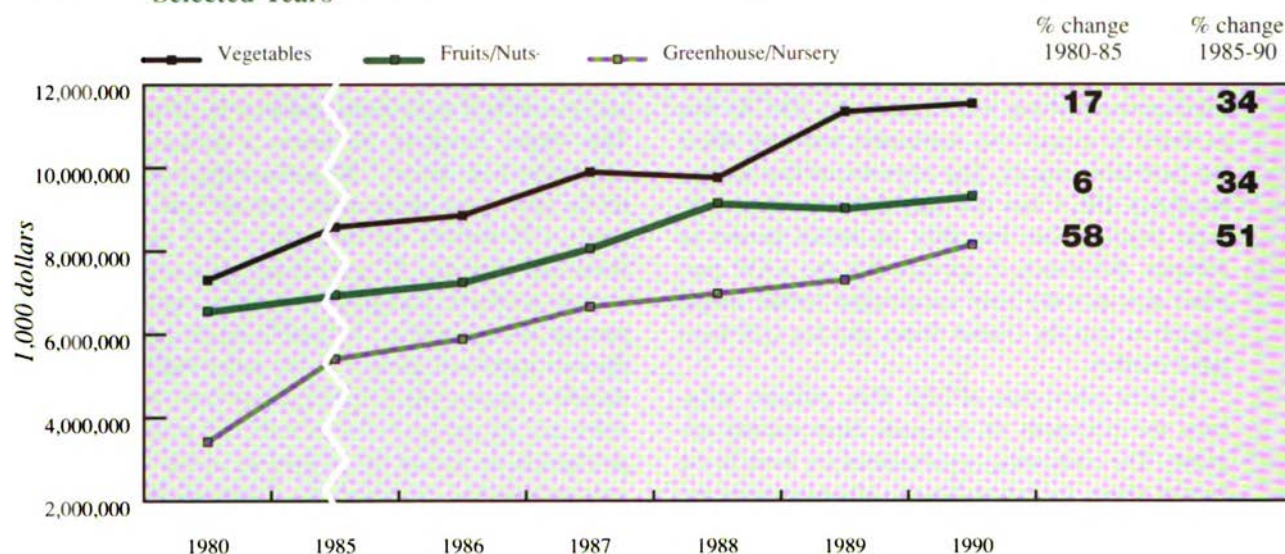
2 Real dollars are adjusted for inflation. The base (100) is the Consumer Price Index of 1982-1984.

3 This category includes agriculture, forestry, and fishing (SIC codes 01-09).

4 This includes establishments primarily engaged in performing soil preparation services, veterinary services, other animal services, farm labor and management services, and landscape and horticultural services (SIC codes 07).

Expansion of fruit, vegetable, and horticultural specialty production has continued unabated since the enactment of IRCA.

Figure 6.1 U.S. Cash Receipts of Fruit, Vegetables, and Greenhouse/Nursery Products, Selected Years



Source: *Economic Indicators of the Farm Sector*, various years, USDA.

projected to increase by 34 percent; the occupation of nursery workers by 30 percent, but farm managers had dropped to a projected 16 percent increase (USDOL 1991b). Thus, while overall agricultural employment is projected to continue its decades-long decline, jobs within the FVH sector are expected to grow.

While FVH production has increased, many growers have not adopted labor-saving technologies and innovations. Experimentation with machine harvesters in such crops as fresh market tomatoes and apples was common 20 years ago. Since then, however, interest has waned. With no fear of labor shortages, many growers have even idled machines purchased during the last decade.

Offsetting any labor-saving technologies which have been adopted are changes in production methods that have actually increased the need for labor. For instance, the shift from using a packing house to field packing in certain commodities is one such change fueling the demand for labor in FVH agriculture.⁵ The shift from ground to staked tomatoes in south Florida is another. The expansion of FVH production without the simultaneous adoption of labor-saving technologies continues to require a large

farm labor force in the United States. This, in turn, both encourages farmworkers to stay in the farm labor market, and attracts new workers into agriculture.

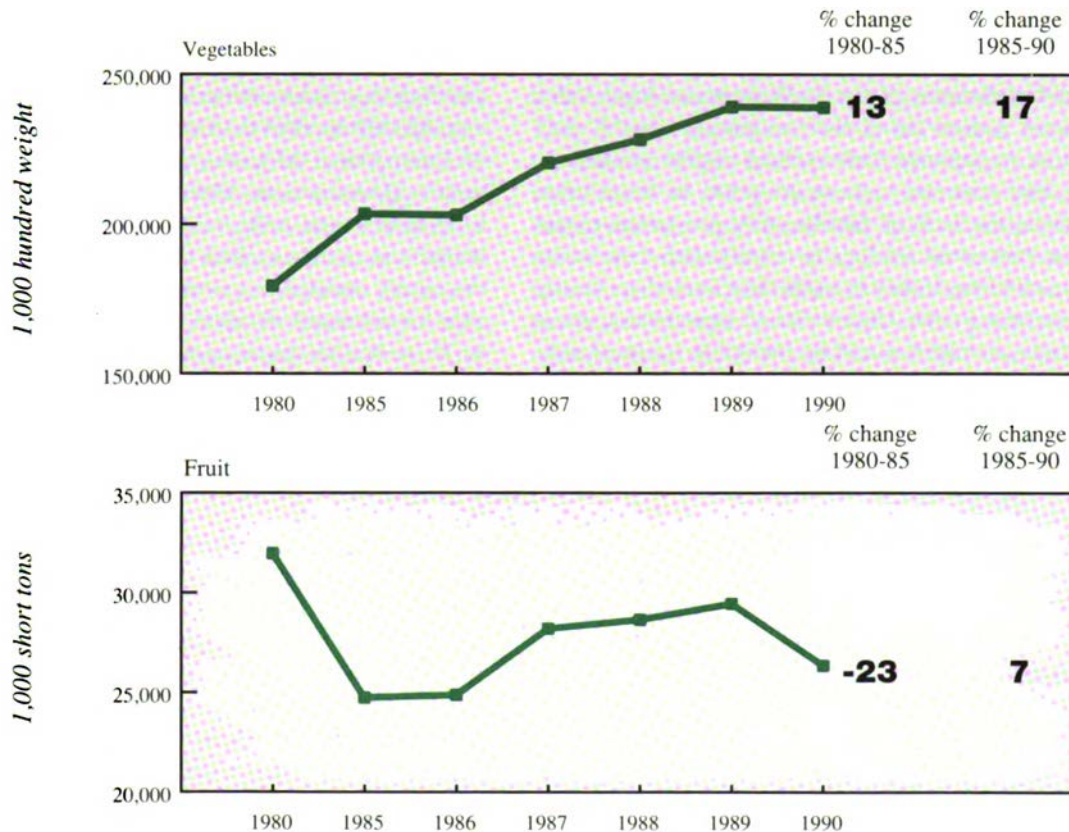
There is much debate as to whether or not there is a shortage of farmworkers. I suggest to the Commission that a labor shortage does not exist. This is based on the fact that farm acreage is increasing without major changes in technology. Also the fact that crops have been and continue to be harvested in an orderly fashion implies to me that there is confidence in the existing agricultural labor force.

Testimony of Most Reverend Ricardo Ramirez, C.S.B., Bishop of Las Cruces, New Mexico.

⁵ For example, whereas most broccoli and melons used to be packed in separate facilities, they are packed increasingly in the field as a standard part of the harvesting procedure. This saves employers both overhead costs and wages.

The Special Agricultural Worker (SAW) legalization program has affected migration patterns in two ways. The first, and most obvious, is that it has facilitated settlement in the United States. The second, and less obvious, is that it has facilitated cyclical, or back-and-forth, migration between Mexico and the United States.

Figure 6.2 U.S. Production of Major Vegetables and Fruit



Source: Fruit and Nut and Vegetable Summaries, various years, USDA.

The Dynamics of Migration Flows

Migration from Mexico has been shaped by the dual forces of the ongoing demand for low-wage labor in the United States and the high levels of unemployment and underemployment in Mexico. Migration from the core sending areas of Mexico to sectors of high labor demand in the U.S. economy — initially, the railroads and mines, and, subsequently, agriculture and other urban low-wage and low value-added sectors — has gone on for more than a century. One of the Commission's critical challenges has been to understand how IRCA's legalization provisions may have affected the dynamics of population flows between tradi-

tional sending areas in Mexico and agricultural regions in the United States.

The Special Agricultural Worker (SAW) legalization program has affected migration patterns in two ways. The first, and most obvious, is that it has facilitated settlement in the United States. The second, and less obvious, is that it has also facilitated cyclical, or back-and-forth, migration between Mexico and the United States.

For many areas of rural central Mexico, immigration to the United States has become a structural feature of social and economic life. By offering many Mexican farmworkers permanent resident status, the SAW program intended to allow U.S. agriculture unhindered access to these workers. This policy, however, paid little attention to the role

Although the economic situation in Mexico has improved over the last few years, it has not improved sufficiently to offer a credible promise of relief, in the short-run, from cross-border migration. As always, many of the new immigrants enter the U.S. agricultural labor market.

of family dynamics in the migration process. While many Mexican pioneering and cyclical migrants were legalized, their immediate families, who had traditionally remained in Mexican villages, were not. Hence, for many of the principals who were the beneficiaries of the SAW program, legal status meant a decrease in their migration costs if they chose to continue their cyclical migration patterns. If, however, they chose to settle in the United States, the lack of family unity provisions meant that they could not legally reunify with their wives and children. If they brought their immediate family members to the United States nonetheless, these family members would be ineligible for most publicly funded services and be subject to deportation.

For those workers who had their families join them before IRCA, and whose wives and teenage children had participated in the U.S. farm labor market,⁶ the SAW program allowed the majority of their family members to achieve legal status.⁷ For other beneficiaries of the SAW program, the effect has been to stimulate cyclical migration — at least for the short term — thus further cementing ties between SAWs working in the United States and their home villages and strengthening family and village migration networks.

CONTINUING PUSH FACTORS IN IMMIGRANT-SENDING COUNTRIES

The circumstances in immigrant-sending countries are a crucial variable in people's decisions to emigrate. Although the economic situation in Mexico has improved over the last few years, it has not improved sufficiently to offer a credible promise of relief, in the short-run, from cross-border migration. As always, many of the new immigrants enter the U.S. agricultural labor market.

The 1980s were a time of severe economic crisis in Mexico. Declining prices for its principal export product, oil, and the economic consequences of a devastating earthquake in 1985, compounded the effects of unsustainable government economic policies. These policies had focused on bolstering the manufacturing sector through extensive subsidies, restricting imports and direct foreign investment, and controlling the peso exchange rate. The results

were a decline in real wages, unprecedented levels of inflation and unemployment, and a flight of both money and people.

At the same time, approximately 1 million persons were entering Mexico's labor force each year, swelling the ranks of the unemployed and underemployed (Report of the Commission for the Study of International Migration and Cooperative Economic Development 1990). The availability of long-established and smoothly functioning networks and pathways into the United States made the option of migrating north one of the few available for economic survival.

There is widespread agreement in the social science community that only economic development in Mexico and the Caribbean Basin will gradually reduce pressures to emigrate — at least in the long-run. Trade and investment policies can play important roles in affecting the pace and direction of such development. Yet, for the United States, the balance between protecting jobs and working conditions at home and supporting, in a substantive way, economic development abroad is not an easy one to achieve. While economic development efforts can, in the long run, decrease migration flows, the immediate impact is likely to be the further stimulation of migration out of rural, peasant villages into labor demand areas, wherever those may be. Implementation of a North American Free Trade Agreement (NAFTA) will likely have just that impact. While NAFTA ultimately may decrease migration pressures from Mexico, the immediate impact is likely to be one of increased population movement out of rural villages, continued overcrowding in Mexico's cities, and further "stage migration" — first to areas of economic growth in northern Mexico and then into the United States.⁸

6 One of the consequences of migration to the United States for these farmworker families was that wives and children who had not participated in the formal labor market in Mexico needed to work. Given the relatively high cost of living, seasonally unemployed families found it difficult to subsist in the United States without the economic contributions of all family members (Kissam and Intili 1988).

7 Some children too young to have worked in the fields and too old to have been born in the United States remained in an illegal status.

8 This process has been documented for *Mixtecs* from southern Mexico to California via employment in multinational, labor-intensive agricultural operations in northern Mexico (Stuart and Kearney 1981).

History has shown that, once established, migration flows tend to accelerate until they reach an equilibrium. At that point, decreasing returns on migration (due, in this case, to a surplus of workers) make it less likely (Massey et al 1987). There is some evidence that this countervailing trend may have already begun in some sectors of the U.S. agricultural labor market. Several newly arrived workers reported to Commission researchers that they plan to return to their home villages in Mexico because they cannot find adequate amounts of work in the United States.⁹ However, it is not clear how rapidly and significantly this feedback loop might affect the culture of northward migration. And while expectations about finding jobs at their destination are a powerful stimulus to migration, economic and political crises in the sending countries continue to be critical variables in an individual's decision to migrate.

THE IMPACT OF EMPLOYER SANCTIONS

Employer sanctions were expected to curb illegal immigration by reducing the pull of U.S. jobs. The enactment of sanctions corrected a long-standing asymmetry in U.S. immigration law which had made it illegal for undocumented aliens to work, but not for employers to hire them.¹⁰ Following IRCA's enactment, all U.S. employers must verify the work authorization of new employees and maintain records (I-9 forms) of that verification.

To date, employer sanctions are thought to have had only a modest and declining impact on overall illegal immigration flows (The President's First Report on Employer Sanctions 1991). And although they have not been found to be a significant burden on employers, sanctions have increased national-origin discrimination in the work place (USGAO 1990).

While these are national findings, they are not necessarily reflective of all sectors of the economy. A review of the impact of employer sanctions in seasonal agricultural work must take into account several of the industry's distinctive features.

With large numbers of workers, short periods of employment, and high turnover rates, verification

of work authorization is more of a burden for agricultural employers than for most other employers. In a 1989-90 survey of agricultural employers in nine separate labor markets, between 51 and 75 percent of employers reported that IRCA had made their employment operations more cumbersome. They cited "paperwork burdens" as the cause (Amendola 1991). Likewise at Commission hearings, most of the growers and industry representatives who addressed the issue of employer sanctions testified that, in addition to being ineffective, sanctions had added to their cost of doing business — primarily as a result of the paperwork requirements and the fines levied for what witnesses called "inadvertent" paperwork violations.¹¹

The issue of discrimination is also of a different character in agricultural employment. The industry employs a largely immigrant labor force. As a result, discrimination based simply on a worker's national origin makes little sense. In fact, testimony at Commission hearings in Rochester, New York and Visalia, California, as well as Commission-sponsored case studies in New York and South Carolina, point to the opposite direction. Here, in some instances, the overwhelmingly Mexican and Central American SAWs and newer entrants to the farm labor force have been favored for both field work and packing house employment over older permanent resident aliens ("green-carders") and citizens — both Mexican- and African-American.

Nationwide, 6 percent of employer sanctions investigations are targeted toward the approximately 3 percent of U.S. employers who are in farming, forestry, and fishing.¹² Yet the evidence available

9 See the Commission-sponsored California tomato case study.

10 Prior to IRCA, only farm labor contractors were sanctioned for hiring undocumented workers. This restriction was part of the Farm Labor Contractor Registration Act of 1963. It was also included when that Act was superseded by the Migrant and Seasonal Agricultural Worker Protection Act of 1983. Enforcement of this provision, however, was clearly not a priority. During each of the 3 years prior to IRCA, only 1,300 to 2,100 unauthorized workers were identified by U.S. Department of Labor investigators.

11 The industry's reaction to additional requirements must be seen in the context of an overall intensification of government regulations — ranging from worker safety and pesticide use to new requirements for employee tax withholdings.

12 Employers within this category, however, have accounted for 10 percent of the fines and 10 percent of the number of aliens identified as working without documents nationwide.

The number of "documented illegals" — those with fraudulent documents — in the agricultural labor force has been steadily growing in the aftermath of IRCA.

to the Commission indicates that employer sanctions have not been effective in curtailing the employment of unauthorized immigrants, i.e., that the overall impact of employer sanctions on the supply of agricultural labor has been negligible.

At the place where I was, there were people who were illegal, the majority was illegal. That's why it was easy for them to fire them, and those of us, because we had legal documents, possibly we were a hindrance to them, so they had to eliminate us, and they fired us. Many have had that experience."

Testimony of Claudio Villadares, farmworker, Hillsboro, Oregon.

The number of "documented illegals" — those with fraudulent documents — in the agricultural labor force has been steadily growing in the aftermath of IRCA. Case studies sponsored by the Commission estimate the presence of such workers in the harvest labor force to range from 0 to 35 percent (Case Study Box 5.1), with the principal variable being the region of the country. The U.S. Department of Labor's (USDOL) National Agricultural Workers Survey (NAWS) found that in 1991, 12 percent of the overall work force and 21 percent of the harvest work force engaged in seasonal agricultural services (SAS) was unauthorized.

Supplying fraudulent work-authorizing documents has now become a thriving business. With demand spurred upward initially by the need for documentation to qualify for SAW status and then by the continuing need for documents to obtain employment, the business has vastly improved the quality of its product. The profits have, in turn, increased the supply of documents while reducing their price.¹³

Employers are not asked to determine the validity of employee documents. The law simply requires them to accept documents "if the document reasonably appears on its face to be genuine" (IRCA Section 101 (b)(1)). Agricultural employers who attempt to comply with the spirit, as well as the letter, of the law as well as those employers who simply take advantage of this legal loophole, feel that IRCA requires them to accept most docu-

ments workers present. To turn away a worker with "suspicious" looking documents is to risk running afoul of the law's anti-discrimination provisions.

The Immigration and Naturalization Service (INS) currently issues 10 types of work authorization documents. In addition, there are several older INS documents that are still valid, although no longer issued. A social security card, in combination with a driver's license or other form of identification (both easily counterfeited or obtained under false pretenses), also provide apparent work authorization. As a result, employer sanctions in agriculture are largely a paperwork exercise, with both employers and employees abiding by the letter of the law, while circumventing its intent.

ILLEGAL IMMIGRATION IN AGRICULTURE

Entry of Unauthorized Workers into the Farm Labor Market

Most observers agree that neither of IRCA's two deterrent provisions, employer sanctions and additional border enforcement, have had more than a marginal effect on the costs of unauthorized migration from Mexico. Virtually everyone who attempts to cross illegally into the United States eventually succeeds (Donato et al 1992).

IRCA did not stop the flow of undocumented workers, as you all know. We are actually seeing more people who are undocumented or with false papers than prior to IRCA.

Testimony of Kay Embrey, Extension Associate, Cornell Migrant Program, Rochester, New York.

You and the other Commissioners should know that there are many undocumented people in this part of North Carolina. Without

13 During the course of Commission investigations, researchers visited flea markets in California where private entrepreneurs were selling state identification cards, with photographs, for \$10 and social security cards for \$15.

these workers, our state's agriculture would suffer greatly.

Testimony of Jim Jett, SLIAG Recruiter/Counselor, Wake Technical Community College, Raleigh, North Carolina.

It is difficult to determine the rate at which unauthorized workers are entering the U.S. farm labor market with any degree of accuracy. Some estimates, however, are possible. According to the NAWS, for instance, in 1989, the year after nearly 1.3 million SAWs applied for legalization, 4 percent of all SAS workers and 6 percent of foreign-born SAS workers were unauthorized. In 1990, 12 percent of all SAS workers (19 percent of foreign-born workers) were unauthorized.¹⁴ The NAWS, however, includes more year-round agricultural workers than most other post-IRCA surveys, and thus provides a lower boundary for estimates of the proportion of unauthorized workers in the farm labor force. In addition, the NAWS bases a worker's legal status on self-identification. This implies a potentially severe undercounting.

A different data source, the 1990 USDOL-sponsored Farm Labor Supply Study (FLSS), found greatly different proportions of unauthorized workers across the farm labor supply communities it surveyed. It found none in the lower Rio Grande Valley of South Texas, 18 percent in South Florida, and 36 percent in Central California. The Commission-sponsored case studies, conducted in 1990 and 1991, found up to 35 percent of the harvest labor force in one crop to be unauthorized.¹⁵

One explanation of the variation in estimates of the proportion of unauthorized workers in different local labor markets is an area's history of immigrant settlement. The highest estimates come from case studies in upstream international migration nodes (such as Fresno and Tulare Counties, California) — communities which are receiving areas for newly arriving immigrants. These communities accumulate unusually high proportions of recent immigrants, who then disperse into other regions.

The case study area with the fewest unauthorized workers was the Yuma County, Arizona citrus labor market. In this area, the majority of workers live in Mexico with their families and commute

legally to work in the United States. The primary reason for this arrangement is the low-cost housing in Mexico. Other factors encouraging this pattern are such employer-provided services as free transportation between the border and the fields and health insurance benefits whose costs are 100 percent reimbursable if obtained from Mexican health care providers.

A reasonable mid-range estimate based on these case studies is that 25 percent of the 1991 non-supervisory SAS labor force is made up of unauthorized workers. This points to an annual increase of unauthorized workers in the order of approximately 6 percent. This also generally conforms with the 4 percent and 12 percent proportions reported in the NAWS for 1989 and 1990, respectively.¹⁶

The FLSS addressed the issue of post-IRCA changes in migration flows by looking directly at arrival dates for all post-1980 immigrant heads of households in the farm labor supply communities included in the survey. In Parlier, California, in the 1981-1984 period, approximately 3 percent of the household heads in the sample arrived each year. In Immokalee, Florida, the annual figure stood at approximately 7 percent.¹⁷

The observations of the agencies that assisted workers in filing SAW applications (the Qualified Designated Entities or QDEs) as well as INS month-by-month data on filing of SAW applications suggest that migration to the United States increased during the latter part of the SAW program's application period. Worker interview data from both the NAWS and the Commission-sponsored case studies seem to corroborate this observation. They show an unaccountable "bulge" of interviewees who allege that they began U.S. farm

14 About 28 percent of these unauthorized SAS workers had signed up for the RAW program.

15 The range was from no unauthorized workers found in the Yuma County, Arizona citrus work force to 35 percent found in the Fresno County, California raisin harvest work force (Table 5.1).

16 This annual rate of increase in the proportion of unauthorized farmworkers appears to be higher than before IRCA. For example, in 1970, the end of the "green card" era, there were relatively few undocumented workers in the farm labor pool. By 1986, there were probably between as high as 30 to 40 percent. This would indicate an annual increase of less than 3 percent per year.

17 The Immokalee figure reflects high flows of Guatemalan refugees after a year of intense violence in that country in 1982.

In view of the fact that demand for labor has increased, one can conclude that the number of workers entering the farm labor market during the post-IRCA period has exceeded the number of workers exiting farm work.

work in 1985-1986 — what was needed to qualify for the SAW program. FLSS data show similar bulges in 1986 arrivals.

The INS decision to allow agricultural workers to file partial applications at the border and provide them with work authorization so they could enter the United States to obtain the necessary evidentiary material for their full SAW application is believed to account for an initial portion of this increase in migration.¹⁸ Subsequent increases probably reflect the migration networks' learning curves regarding the availability, affordability, and acceptance of counterfeit documents.

Because newly arriving migrants are disproportionately young unaccompanied male workers, the demographic composition of the farm labor force provides additional indirect evidence of the current rates of unauthorized migration flows. The results of the Commission-sponsored case studies and NAWS data both indicate high proportions of men who travel alone.¹⁹ This contrasts with the greater incidence of family farmworkers in the labor market in the 1970s.

Unauthorized Workers and Labor Surpluses

In both testimony before the Commission and interviews from Commission-sponsored case studies, most agricultural employers have indicated that there has been a surplus of farmworkers in the post-IRCA period. In view of the fact that demand for labor has increased, one can conclude that the number of workers entering the farm labor market during the post-IRCA period has exceeded the number of workers exiting farm work. Public announcements from state employment security agencies have consistently reported labor surpluses in Arizona, California, Oregon, and Washington. This surplus has led to increasing competition among workers — a matter of growing concern among many workers interviewed by Commission researchers.

This scenario, however, appears to be contradicted by information from both the U.S. Department of Agriculture's (USDA) Farm Labor Survey and the USDOL NAWS data. The former shows fewer hired workers employed for more hours. The

latter shows that workers, and particularly unauthorized workers, have been able to obtain additional days of work over the study's 3-year period.

The probable explanation for this anomaly lies in the sampling bias of each of the data sources. The USDA data are based on employer reports of workers hired, and thus would not reflect situations where workers share the same employment authorization document or where employers underreport the number of workers in the fields. These data also fail to capture much of the employment through farm labor contractors, an employment category which has increased over the past several years. The NAWS data are more likely to include workers employed through farm labor contractors, but are also biased toward more established workers. This "bias" is the result both of statistical weighting techniques and the conducting of one cycle of surveys in December, a time when seasonal workers in all regions except Florida are not likely to be employed.

In contrast, data from the Commission's case study research consist almost exclusively of interviews with harvest workers, thus reflecting primarily the situation with entry-level positions in farm work. It is in this type of work that the majority of new, unauthorized immigrants are found.

Case study worker interviews also raise the possibility that post-IRCA migration may threaten to push U.S.-born and pre-IRCA legalized farmworkers out of the farm labor market. Because farm labor recruitment relies so heavily on extended family and village networks, shifts in an area's linkages to migrant-sending communities tend to begin slowly then grow rapidly as new networks supersede the networks of earlier immigrant groups. The shift in Florida toward increased reliance on Guatemalan workers, increases in the representation of Mixtecs in the farm labor market in areas as diverse as central California, Washington, and Florida, and the low level but widespread representation of migrants from urban areas of Mexico throughout the migrant stream, all point to the formation of new

18 See Chapter IV for a discussion of the implementation of the SAW program.

19 In 1990, 71 percent of all SAS workers were male. Of them, 54 percent did not live with their immediate family when doing SAS work.

Family networks play a critical role in labor recruitment across international borders.

migration networks. This, in turn, suggests that, over time, the exodus from farm work of workers with ties to traditional networks may accelerate.

THE ROLE OF NETWORK RECRUITMENT

This is by now a truism, but family networks play a critical role in labor recruitment across

international borders (Donato et al 1992; Massey et al 1987; Piore 1979). Finding a job through such networks appears to be especially effective in low-wage occupations with few skill requirements or screening barriers. In seasonal farm work, recruitment is generally the responsibility of the foreman or farm labor contractor — positions which, over the years, have been filled by experienced immigrant farmworkers who have gained legal status.

Case Study Box 6.1 — The Role of Networks in Job Recruitment

CALIFORNIA tomatoes — A significant proportion of the workers in any tomato crew where interviews were undertaken come from the same village in Mexico.

CALIFORNIA citrus — In Tulare County, 40 percent of the workers interviewed said that their parents had worked in U.S. farm jobs.

CALIFORNIA raisins — Job search and finding employment among raisin workers follows a pattern that relies on an informal network of friends and family members. Only 12 percent of the workers interviewed were recruited directly by the grower. Slightly more than half of the worker sample stated that one or both of their parents had worked as agricultural workers in the United States.

OREGON — Twenty of the 21 nurseries depended on word-of-mouth references to recruit new workers. Of the nursery workers interviewed, 73 percent had been referred to their job by a friend, relative, or workmate. Almost two-thirds of the pear and strawberry workers interviewed had been referred to their jobs by a friend or relative.

WASHINGTON — Sixty-seven percent of the workers interviewed found their current job via extended family or personal network ties.

ARIZONA — Sixty percent of the Yuma County farmworkers said their parents had done U.S. farm work.

TEXAS — All farm labor contractors interviewed report recruiting their workers with little effort. Most maintain a list of telephone numbers of former workers and make phone calls when they need workers. They

also put the word out informally through networks of family, friends, and neighbors.

MICHIGAN — Fifty-five percent of the workers interviewed found jobs through their network of friends or relatives' contacts.

NEW YORK/PENNSYLVANIA — The real labor market is word-of-mouth, friend-to-friend, neighbor-to-neighbor communication; it's the call from the uncle in Florida or Mexico that he can't come this spring but his nephew will make the trip in his place.

GEORGIA — Usually workers are told by their crew chief at the end of the season if and when to return. Eighty-five percent of the workers interviewed were referred by a friend or relative; 44 percent had a parent who had performed farm work in the United States; and two-thirds had one or more siblings employed in U.S. agriculture.

SOUTH CAROLINA — Growers needing new crew leaders tend to find them through both formal and informal channels. Some use the Employment Service, others rely on referrals from other growers, while still others rely on other crew leaders for referrals. Workers tend to change jobs based on labor market information from friends or crew leaders.

FLORIDA — Without exception, all growers interviewed use farm labor contractors. Overall, recruitment relies heavily on traditional and informal techniques (shape-ups and networks) and almost not at all on formal agencies such as private or public employment agencies.

Source: Commission-sponsored Case Studies.

These individuals fill available jobs by turning to their own or their crew members' friends and relatives, many of whom still live in Mexico.

This method of kinship and village recruitment is virtually cost-free for employers. Advertising, screening, training, and other typical personnel management costs are no longer the employer's responsibility. Surrendering this function to foremen and farm labor contractors has also proven to be very reliable. Not only is information about specific job opportunities circulated effectively, but the networks' collective experience, which assists with and facilitates both border-crossing and obtaining the necessary work authorization documents, is put in motion.

Numerous studies have documented the importance of network recruitment for seasonal agricultural jobs in the post-IRCA era. In each of its study areas, the FLSS identifies networks as the primary means by which agricultural employers recruit farmworkers and by which workers seek and obtain employment. According to the NAWS, 52 percent of all SAS workers found their jobs through referrals from friends or relatives. This is even more pronounced for unauthorized workers, 73 percent of whom were referred to their present employer through friendship or kinship networks. Finally, workers employed through farm labor contractors were also more likely to be recruited in this manner (61 percent) than were workers directly hired by

employers (50 percent). The Commission-sponsored case studies also affirm the importance of network recruitment (Case Study Box 6.1).

CONCLUSION

Medium- and long-term developments in the U.S. farm labor market will continue to reflect and affect the migration patterns of authorized and unauthorized Mexican immigrants. The push factors, which for years have caused people to leave their homes and travel to other countries looking for work, remain critical. These workers continue to be readily employed in the expanding industry of perishable crop agriculture. Since the enactment of IRCA, unauthorized immigration into the U.S. agricultural labor force has continued. This is a function of the availability of agricultural jobs and the ineffectiveness of both employer sanctions and the border control effort. There is no indication that this will change in the near future.

However, the SAW program itself also appears to have encouraged a certain amount of additional migration to the United States. By not legalizing dependents of SAWs, the program appears to have inspired the illegal migration of family members. Social networks continue to be the mechanisms which foster and facilitate both migration and job placement.

CHAPTER VII

POST-IRCA CHANGES IN THE AGRICULTURAL WORK ENVIRONMENT

BACKGROUND

A significant change in the supply of hired agricultural labor should lead to changes in wages and working conditions for employees and/or in the management practices of their employers. Data on farmworker wages and earnings, both locally and nationally, are unreliable. And, as in other industries, there is no single national source of information on overall labor management practices within the industry on which to draw. Nevertheless, by piecing together data from a variety of sources, it is possible to infer changes in the employment circumstances of hired agricultural workers in the years since enactment of the Immigration Reform and Control Act (IRCA).

In general, IRCA has done little to change the work environment of seasonal agricultural labor. Any changes that have occurred cannot be attributed directly to the law. Rather, they represent changes in the overall U.S. labor market, legislative changes in such areas as minimum wage or unemployment insurance, or a continuation of trends begun in the previous decade.¹

IRCA had little to no effect on wage rates and working conditions. Most of the changes and improvements would have occurred regardless of IRCA.

Testimony of Dino Cervantes, Farm Bureau Labor Committee, Las Cruces, New Mexico.

POST-IRCA CHANGES IN WAGES AND EARNINGS

Agricultural Wage Rates

Real wages² for the overall farm labor force during the last five years have been stagnant. Nevertheless, there is a great deal of variability by crop and region. While most real hourly agricultural wage rates during the post-IRCA period remained flat, for some groups of workers, particularly farm labor contractor employees and harvest workers, real wages declined.

The market for agricultural produce is a genuinely national one and, consequently, establishes a

single set of parameters for employers' wage offers to workers. In contrast, the supply of labor, prevailing employment practices, and payment methods vary from region to region and crop to crop.

An analysis of agricultural wage trends must thus take into account the following facts: (1) Wages are usually paid on either an hourly basis, a piece-rate basis, or some combination of the two; (2) Federally and sometimes state-mandated minimum hourly wage floors exist for piece-rate work; and (3) These minimum hourly wage rates increased twice in the post-IRCA period.³ Also significant is the fact that under the general occupational category of "farmworker," wages vary according to task. Unskilled harvest workers, semi-skilled workers engaged in such activities as pruning or tractor driving, and various levels of supervisory workers all earn different wages, and often operate under different payment methods.

In general, there is a high degree of informality in employer-worker relationships in seasonal agriculture. This does not mean, however, that economic transactions are not well defined or highly structured. Rather, the quality of documentation relating to many of these transactions is less than ideal. As a result, caution should be used when arriving at simple conclusions based on analyses of national data bases.

The primary source of information on the wages paid in the national farm labor market is farm labor wage data collected in the Farm Labor Survey by the National Agricultural Statistics Service (NASS) of the U.S. Department of Agriculture (USDA).⁴ These data show that *real* U.S. farm hourly wages between 1986 and 1991 decreased by 2 percent, while *nominal* wages increased from an average of \$4.57 to \$5.57 per hour.

1 Similar conclusions were drawn from a series of case studies conducted in 1989-1990 examining the impact of IRCA on the farm labor market (Heppel and Amendola 1992).

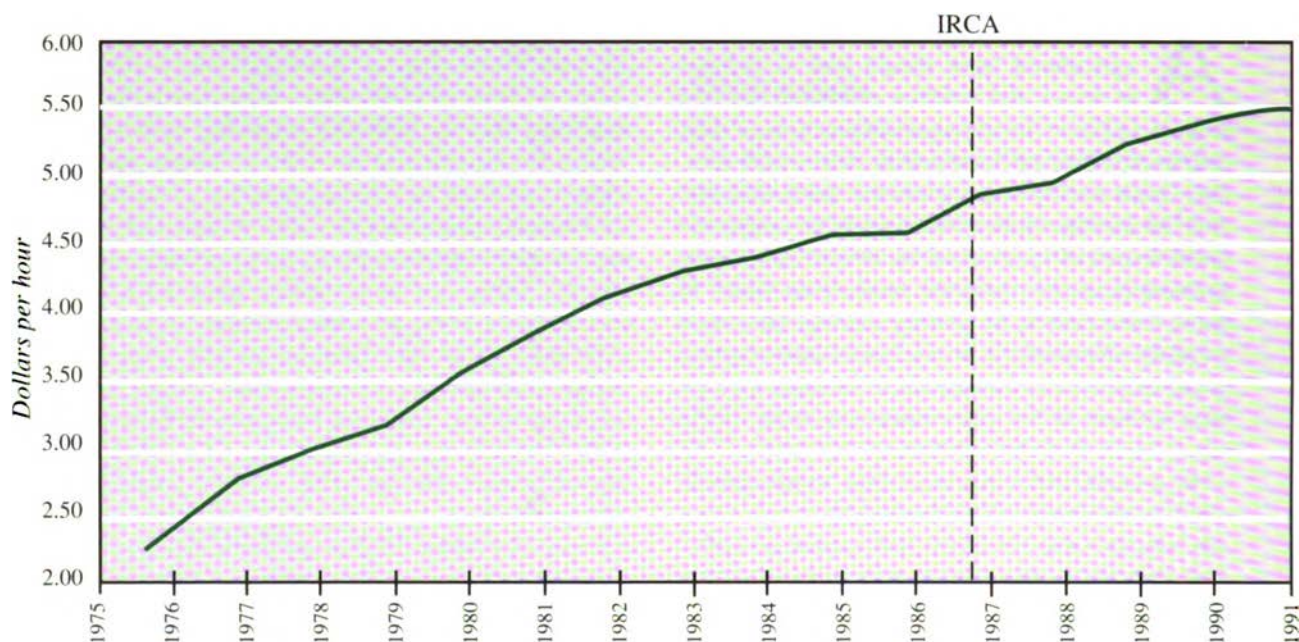
2 It is important to distinguish *wages*, the rate paid per task or time unit, from *earnings*, the amount a worker actually receives during a particular period of time. Also important is the distinction between *nominal* wages or earnings, the actual dollar amount, and *real* wages or earnings, which have been adjusted for inflation.

3 The federal minimum wage had stood at \$3.35 per hour since 1981; it was increased to \$3.80 in April 1990, and to \$4.25 in April 1991.

4 USDA Farm Labor Survey data are based on employer reports and reflect wage trends for "all hired workers."

While most real hourly agricultural wage rates during the post-IRCA period remained flat, for some groups of workers, particularly farm labor contractor employees and harvest workers, real wages declined.

Figure 7.1 U.S. Quarterly Farm Wages: 1975 - 1991



Source: Farm Labor Reports, USDA.

Figure 7.1 shows the trend for nominal hourly wages paid to all hired farmworkers during the period 1975 to 1991.

Regional Differences in Wage Trends

Regional data show substantial differences in wage trends.⁵ Between 1986 and 1991, real wages for hired farmworkers decreased by 13 percent in California and 8 percent in the Southern Plains region. There was no change in Florida and a slight increase in the Pacific region.

Regional data show that increases in the federally mandated minimum wage during the post-IRCA period partially offset the downward wage trend that began in 1977. In some states, such as Florida, minimum wage increases raised some workers' hourly wage rates at the same time that the increased availability of labor was exerting a downward pressure on wages. The effect of this interplay of forces was to depress the higher end of the wage range. In contrast, because the state-mandated minimum wage in California during most

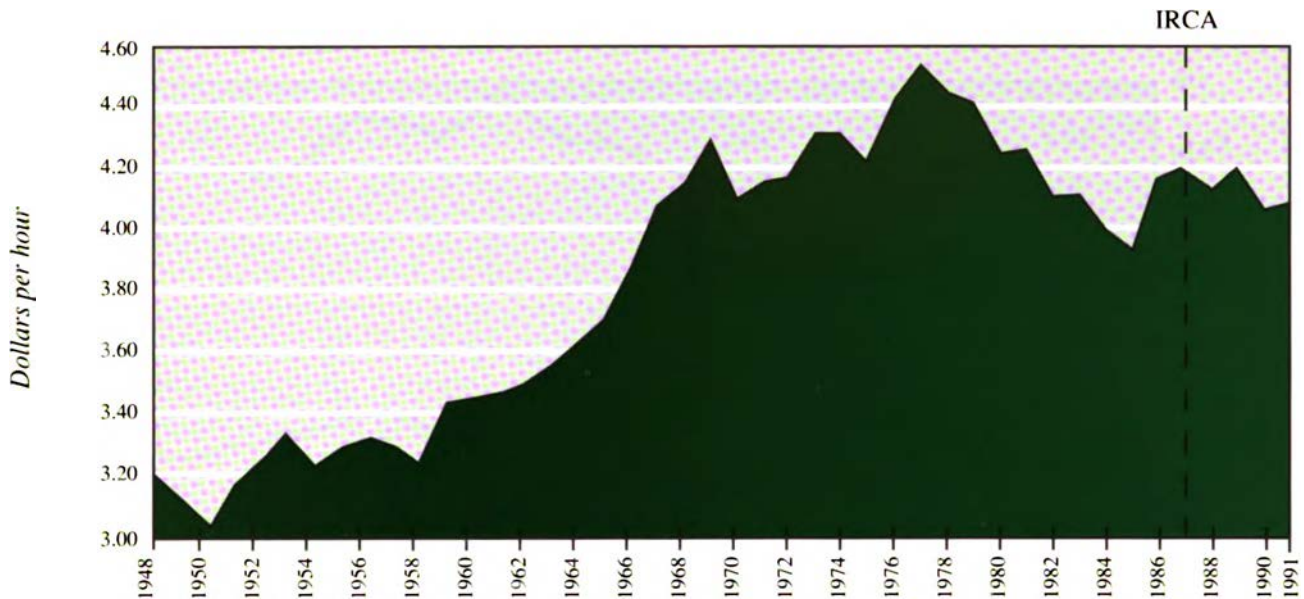
of this period had been higher than in other states, changes in the federal minimum wage had no effect. Instead, the downward pressure on wages, presumably caused by labor surpluses, shifted average wages downward in the state, as workers at the lower end of the range were already earning what became the federally mandated minimum wage rate.

Differences in the supply of labor and crop conditions also affect regional data directly. For example, the Southern Plains region saw a steep, 11 percent drop in wages between 1989 and 1990, when a freeze reduced production and caused a tremendous labor surplus in Texas. In contrast, Florida, which was less seriously affected by that same freeze, showed a 1 percent increase in real wages during that same year.

⁵ See Appendix I.

In addition to immigration policy, many factors affect wage trends. As a result, it is difficult to infer either a causal relationship or a significant correlation between the post-IRCA labor supply and wage behavior.

Figure 7.2 Real U.S. Farm Wages: July 1948 -1991*



*Deflated by CPI, (1982-84=100)

Source: Farm Labor Reports, USDA.

Wage Trends in Agriculture

Because of year-to-year oscillations in wage rates, the 5 years of post-IRCA data are not sufficient to infer a clear trend. It is thus more useful to analyze wage data from a much longer observation period. Figure 7.2 shows changes in the real U.S. farm wage rate from 1948 to 1991.

As can be seen, real farm wages rose steadily throughout the 1950s and 1960s, peaked in 1969, fell briefly after that, and then rose again until 1977. They then fell for 8 years,⁶ increased in 1986, and then sloped gently downward during the post-IRCA period.

In addition to immigration policy, many factors affect wage trends. As a result, it is difficult to infer either a causal relationship or a significant correlation between the post-IRCA labor supply and wage behavior.

Figure 7.3 compares long-term wage trends in the farm and non-farm economic sectors. This

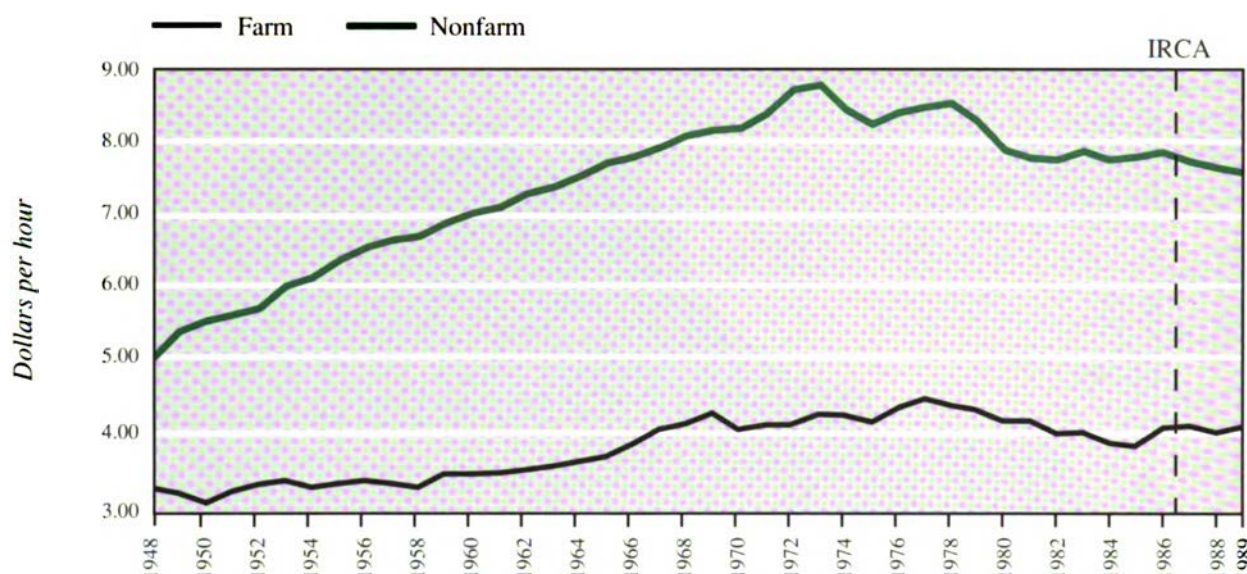
figure shows that farm wages have followed the same overall patterns as nonfarm wages throughout the 43-year period under observation. A similar analysis of farm wages to manufacturing wages shows that the ratio between the two wage rates has been consistent — with farm wages being between 51 and 54 percent of manufacturing wages throughout the period.⁷

Another data source, the U.S. Department of Labor's (USDOL 1991) National Agricultural Work-

6 While the substantial decline in the farm wage rate from 1977 through 1985 was clearly affected by overall U.S. economic conditions, it is also likely to have been affected by high migration flows from Mexico during that period.

7 These rates do not include worker benefits. Most seasonal agricultural employees do not receive health or insurance benefits. However, according to the USDA, 21 percent of hired agricultural workers receive employer-subsidized housing. An estimate of housing costs for Michigan (based on Farmers Home Administration data) shows for a work force of 6 workers employed for 26 weeks, providing housing would cost an employer 22 cents per worker per hour. A work force of 4 workers employed for 6 weeks would add \$1.35 per hour to labor costs (Interagency Migrant Services Committee 1989).

Figure 7.3 Real U.S. Farm and Nonfarm Wages: July 1948 - 1989*



*Deflated by CPI, (1982-84=100)

Source: Farm Labor Reports USDA; Employment and Earnings USDOL.

ers Survey (NAWS), also indicates that farmworkers' real hourly earnings (from both hourly and piece-rate wages) were flat between fiscal years 1989 and 1991.⁸ Unlike the USDA's Farm Labor Survey, the NAWS collects wage data from employees engaged strictly in seasonal agricultural services (SAS). It found that farmworkers' real hourly earnings fell by 1.8 percent over the 3-year survey period. Nominal wages during the same period increased from \$5.36 to \$5.79 per hour.

This data set also allows a wage trend comparison between farm labor contractor (FLC) employees and farmworkers hired directly by growers. Table 7.1 shows that real wages for the farm labor contractors' employees dropped by 16 percent over the 3-year period, while the wages of directly hired farmworkers remained flat.

Commission-sponsored case studies examined wages in specific agricultural labor markets. Generally, these findings have been consistent with those of both the USDA Farm Labor Survey and the USDOL NAWS (Case Study Box 7.1).

Piece-rate Earnings

Case study data point to wide differences in average piece rate-based hourly earnings between inexperienced, recently arrived workers and more experienced ones. The Florida case study showed that the average hourly earnings of workers who entered the country before 1982 was \$4.87. Those entering in 1987 or later earned \$3.97 an hour. The

8 Federal and state departments of labor also collect wage data. However, these data did not prove to be accurate or thorough enough to be useful. For example, wage trend data generated through ETA 223 surveys is available for a number of crops. However, a 1989 General Accounting Office report reviewing the adequacy of the survey methodologies used was severely critical of the data collection effort and noted that survey quality varied considerably from state to state. The USDOL has also conducted wage studies to determine the prevailing wage for reviewing H-2A requests. These ETA 232 data do not, however, provide useful information on wage trends, as most wage data consist of information on piece rates. Moreover, it is not clear that the methodology specified in USDOL regulations for calculating the prevailing wage yields data that are comparable to other methodologies. Witnesses at Commission hearings provided specific examples of labor markets in which they felt that the official Adverse Effect Wage Rate did not accurately reflect labor market conditions.

Table 7.1 — FLC, Non-FLC, and All Farmworker Real Wages, 1989-1991

	1989	1990	1991	All Years	% change
FLC Employees					
Hourly Rate	\$3.45	\$3.40	\$3.31	\$3.38	– 4
Piece Rate	5.73	4.90	4.04	4.89	–29
Overall	4.34	3.99	3.73	4.02	–14
NonFLC Employees					
Hourly Rate	3.86	3.73	3.64	3.74	– 5
Piece Rate	5.77	5.40	5.66	5.61	– 2
Overall	4.17	4.25	4.03	4.15	– 3
All Farmworkers					
Hourly Rate	3.83	3.66	3.59	3.69	– 6
Piece Rate	5.79	5.26	5.22	5.42	–10
Overall	4.19	4.19	3.98	4.12	– 5

Source: USDOL Report Prepared for the Commission on Agricultural Workers (Appendix I).

study also pointed to a large variance in piece rates and crop productivity at different farms, showing that even within a single labor market, there often will be significant differences in earnings among workers of similar skills.

Data on the prevalence of piece-rate, rather than hourly wage payment methods, also show wide variations by data collection method. The NAWS reports that only 17 percent of the SAS labor force, but 46 percent of harvest workers, are paid on a piece-rate basis. Commission-sponsored case studies show even greater reliance on piece-rate payment methods for the harvest work force. While the precise degree of such reliance cannot be ascertained, such wages make up an important component of the overall wage picture.

Such payment schemes, however, add an element of uncertainty to workers' lives. Harvest workers paid piece rates cannot accurately predict what their hourly earnings will be, and some agricultural employers do not regularly perform hourly wage rate calculations — although, in principle, such calculations are necessary to determine if workers are receiving the federally mandated minimum wage.

Case Study Box 7.2 presents Commission-sponsored case study data on piece rates during the post-IRCA period. The piece-rate trends serve, in part, to explain employers' and workers' differing perspectives regarding wage trends. While piece rate payments in some areas have increased substantially during the 5-year period of observation, that increase would have to be a minimum of 24 percent if it were to keep pace with inflation.⁹ Therefore, wherever piece rates have either remained unchanged or undergone only modest increases, workers' real earnings have declined.

There are serious analytic obstacles to using piece-rate data to infer wage trends. Perhaps the most serious one relates to the meaning of different tabulations of piece-rate data. Typically, statements about piece rates refer to "prevailing" piece rates. In fact, the Department of Labor's "40 percent rule" for calculating the prevailing wage rate adopts this measure and uses the modal piece rate as reported by employers as a proxy for the wage rate in the overall labor market. Based on voluntary reporting by employers, such a survey can be seriously

9 This assumes that field conditions remained approximately the same.

flawed when a large producer, employing many workers, fails to report wages paid.

The piece-rate system rewards the fastest workers and theoretically adjusts for differing conditions of productivity. If piece-rate adjustments were perfect, a worker's earnings would remain the same regardless of field or orchard conditions. However, such adjustments are technically difficult to achieve, and it appears that they are seldom ade-

quate to compensate for differences in field or orchard productivity.

As a result, piece rate-based employment agreements distort labor market transactions. When an employer offers a worker higher-than-average piece rates, the message is ambiguous. It could either imply higher than average hourly earnings, or lower-than-average expected productivity. Two other tendencies further distort piece rate-based labor

Case Study Box 7.1 — Farmworker Wages/Earnings

CALIFORNIA tomatoes — In San Diego, most of the harvesting jobs are paid by the hour. Wages are at or near the minimum wage — the mean wage was \$4.25 for those paid hourly wages. Most other tomato harvest workers are paid piece-rate wages, which average substantially more than do the hourly wage rates.

CALIFORNIA citrus — Average hourly earnings, with all workers being paid on a piece-rate basis, were \$6.

CALIFORNIA raisins — All raisin workers interviewed were paid piece-rate wages. The average wage was \$6.25 an hour. About 10 percent of the workers interviewed earned less than \$4.25 and 10 percent earned more than \$8 an hour.

OREGON — Nursery workers averaged \$5.28 per hour, while Christmas tree workers averaged \$6.47 per hour. The 16 percent of strawberry workers who were paid hourly wages earned between \$4.25 and \$6.50 an hour. Pear workers in the Hood River Valley who were paid hourly wages averaged \$5.63 per hour.

WASHINGTON — Nominal hourly wages in asparagus decreased from \$6.78 in 1987 to \$6 per hour in 1991, and in apples from \$8.65 in 1987 to \$7.95 in 1991. This represents a drop of 27 percent in real wages for asparagus workers and 24 percent for apple workers.

ARIZONA citrus — All workers interviewed were paid on a piece-rate basis. Average daily earnings ranged from \$39 to \$52.

TEXAS — Wage improvements since 1986 are due to factors other than IRCA. Workers paid on an hourly basis are almost always paid the minimum wage. Increases in the federal minimum wage have had the largest influence on compensation to farmworkers in the Rio Grande Valley.

MICHIGAN — Average hourly earnings for workers interviewed were \$5.70 an hour. The range was 82 cents to \$13.75 per hour. Even during the peak harvest, 33 percent of the workers were earning a sub-minimum hourly wage during the week prior to interviewing.

NEW YORK/PENNSYLVANIA — Workers are paid for picking apples on a piece-rate basis. Average hourly earnings were \$7.26, ranging from \$4.32 to \$13.82.

GEORGIA — In the peach industry, workers' nominal hourly wages increased from \$4.97 in 1986 to \$5.71 per hour in 1991, a decrease of 8 percent in real wages.

SOUTH CAROLINA — In 1991, wage rates for the few tasks that were paid by the hour were between \$4.25 and \$4.50. This had increased since 1986 as a result of changes in the federally mandated minimum wage.

FLORIDA — Hourly wage rates have increased along with federally mandated changes in the minimum wage. The average hourly earnings (usually a combination of hourly plus piece-rate wages) were \$4.62. U.S.-born workers had the highest hourly earnings — \$5.50, while those who entered the United States after IRCA earned an average of \$3.97 per hour.

Source: Commission-sponsored Case Studies.

Case Study Box 7.2 — Post-IRCA Trends in Piece Rates Paid to Harvest Workers in SAS Crops*

CALIFORNIA tomatoes — Between 1986 and 1991, nominal piece rates in Stockton increased from 40 cents to 47.5 cents a bucket. In Fresno, nominal piece rates increased by 1 cent a bucket.

CALIFORNIA citrus — Workers reported being paid \$10.50 per bin of navel oranges. According to the state Employment Development Department, the most common bin rate in 1986 was \$8.50.

CALIFORNIA raisins — The average piece rate per tray was 16 cents, an increase of 1 cent since 1986.

OREGON — Workers typically pick 50 to 60 pounds of strawberries per hour. The average piece rate was 16 cents a pound, converting to about \$7.70 an hour. Pear workers paid on a piece-rate basis averaged \$9.30 per hour. However, averaging those paid hourly wages (46 percent, with an average hourly wage of \$5.63) with those earning \$9.30 per hour by piece-rate wages, the average paycheck for pear workers, after deductions, was \$5.27 an hour.

WASHINGTON — Asparagus piece rates showed a 5 percent increase during the post-IRCA period. Piece rates for apples increased 20 percent in the benchmark piece rate for Red Delicious, but decreased 7 percent in the “premium” piece rate for Golden Delicious.

ARIZONA citrus — There was a 21 percent increase in piece rates during the post-IRCA period, from \$20-\$22 a bin for lemons to \$25-\$26.

TEXAS — Piece rates generally have risen slightly, with upward adjustments in the minimum wage, but proportionately, increases in piece rates are often less than minimum wage increases. Onions are always paid on a piece-rate basis, with the rate varying between 60 and 80 cents per bag in Hidalgo County. In Starr

County, piece rates run about 10 cents lower. Tomatoes are almost always paid on a piece-rate basis. When broccoli and cabbage are field packed, payment is made on a per-box basis, with reported rates at 95 cents a box for cabbage and \$1.25 for broccoli during 1991.

MICHIGAN — There have been no significant changes in piece rates paid for pickles during the post-IRCA period, but piece rates paid “independent contractor” workers are 70 percent of the 1982 Michigan determination of the piece-rate equivalent of the minimum wage. Likewise, there have been no changes in piece rates paid for apple harvesting in the post-IRCA era.

NEW YORK apples — In the Hudson and Champlain Valleys, where nonimmigrants dominate the labor market, piece rates have remained flat for the last 6 consecutive years. In Western New York and Adams County, Pennsylvania, there is more volatility in the piece rates, with some tendency for piece rates to rise.

GEORGIA peaches — Piece rates increased between 12.5 percent and 25 percent. Piece rates in 1986 were 25-35 cents a bag. In 1991, the piece rate was 40 cents.

SOUTH CAROLINA peaches — There was an average increase of 37 percent in piece rates during the post-IRCA period, but high variance in current and previous piece rates.

FLORIDA vegetables — There has been no significant changes in piece rates for at least 10 years.

Source: Commission-sponsored Case Studies.

* Wages not adjusted for inflation. Based on a CPI of 1982-84=100, the CPI was 109.6 in 1986 and 136.2 in 1991.

markets. One is that employers usually pay the same piece rate their neighbors do, irrespective of specific harvest conditions. The second is that workers tend to assume, often incorrectly, that higher piece rates mean higher hourly earnings.

Perceptions Regarding Changes in Wages

Several of the Commission-sponsored case studies investigated worker perceptions regarding earnings and wage trends. It appears that overall, most

While there is evidence of labor surpluses depressing wages, neither the relationship nor one of the purported culprits — the willingness of unauthorized immigrants to work for below minimum wage — appears to be as strong as is often postulated.

Case Study Box 7.3 — Worker Perceptions Regarding Post-IRCA Wage Changes

Area/Crop	Reporting Increase	Reporting No Change	Reporting Decrease
	Percent*		
CA citrus	27	50	12
CA raisins	25	73	6
OR nursery	32	61	7
OR Xmas trees	18	53	29
OR strawberries	28	60	11
OR pears	48	46	6
WA apples	20	70	10
WA asparagus	29	61	10
AZ citrus	50	50	0
MI apples & cucumbers	33	55	12
NY/PA apples#	43	—	30
GA peaches	41	48	11
SC peaches	19	28	53
FL vegetables	9	71	9

* When these figures total 100 percent, percentages are expressed as a proportion of interviewees who responded, excluding those with no opinion or who stated they had not worked in the crop/area long enough to have a sense of trends. When the total is less than 100 percent, the remainder is those who had no opinion.

In this case study, the question was phrased in terms of whether workers were earning more or less than five years ago.

Source: Commission-sponsored Case Studies.

workers think that wages have been stagnant. In most cases, this perception is consistent both with employers' perceptions and with the data, although workers are more likely than employers to mention the importance of nominal versus real wages by referring to "costs going up." Case Study Box 7.3 provides an overview of workers' perceptions of wage changes.

Ultimately, the variance of worker earnings within and between establishments must be examined to understand more fully how the labor supply

affects the distribution of hourly earnings, piece-rate offers, and the relationship between them. It is likely that such major changes in the composition of the labor force as the current increased reliance on newly arrived, inexperienced harvest workers will result in decreased worker productivity and thus contribute to falling mean hourly earnings — even when piece rates are unchanged.

Multiple factors, including overall economic trends, the structure of the local labor market, levels of emigration from Mexico, and commodity prices affect post-IRCA farm labor wages. While there is evidence of labor surpluses depressing wages, neither the relationship nor one of the purported culprits — the willingness of unauthorized immigrants to work for below minimum wage — appears to be as strong as is often postulated. While the hourly earnings of recently arrived, unauthorized workers are, in fact, lower than the earnings of other groups of workers, other marginal workers, such as U.S.-born occasional workers, also earn lower-than-average amounts.

FARMWORKER EARNINGS

Farmworker annual earnings provide a more revealing measure of economic welfare than do either hourly or piece-rate wages. This is because the availability of work varies dramatically and it is seldom possible for farmworkers to secure alternative employment during short periods of unemployment or underemployment.

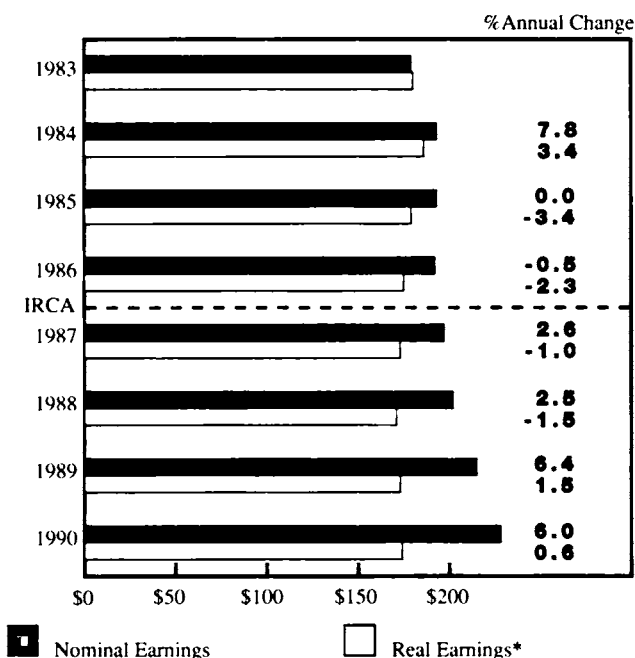
I believe the average farmworker is worse off today than 10 years ago... I know from experience in our social service ministries that over the past 10 to 12 years we are aware of greater numbers of farmworkers in all levels of poverty.

Testimony of Pastor Arturo M. Fernandez, Director, Casa de Amigos Center, Calwa Methodist Church, Visalia, California.

According to the NAWS, the average personal annual income of SAS workers between 1989 and 1991, in real 1989 dollars, was \$6,500. However, income varied significantly by region and type of employer — labor contractor vs. producer. The

While virtually all farmworkers piece together a cycle of work that combines farm work with work in packing sheds, non-agricultural work, unemployment insurance, and/or work in the informal sector, seldom do they attain more than marginal economic status.

**Figure 7.4 Weekly Earnings of Farmworkers
1983 - 1990**



*Deflated by CPI (1982-84=100)

Source: Current Population Survey, USCB

lowest earnings were those of farm labor contractor employees in new immigrant-receiving regions (\$3,500); the highest earnings were those of directly hired employees in established immigrant-receiving regions (\$7,100).

The U.S. Census Bureau's Current Population Survey (CPS) tabulates data on the "usual" weekly earnings of workers in different occupational categories. These data have serious limitations in their accuracy with regard to farmworkers due to sample bias¹⁰ and the fact that earnings data do not refer exclusively to farm work earnings (since some workers also work in nonagricultural occupations). Nonetheless, the data provide an independent source of information on earnings trends. Figure 7.4 shows earnings for an 8-year period which includes the post-IRCA years.¹¹

The cumulative increase in farmworkers' nominal weekly earnings for 1987-1990 is 16 percent,

or less than 1 percent in real weekly earnings. While virtually all farmworkers piece together a cycle of work that combines farm work with work in packing sheds, nonagricultural work, unemployment insurance, and/or work in the informal sector, seldom do they attain more than marginal economic status. In fact, in 1990, NAWS data indicate that one-half of SAS workers lived below the federal poverty guidelines.¹²

A final indication of earnings trends is possible by using one of the few examples of detailed pre-IRCA research on farmworker work patterns and earnings, a California study sponsored by the state's Economic Development Department and the University of California (EDD/UC) (Mines and Martin 1986). This study can be used as a benchmark for 1983 earnings and compared with case study research in California since IRCA.¹³ The EDD/UC study reports that in 1983, central California farmworkers averaged earnings of \$4.60 per hour. Against this benchmark, the average hourly earnings of \$4.48 per hour for 1990 reported by the FLSS amounts to a decrease in nominal hourly earnings of 3 percent. According to the EDD/UC study, male farmworkers in 1983 averaged 24.8 weeks of work per year. In 1990, the FLSS reported a mean of 29.0 weeks of farm work per year, an increase of 17 percent. Consequently, nominal annual earnings from farm work during this period increased by 13 percent. However, they did not keep pace with inflation.

What the SAW provisions have done, what IRCA has done, is created a situation where this abundance of labor puts each worker in a situation where he earns less.

Testimony of Rafael Ramos, Pacific Labor Service, Visalia, California.

10 Due to the nature of the CPS sampling, which is household based, these data reflect the earnings experience of the most settled, stable group of hired farmworkers.

11 1990 is the last year for which data were available.

12 Federal poverty guidelines in 1990 were as follows: for a family of one, \$6,280; for a family of four, \$12,700; and for a family of six, \$16,980.

13 Reporting categories for these two studies are not equivalent, although study methodologies are similar. For example, the FLSS included only workers residing in Parlier; the closest reporting category in the EDD/UC study is "central California farmworkers."

Unemployment and Underemployment

A key factor influencing farmworker welfare is the amount of available work. There have been reports throughout the country that both crew sizes and the number of crews used to harvest a given acreage have increased during the post-IRCA period. A frequent complaint of workers interviewed in the Commission-sponsored case studies was that there was not enough work to go around. These studies do not provide quantitative data on increasing labor surpluses at the labor market level. However, employer and worker interviews from the case studies, as well as testimony from Commission hearings, indicate that in most areas there are more workers and not enough work to go around in the aftermath of IRCA.

I'm seeing things differently here than in prior years. There was more work, but now work is very scarce, there are many people, and the people in charge of the farms are very hard to work with. One puts up with it because one has no choice.

Testimony of Bonifacio Mazariegos, farmworker, Rochester, New York.

An independent report from Fresno County, California, documents desperate workers picking grapes for free in the hope that they would be hired (EDD 1988).

Even during periods of peak labor demand, earning opportunities can be interrupted. Slowdowns in crop harvest operations due to changing weather or market conditions can result in serious underemployment at any point during the harvest.¹⁴

The FLSS, in its 1990 field research, gave particular attention to the issues of farmworker underemployment and unemployment. Researchers found that 20 to 45 percent of the labor force in the study's California, Florida, and Texas communities were unemployed during the off-peak season. Even during the peak labor demand period, 15 to 20 percent of the farm labor force was unemployed for at least 1 full week during the harvest. Case Study Box 7.4 presents Commission-sponsored case study

data on the degree of employment for harvest workers.

Not surprisingly, in an occupational arena where chronic underemployment and seasonal unemployment are endemic, a key concern among farmworkers is the amount of work available to them. Consequently, farmworkers' economic strategies are strongly oriented toward employment stability.

Family Earnings

Data culled from the FLSS provide another measure of farmworker economic welfare. These data allow for analysis of family income by family type in three regions, and the calculation of total family income as a proportion of federal poverty guidelines. Average 1989 farmworker family incomes ranged from 64 to 90 percent of Government poverty levels in Parlier, California; from 80 to 107 percent in Immokalee, Florida; and from 15 to 50 percent of poverty levels in Weslaco, Texas. Unaccompanied migrants, including both recently arrived workers and established cyclical migrants, had annual incomes of \$4,005 in Parlier and \$5,213 in Immokalee. However, their living costs were lower than those with families since they needed to support only themselves during their time in the United States. Conversely, while the earnings of larger family groups are higher (because of multiple workers in the household), the increased income does not always compensate for family size. For example, nuclear family groups in Parlier earned an average of \$11,716, 90 percent of the poverty level income; in Immokalee they earned \$13,316, or 107 percent of the poverty level; and in Weslaco they earned \$6,823, or 51 percent of the poverty level.

In summary, quantitative data on earnings, extent of unemployment, and farmworkers' family incomes in the pre-IRCA period are limited. This

¹⁴ Such underemployment occurs when workers must wait for a field or orchard to dry, or are required to stop picking because the sugar content of fruit has not risen sufficiently. In other instances, rain can make truck access to fields impossible and thus halt harvest operations. Underemployment also occurs if weather or market conditions make it possible to harvest a crop for only 3 or 4 days a week. Conversely, when crops are maturing rapidly during hot periods, long working days are common.

Case Study Box 7.4 — Hours of Work Available

CALIFORNIA tomatoes — Workers averaged 6.3 hours of work a day and 5.3 days a week, or a mean of 34 hours of work each week. This ranged from an average of 27.4 hours/week in Stockton to 44.2 hours/week in San Diego. In Baja California, Mexico, workers averaged 57.7 hours a week.

CALIFORNIA citrus — Workers reported 25-27 hours of work/week in Tulare County.

CALIFORNIA raisins — Eighty percent of the workers interviewed reported that they had been unemployed and available for work during the previous 12 months. Of those who reported they were available for employment, they were unemployed 6 of the previous 12 months.

OREGON — Nursery workers average 7.9 hours/day while workers in Christmas trees reported working approximately 50 hours/week. Workers in strawberries reported an average of 7.3 hours/day, while pear workers reported an average work week of 8.8 hours/day. However, prior to the season, two-thirds of those interviewed were unemployed and either actively searching for work or waiting for the pear season to begin.

WASHINGTON asparagus — Workers had a mean work week of 32 hours.

ARIZONA lemons — Workers averaged 29 hours of work each week.

TEXAS winter vegetables — Sixty-seven percent of the farmworkers interviewed worked less than 20 hours

a week in their most recent crop. The number of days of work reported for the previous 12 month period was: 51 percent worked less than 30 days; 24 percent worked 31-60 days; 7 percent worked 61-90 days; 6 percent worked 91-120 days; 3 percent worked 121-180 days; 4 percent worked 181-240 days; and 6 percent worked 241-365 days.

MICHIGAN cucumbers and apples — Farmworkers who migrated from Florida and Texas had unemployment rates topping 30 percent from November through March, even though the worker group included many workers who worked in Florida strawberries or citrus or in Texas winter vegetables. The mean work week for those working in a single crop establishment was 31 hours.

NEW YORK/PENNSYLVANIA — The average duration of unemployment among apple harvest workers was 6.5 weeks. The average work week was slightly under 40 hours.

GEORGIA — The work week ranged between 36 and 45 hours for the peach workers interviewed. Thirty-three percent of the workers had been unemployed for 2 or more months in the previous year.

SOUTH CAROLINA — South Carolina farmworkers spent an average of 63 days in peaches, but many complained of having little work while they were there.

FLORIDA — Florida workers' work weeks ranged from 9-60 hours long, with an average of 40 hours/week.

Source: Commission-sponsored Case Studies.

makes it difficult to determine precisely how worker earnings have changed since the passage of IRCA. However, the data that are available appear to provide a fairly consistent national picture. For settled farmworkers, there has been earnings' stagnation, while for harvest workers there has been a slight increase in nominal, but a decrease in real, earnings.

The status of farmworker earnings is an important element in the examination of the post-IRCA

farm labor market. Incomes below the poverty level are evidence of a surplus labor market and imply that there has been continued utilization of systems of economic and social service support for low-income individuals and their families. Minimizing underemployment by increasing the employment stability of legally authorized workers is one policy objective from which workers, their employers, and the public would all benefit.

Increasing reliance on farm labor contractors in many regions of the country has resulted in deteriorating working and living conditions for many of those employees.

LIVING AND WORKING CONDITIONS

While increased regulation of the agricultural industry has improved working conditions for many seasonal farmworkers, these improvements have been offset by the reduced need for employers — both growers and farm labor contractors — to compete for workers in the post-IRCA era of continuing labor surpluses. In general, post-IRCA working conditions in agriculture are similar to those that prevailed throughout the 1980s. Some emerging trends, however, have had a negative impact on workers' lives. Increasing reliance on farm labor contractors in many regions of the country has resulted in deteriorating working and living conditions for many of those employees. Similarly, the increasing employment of Mexico-based unaccompanied male migrants, who are felt to be more "flexible" in their housing needs, has decreased employer commitment to providing housing, especially for migrant families.¹⁵

However, the 6 years since IRCA's passage have also seen instances in which some agricultural employers have been interested in a stable labor supply, and that interest has led to improved working conditions. Several grower representatives and labor contractors who testified before the Commission described packages of initiatives designed to stabilize their labor force (See Example Box on Providing Benefits). Among these are efforts to extend the work season and provide fill-in work for underemployed workers (See Example Box on Extending the Season).

A critical variable in the working conditions for seasonal farmworkers is access to enough hours and weeks of work. Data cannot establish definitively whether the availability of work has declined during the post-IRCA period, as there are no comparable pre-IRCA baseline data. However, the Commission-sponsored case studies show that both seasonal and short-term peak season unemployment are high — as is chronic underemployment.

Worker Turnover

There are very few solid data on the proportion of workers who return to a given employer each

year, as distinguished from those who are hired for the first time during the season. Employers report turnover rates as high as 50 percent per season in their work force, but very few maintain management information systems that can yield solid data on turnover. The NAWS found a significant difference in turnover rates between employees of farm labor contractors and those hired directly by growers. Farm labor contractor employees typically have higher turnover rates. Fewer than one-third of workers who work for a farm labor contractor have been with their present employer for 3 years or more, while one-half of the directly hired workers have been with their present employer at least 3 years. In fact, FLC workers average about one-sixth more SAS employers in a year than do directly hired workers.¹⁶ Finally, on a national basis, there is a great deal of variation in turnover rates, depending in part on different producers' labor management and recruitment strategies.¹⁷

Data collected by the NAWS indicate that about one-half of the overall SAS labor force consists of "temporary" workers, i.e., workers who piece together a season of work that includes at least one job lasting less than 6 weeks. Within this half of the work force, about three-fourths are periodic workers, while the remaining are occasional workers. The former combine several periods of farm work throughout the year, while the latter have only one or two short-term work periods per year and do no other U.S. farm work. Important, and somewhat disparate, subgroups among this temporary labor force include recently arrived migrants (who are widely used as fill-in workers to meet sharp spikes of labor demand), and the wives and children of regularly returning workers (who may work in

15 Other factors adversely affecting the availability of housing include increasingly stringent regulations with which employers feel it is difficult to comply; a perceived increase in liability; zoning restrictions; and community opposition to providing housing for seasonal farmworkers.

16 See the report prepared by the U.S. Department of Labor for the Commission on Agricultural Workers in Appendix I.

17 The Commission-sponsored case study in Michigan, for instance, found close to 50 percent annual turnover — with turnover rates ranging from 35 percent at small multi-crop farms to 60 percent at the larger producers. In the case study of Washington apples and asparagus, annual turnover rates were much lower, with only 26 percent of the labor force working for their employer for the first time during the current season.

Example Box — Providing Benefits

A. Duda & Sons, Farming Operation

A. Duda and Sons has been a citrus and vegetable operation for more than 65 years. A large part of the success of the company can be attributed to its management philosophies. A. Duda is a large operation, with approximately 3,000 workers at peak season. Since the mid-1970s, the following employee benefits have been provided:

Free medical and life insurance for all workers (initiated 30 days from the date of hire, automatic for returnees).

Low-cost family medical plan (\$6/week for worker + one, \$9.46/week for entire family).

Paid vacations (additional 2 percent of earnings the 1st year, 4 percent the 2nd year, 6 percent the 10th year, 8 percent the 20th year).

Paid holidays (workers receive the guaranteed hourly rate of pay for an 8-hour day if they work the day before and the day after a holiday).

Retirement plan at no cost to employees who have worked 1,000 hours at A. Duda.

Company 401-K contribution of \$120 annually for workers who have completed 1,000 hours.

Housing, made available to employees from out of the area, at a minimal cost for services (\$8/week-single occupancy, \$33/week-family).

Day care center for newborns to preschool-age children of workers (joint project with East Coast Migrant Head Start Program).

As labor needs increase, housing will increase. There is an ongoing evaluation of company needs. A. Duda management holds annual focus group meetings with workers to understand their needs. Exit interviews are conducted with workers who leave the company. Many of the farmworkers have worked at A. Duda for 10 years or longer. Israel Baez, manager of employee relations at A. Duda, estimates a 95 percent employee return rate at the Belle Glade vegetable operation, of which housing plays a large part.

The success of A. Duda & Sons is recognized by farmworker advocates:

"A. Duda has people standing in line to work for them in Immokalee." According to Williams, there are very few employers like A. Duda in Florida. "The incentive to be an A. Duda is you have to worry about your labor supply, and you have to do something to retain your work force."

Robert Williams, Attorney, Florida Rural Legal Services, from Appendix II, Testimony, West Palm Beach, Florida, 2/15/91

Source: Telephone interview with Israel Baez, Manager of Employee Relations, A. Duda & Sons; See also Appendix II, Testimony, West Palm Beach, Florida, 2/15/91.

packing sheds or only during periods of high labor demand).

Farmworker Housing

Housing for both migrant and seasonal farmworkers remains a serious problem. There are some model private labor camps and government-sponsored or -subsidized farmworker housing developments around the country (See Example Boxes on

State-funded and Federally-funded Housing). However, the vast majority of hired farmworkers are housed in seriously inadequate conditions. Most quarters are overcrowded, particularly during the seasons of peak labor needs when migrant workers add to the local labor supply. Other problems include the use of dilapidated structures and of buildings not intended for residential use, such as

Example Box — Extending the Season

Bixby Orchards

Bixby Orchards has been in the farming business since the early 1940s. Bixby harvested primarily apples and cherries until the mid-1960s, when it became more difficult to attract 15-20 farmworkers for the short, 8-week harvest. Paul Bixby put himself in the worker's position and considered what changes were needed to secure a stable work force.

In the mid-1960s, Bixby Orchards underwent a major crop diversification plan which has proven to be profitable to the farm and beneficial to the farmworkers. In addition to apples and cherries, Bixby orchards began harvesting peaches, plums, strawberries, sweet corn, asparagus, melons, cabbage, cauliflower, and a variety of summer vegetables.

At peak season (June-October), Paul Bixby employs between 15 and 20 farmworkers. He is able to provide stable employment for 8 to 10 workers for 10 months of the year. While working for Bixby, employees do not experience underemployment. Weather permitting, on average, each employee works approximately 40 hours per week. Family housing is provided for all Bixby workers.

The following calendar demonstrates how Paul Bixby has created a stable work force and a more profitable operation:

February — end of month — workers arrive and begin trimming apple, cherry, and peach trees (8-10 workers)

March — trimming continues (8-10 workers)

April — trimming continues (8-10 workers)

May — asparagus harvest, peach and pear tree trimming, summer vegetable planting (8-10 workers)

June — strawberry harvest, peach thinning, summer vegetable planting continues (15-20 workers)

July — summer vegetable harvest, cherry harvest (15-20 workers)

August — peach and plum harvest, summer vegetable harvest (15-20 workers)

September — apple and pear harvest, late vegetable harvest (15-20 workers)

October — apple harvest, late vegetable harvest (15-20 workers)

November — apple and cherry tree trimming (8-10 workers)

December — trimming continues (8-10 workers); end of month — workers return home

Source: Telephone interview with Paul Bixby; see also Michigan Case Study, Appendix I.

garages and storage sheds. Often, these buildings lack proper plumbing and sewage disposal.¹⁸ Commission-sponsored case studies also collected data on farmworker housing availability in various crop areas (Case Study Box 7.5).

Both growers who house a portion of their work force and workers who live in grower-provided housing face serious challenges. For employers, there are substantial costs in building and maintaining worker housing, particularly when it is used only on a seasonal basis. Keeping abreast of and following a myriad of housing regulations is viewed as a significant deterrent. For workers, the fact that access to housing is tied to keeping their

jobs puts them at a disadvantage in the employer/employee relationship. Finding housing for a family group is more difficult under any circumstances. It becomes even more so, however, in em-

18 Examples of deplorable housing conditions continue to surface in post-IRCA research. Testimony presented to the Commission detailed the condition of newly arrived migrant workers living in cardboard houses in the canyons of San Diego. Researchers collecting FLS data in Parlier, California found 20 or more men living in a single garage or backyard. In Immokalee, Florida, workers sleeping in vacant lots paid \$1 for showers, but lived in constant fear of being robbed while they camped out. In Michigan, unaccompanied male workers housed in small shacks originally built in the 1950s were required to share beds. In Washington, groups of five to nine men shared horse stalls in an abandoned barn. In northern California, hundreds of workers gathered under a local bridge until, in 1991, a coalition of farmworker advocates and local agricultural producers opened a tent city.

Example Box — State-Funded Housing

Manuel Castro, Liaison/Representative California Department of Housing and Community Development

California has had a program of government-funded housing for migrant farmworkers for more than 25 years. Migrant centers are scattered throughout the California farm belt, with the majority in the central San Joaquin Valley. There is no migrant center in southern California. To date, there are 26 state migrant camps, 25 of which were built between 1965 and 1972. In 1991, one camp was built in Riverside County. The sites were funded by the United States Department of Labor until 1977, when the state assumed funding responsibility. A total of 2,400 families live in these state-funded dwellings which serve approximately 12,500 people (on average, 6,441 workers).

Every year, there is an 80 percent return rate among migrant families. The camps are open 180 days of the year, usually between May 1 and October 31, depending on the site. Each year, on opening day, thousands of hopeful migrant families line up for interviews. First priority is given to tenants who met the qualifications and resided at the facility the previous year. New arrivals, chosen through a lottery for an interview, fill 20 percent of the housing. Every year many workers are turned away, but those who are accepted come to know the camps as home. They retain the property and are able to return to the same apartment year after year. By stabilizing the agricultural work force, such state-sponsored camps have benefitted farmworkers and growers alike.

The camps consist of fully furnished apartment-style family units, complete with kitchens, bathrooms, and cooling and heating systems. On average, occupants rent the units for \$3.50 per day (all utilities included except telephone). Most camps have infant and child care centers which are staffed by the California Department of Education. Recreational facilities (baseball diamonds and soccer fields) are available at all camps.

Successful camp management is due largely to the residents themselves. Families are encouraged to organize a resident council which consists of interested members and five resident-elected officers. The state tenant liaison travels to each of the 26 camps and meets with these officers three times each year to discuss camp management and generate ideas for improvement. There are also an average of three paid positions at each camp: camp manager, assistant manager, and office clerk. The people holding these positions are usually former migrant workers. According to Manuel Castro, the current tenant liaison, this system has been extremely successful because the workers feel they have a stake in the well-being of their community. Castro reported, "I have been with the program for 21 years, and I have never witnessed an intentional act of destruction to our housing." The main regret surrounding California migrant camps is the lack of available funding to supply more housing to the many farmworkers in need.

Source: Telephone interview with Manuel Castro; see also California Tomatoes Case Study, Appendix I.

ployer-provided housing situations because growers prefer to bear the expense of housing only the most

productive workers, thus favoring single men over families.

Example Box — Federally-Funded Housing

Trina Ramos Foster, Chairperson, RISE, SunRISE Apartments

RISE, Rural Initiatives for Shelter and Education, is formed of Michigan growers, social service representatives, church members, bankers, migrant legal representatives, health care officials, educators, and other concerned residents united for a common purpose. The goal of RISE is to promote the community's general social welfare. Farmworkers, although seasonal residents, are viewed as community members.

In 1987, just outside of Keeler, Michigan, RISE opened SunRISE Apartments for migrant workers and their families. The project cost \$594,000, of which 95 percent was FmHA funded. There are 20 fully furnished, two- and three-bedroom apartment-style family units in the complex.

SunRISE Apartments are open during the southwest Michigan harvest season, from April 1 to November 1. Residents are required to be fully employed farmworkers. Most SunRISE residents come north from Florida and Texas for the Michigan harvest. Depending on their income, residents pay an average of approximately \$100 for rent and \$30 for electricity each month. The complex

has a recreation area with picnic tables and a gazebo, a laundry facility, and a play room for children. RISE members teach seminars for SunRISE residents on topics such as worker safety, home economics, and family living. The demand for migrant housing in Michigan greatly exceeds the supply, but the 20 farmworker families who are chosen and meet the qualifications are proud to make SunRISE Apartments their home. Workers keep their units neat and clean, and in the 5 years that SunRISE has been open, there has never been a legal eviction.

According to Trina Ramos Foster, RISE chairperson, the community has been very pleased about how well the property has been kept. Several growers have even offered their land as future housing sites. In 1993, RISE is planning to begin construction of two FmHA projects in southwest Michigan; preapplications have been submitted. RISE will continue to promote community awareness of the migrant farmworker housing problem and plans to offer technical assistance to other groups who wish to develop farmworker housing.

Source: Telephone interview with Trina Ramos Foster; see also Appendix II, Testimony, Grand Rapids, Michigan, 6/25/91.

Transportation

Transportation to the fields has also become more difficult for many workers over the past few years. One reason is that many employers and more established labor contractors are reluctant to incur the legal liabilities of providing transportation.¹⁹ Another is the increased costs of vehicle insurance for these employers.²⁰ As a result, in many parts of the country the cost of daily transport to the fields has shifted from employers to workers.

The NAWS found that 10 percent of the farm labor force nationally are charged by *rateros*. Commission-sponsored case studies found a range of transportation arrangements. In California citrus and tomatoes, approximately two-thirds of the

19 According to the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1841(b)(1)(C), farm labor contractors, agricultural employers, and associations which transport migrant and seasonal agricultural workers are legally required to maintain certain minimum levels of insurance coverage sufficient to satisfy liability for personal injury, unless the workers are covered under workers' compensation insurance or a liability bond that has been approved by the Secretary of Labor. The insurance coverage is to be at least the amount required for common carriers of passengers under the Interstate Commerce Act. Testimony before the Commission and enforcement experience indicate that not all persons who transport migrant farmworkers comply with the regulations.

20 The Interstate Commerce Commission prescribes minimum vehicle liability insurance coverage of \$1.5 million when transporting 15 or fewer passengers and \$5 million for more than 15 passengers. In California, the cost of the lower coverage is \$2,500 - \$3,500 per year and \$4,500 - \$5,500 per year for the larger coverage; in New Mexico, large buses pay \$7,500 per year when transporting fewer than 50 passengers and \$9,300 per year when transporting over 50; in Florida, the cost is \$6,000 - \$7,000 per year in rural areas and \$10,000 - \$12,000 in urban areas for the lower coverage, and \$13,000 - \$14,000 in rural areas and \$19,000 - \$22,000 in urban areas for the \$5 million coverage.

Case Study Box 7.5 — Farmworker Housing

CALIFORNIA tomatoes — There are two state-owned seasonal farm labor camps in the area south of Stockton, close to where most of the tomatoes are grown. Between them, the camps have 192 units and house almost 1,000 people. These camps account for an estimated one-half of the Stockton area fresh tomato labor force. A large proportion of the other half of the labor force are former camp residents who have settled in Stockton.

CALIFORNIA citrus — The majority of the Tulare County citrus workers rent houses or apartments from private landlords; according to the workers surveyed, 62 percent rented from someone other than their employer, while almost 10 percent indicated that they lived with friends or relatives and paid rent. Only 4 percent rented housing from employers, and 21 percent owned or were buying their homes.

CALIFORNIA raisins — Scarcity of housing is considerably more acute during the raisin harvest, with the influx of a large number of workers into the region for a relatively brief period. Consequently, a high percentage of the workers (52 percent) were living in grower- or FLC- provided housing. Such housing often consists of cramped, substandard structures lacking basic amenities. Four of the 125 raisin harvest workers interviewed were homeless and slept in automobiles.

OREGON — In the Oregon nursery, Christmas tree, and strawberry industries, the majority of the farmworker respondents rented off-farm area housing from someone other than their employer. In the Oregon pear

industry, free housing was provided by the employer to the majority of the workers surveyed. Both single-sex and family housing were provided.

WASHINGTON — The majority of the farmworkers interviewed in the Yakima Valley (82 percent) lived in houses they own or rent in one of the many small towns in the area. The remaining 18 percent lived in employer-provided housing (mobile homes or motel-style units) which was in good repair. To ease the burden of the cost of rent, housing generally involved a measure of crowding. Outside the Wapato area, horse stables were converted to housing for 30 to 40 unaccompanied males.

ARIZONA — In Yuma County, 8 of the 20 interviewees (40 percent) responded that they owned or were buying their homes (typically in Mexico). Five of the workers rented, and four said they lived with friends or relatives and paid no rent. Fourteen of the workers indicated they lived in houses, and three lived in mobile homes.

TEXAS — There are more than 400 colonias (clusters of generally substandard houses) in the Rio Grande Valley. About one-half of these house farmworkers. The colonias are outside the limits of water and sewer service. Since colonias are interspersed among existing agricultural fields, proximity to growing operations has caused farmers increasing problems as public awareness of pesticide dangers has increased.

workers interviewed paid *rateros* an average of \$3 a day for transportation to and from the fields. In Arizona citrus, most workers rode to the fields, at no charge, in buses provided by the harvesting companies. In Georgia peaches, three-fourths of the workers owned their own cars. The remainder rode with friends or the crew leader, at no charge.

For migrants who move on a seasonal basis to find work, none of the workers interviewed through the Commission-sponsored case studies (with the

exception of H-2A workers, where regulations require that employers pay transportation costs) reported that they received financial assistance for transportation. Only in Michigan did 13 percent of the workers interviewed believe that employers "would probably" make loans for travel advances available to them if asked. None of the workers, however, had ever made such a request.

Case Study Box 7.5 — Farmworker Housing (continued)

MICHIGAN — Employer-provided housing is at the core of the Michigan farm labor system because it is a key factor in worker recruitment and control. Workers arrive early to make sure they will have access to housing. This, in turn, insures the grower a labor pool in place when needed for the harvest. While almost all farmers in the area once provided free housing for their workers, now only 64 percent of the housing is free. Moreover, even those employers who provide rent-free housing usually charge for utilities. Migrants coming to Michigan face tremendous disparities in terms of the housing available to them.

NEW YORK/PENNSYLVANIA — Most of the surveyed workers (89 percent) lived in grower-provided housing. Typically the workers were traveling alone (84 percent) and lived in camps, which are small, on-farm clusters of houses, trailers, and dormitories. Most of the new housing constructed is dormitory-style for singles rather than family housing. The condition of the housing varies widely from one camp to the next. Free housing for apple workers is mandated under the H-2A program and has become the norm throughout the New York apple industry. Pennsylvania growers provide on-farm housing, for which many charge a modest fee.

GEORGIA — Generally, the larger peach operations do not provide housing for their full-time workers. The smaller operations tend to furnish housing for part of their permanent work force. The provision of housing for seasonal farmworkers came about with the transition to a migrant labor force. Most housing is located on the

farm property. Housing is problematic for farmworker families, as most grower-provided structures are more suited for single males. Barracks-style structures and trailers are the most common type of housing provided. Barracks consist of two sleeping rooms, with four to five men in each, and a shared kitchen and bathroom. Depending on the size, trailers can sleep upwards of 10 men. Off the farms, affordable housing for workers in the area is in short supply.

SOUTH CAROLINA — Farmworkers are generally supplied free housing. Seventeen of the 27 growers interviewed provided free housing for their year-round workers. Dormitory-style housing is the most common, usually built to typical specifications: concrete block, with a communal area at one end and a long hallway with rooms on either side. The grounds surrounding most labor camps tend to be stamped earth, littered, and generally unkept.

FLORIDA — Housing for workers varies from farm to farm depending on its location, the crop, and the orientation of farm owners and managers toward creating and maintaining stability in their labor force. Of the 88 farmworkers surveyed: 66 percent rented their housing from a non-employer; 11 percent rented their housing from their employer; 9 percent lived in employer-provided free housing; 3 percent owned their own home; 6 percent were homeless; and another 6 percent did not report their housing situation.

Source: Commission-sponsored Case Studies.

Field Sanitation

Changes in the regulations regarding field sanitation for “hand-laborers” have resulted in increased availability of toilets, drinking water, and water for hand-washing in recent years. The Occupational Safety and Health Act (29 U.S.C. 651) was enacted “to ensure so far as possible every working man and woman in the Nation safe and healthful working conditions. . .” Requirements for the pro-

vision of sanitation facilities are included in OSHA’s General Industry Standard. Agricultural employees are covered by the Act, however, these standards did not include rules for field sanitation until 1987. The adoption of such a safety and health standard took 15 years of litigation, lobbying, and negotiating by farmworkers and their advocates before one became effective in 1987. This standard requires employers of 11 or more hand-laborers in the field to provide, at no cost to the employees,

toilets, potable drinking water, and hand-washing facilities. Some states have enacted standards that provide coverage to field workers at smaller establishments.²¹

The NAWS reports that in 1991, one in four workers lacked access to toilets, drinking water, or water to wash with at the work site. The Commission-sponsored case studies report a range of access to sanitation facilities. In California raisins, 43 percent of the workers said that no toilet facilities were provided at the work site; 32 percent said that no wash water was available; and all reported access to drinking water. In contrast, in Washington, 96 percent of the workers interviewed said that toilets were available, but only two-thirds reported that drinking and wash water was.²²

Education and Health

As is the case with housing, there are also a number of model health clinics, day care facilities, and educational programs for farmworkers and farmworker children around the country. Yet these programs fall far short of meeting the actual need. Migrant farmworkers, particularly, face severe constraints when trying to provide an education for their children. Moving from area to area interrupts schooling and leads to higher drop-out rates.

The National Commission on Migrant Education (1992:x) observed that "Children served by Migrant Education Programs have multiple needs that are not adequately met by their families, employers, the communities in which they live, or the Federal Government. While the migratory lifestyle which many of these children share with their parents contributes to some of the health and education problems these children encounter, other factors play an important role as well. Among the most important of these are poverty, lack of English proficiency, and social isolation from the larger community." The Commission also found that funding for Migrant Education Programs was only 33 percent of the amount that the legislated formula would generate.

The National Safety Council ranks agriculture²³ consistently among the top three most hazardous occupations in the country. In 1991, agriculture

reported the highest rate of deaths (44 per 100,000 workers) and disabling injuries.²⁴ (The death rate for persons who lived on farms was 52 per 100,000.) A study comparing the occupational injuries and illnesses of agricultural with nonagricultural workers was conducted using workers' compensation claims from Washington state. Agricultural workers had a claim rate approximately 50 percent higher than the rate for nonagricultural workers. More than one-third of the accepted injury claims were for sprains and strains; 20 percent were for lacerations; and 15 percent for contusions. Of the illness claims, 29 percent were for various types of dermatitis; 23 percent were for systemic effects due to toxic materials; 13 percent were for conjunctivitis; and 13 percent for tendinitis (Demers and Rosenstock 1991).

Too many farmworkers are exposed to pesticides and according to a recent study by the U.S. General Accounting Office, are provided with inadequate protections from these risks — fewer protections, in fact, than workers exposed to other toxic and hazardous substances (USGAO 1991a and 1992). Yet children are allowed to work in agriculture at a younger age than they are in most other occupations.

EFFECTS ON LABOR ORGANIZING

By giving legal status to eligible farmworkers and stemming the supply of new unauthorized workers, IRCA could have increased the possibility of successful labor organizing in agriculture. Many labor advocates had anticipated that when unauthorized farmworkers gained legal status, they would be willing to exercise their legal rights more fully and take steps to improve their lives. This assumption was an extension of the anticipated benefits that were to occur as illegal residents of the United

21 For example, in Connecticut and Florida, drinking water must be available to all employees, regardless of the number employed, while in Arizona, California, and New York, the minimum number is five.

22 These reports simply reflect access to such sanitation facilities. Neither the NAWS nor the case studies attempted to verify whether employers who did not provide sanitation facilities were in violation of the law.

23 Agriculture includes forestry and fishing.

24 The second most dangerous occupation was mining, with 43 deaths per 100,000 workers

The overall surplus of agricultural workers since IRCA has militated against any widespread labor organizing activity.

States were given amnesty. For farmworkers, it was thought that these steps would include organized attempts to improve wages and working conditions. While this appears to have been the case in some instances, the overall surplus of agricultural workers since IRCA has militated against any widespread labor organizing activity.

In general, farmworker organizing, as measured by the number of workers covered by union contracts, continued to decline throughout the 1980s, a trend apparently unaffected by the passage of IRCA. However, the declining proportion of workers covered by union contracts is not peculiar to agriculture; it has occurred throughout the labor market.

The General Decline in Union Activity

Over the past 30 years, as the overall U.S. work force has grown, the share of wage and salary workers who are members of unions and are covered by union contract has shrunk. This decline has occurred in three stages: (1) from the early 1960s through 1979, the number of union members continued to increase, although at a slower rate than overall employment; (2) from 1979 to 1985, union membership fell while total employment rose; and (3) from 1985 to 1990, union membership continued to decline, albeit more slowly, while total employment continued to rise.

In 1991, 16 percent of wage and salary workers in the United States were union members. This is a decrease from 20 percent of total employment in 1983 and from 17 percent in 1987. Of the 16.6 million union members in 1991, about three-fifths were in private industry, where they accounted for 12 percent of employment. The remaining were in government, where union members accounted for 37 percent of employment (USDOL 1992).

There are a number of factors that explain the decline in the importance of unions, both within and outside of agriculture. One such factor is the pressure of the increasingly competitive international economic environment. In agriculture, this has been manifested in the surge of fruit, vegetable, and horticultural specialty production in third world countries and accompanying improvements in storage and transport.

Another factor is the political environment at both the federal and state levels. Politics may influence not only the process and outcome of collective bargaining, but also the accompanying adjudicatory processes. Since the late 1970s, administrative agencies and the judiciary have been less hospitable to unionism (Delaney and Masters 1991). This has been a factor in California, which has seen enormous changes in the composition of its Agricultural Labor Relations Board (ALRB).²⁵

Also important are demographic changes. People and industries have shifted in large numbers to the Sun Belt states, virtually all of which have right-to-work legislation.

Finally, there is also a general disenchantment with the perceived ability of unions to adequately represent workers and provide them with substantive improvements in their wages and working conditions. Reports of corruption within unions, as well as of in-fighting among local and national chapters, have also led many to question their usefulness.

Underlying all these issues, however, is the labor supply. When actual or potential strikers, or even workers deemed to be "trouble-makers," can be replaced easily, the likelihood of successful organizing declines. Occupations with few entry requirements and many available workers are always difficult to organize. This has been the case with agricultural field work in recent years.

Current Levels of Agricultural Labor Organizing

There is no way to accurately determine the proportion of hired agricultural workers who are currently members of unions. It is widely thought, however, to be negligible. According to the NAWS, less than 1 percent of SAS workers in 1990 were referred to their jobs through union hiring agreements.

25 The ALRB was established and members first appointed under the administration of Democratic Governor Jerry Brown. Governor Brown's appointments were perceived to be decidedly pro-labor. In contrast, beginning with the election of Republican Governor George Deukmejian, Board appointments have been perceived as pro-grower.

In California, the United Farm Workers, which signed its first contract in 1966 and has been the dominant union for agricultural field labor over the past 30 years, has seen a decline in its membership under contract from more than 100,000 in the mid-1970s to approximately 20,000 in 1992.

Another indicator of the general decline in union activity in California agriculture can be seen in the number of elections held. When the California ALRB was first established in 1975, it conducted 423 elections in the 6 months between August 28, 1975 and February 6, 1976. In contrast, 23 election petitions were filed before the ALRB in fiscal year 1990-91, 10 of them to decertify an incumbent union. The ALRB ultimately conducted 15 elections, certifying union victories in only 9 cases.

Nevertheless, there continue to be various pockets of labor organizing among hired agricultural workers throughout the country. For example, the United Farm Workers includes a community union, LUPE (La Union del Pueblo Entero), of approximately 20,000 members who are working under union contract. A model followed by many of these new groups begins with a type of "self-help" association, often anchored in immigration relationships, where the majority of members come from a specific cluster of villages in Mexico. Others are organized around specific community needs, such as housing. Many of these groups have become involved in workplace issues, eventually becoming the center of labor organizing activities. A number of these small farmworker organizations have come into being over the past decade. Their rise, however, appears to stem more from a response to deteriorating wages and working conditions than from the security workers feel after having achieved legal status.

Another model of farmworker organization has been developed in Ohio by the Farm Labor Organizing Committee (FLOC). After 20 years of organizing activities, FLOC signed its first labor contract in 1985. Because Ohio has no state law governing collective bargaining for agricultural workers,²⁶ this consists of a voluntary tripartite agreement among the union, growers, and processors.²⁷ The Commission-sponsored case studies were able to capture much of the range of union influence and

organizing activities. In some labor markets, such as the Georgia and South Carolina peach harvests, none of the workers interviewed had any familiarity or contact with a labor union. In the Tulare County, California citrus harvest, there were two union contracts in effect at the time of the case study.

The tomato industry around Stockton, California, has a long history of strikes and organizing activities. In the 1980s, there were three. Each time, workers were demanding increases in the piece rates. In 1983, they asked for a 15 cent per bucket raise and settled for 5 cents. In 1987, they asked for 10 cents and settled for 5 cents. In 1989, they were seeking a 5-to-10 cent increase and got nothing.²⁸

Finally, an interesting example of an informal attempt by workers to improve their wages and working conditions was documented in the Michigan case study. Here, a work stoppage led to the employer's subsequent capitulation to many of the workers' demands. The situation appears unrelated to IRCA, but provides evidence that, notwithstanding labor surpluses, it is possible for workers to engage in concerted activity to advance their interests in the post-IRCA era.

LABOR MANAGEMENT CHALLENGES

IRCA is responsible, at least in part, for increasing agricultural employer interest in and awareness of the possibilities of effective labor management. Initial responses to IRCA included heightened employer concerns about labor shortages, and attention to the possibility of decreasing worker turnover. While worker turnover is not in itself necessarily a problem, many employers and researchers consider higher-than-average turnover rates to be evidence of ineffective labor management. However, other personnel concerns, such as improved worker

26 See chapter I for a discussion of the rights of farmworkers to bargain collectively in different states.

27 See the testimony before the Commission of Baldemar Velazquez in Grand Rapids, Michigan in Appendix II.

28 This strike resulted in a union election which the UFW won. Certification was granted in 1992.

While post-IRCA labor surpluses have, in many instances, decreased interest in effective and innovative labor management, they have not completely eliminated producers' interest in a stable and quality work force.

safety, more efficient operations, and better quality control, have also motivated producers to focus on improving their utilization and management of the labor supply.

The NAWS data show that 28 percent of all SAS workers receive health insurance, and 20 percent receive vacation pay. Both benefits probably serve to strengthen workers' loyalty to their employer, but there is no information on their efficacy in reducing turnover. Commission-sponsored case studies show that these benefits generally are not provided to harvest workers.

In general, the agricultural work place remains little changed from the 1960s. Yet there are scattered instances of agricultural producers who have developed and implemented innovative labor management practices. These serve as examples of promising directions for improving the efficacy with which the industry could utilize the available labor supply.

Innovations in labor management are important steps toward developing a stable agricultural labor force. The Commission heard several examples of different labor management strategies designed to stabilize a grower's work force (Case Study Box 7.6). However, such innovations are infrequent. The lack of authoritative research able to document the relationship between apparently promising labor management techniques and worker productivity in labor-intensive agriculture remains a barrier to industry efforts to move toward a more structured and effective utilization of the available labor pool. While post-IRCA labor surpluses have, in many instances, decreased interest in effective and innovative labor management, they have not eliminated producers' interest in a stable and quality work force.

While basic information on legal and regulatory requirements relating to farm labor employment and housing are widely available, information and advice on personnel management is not. This is the case despite widespread recognition that agriculture faces distinctive personnel problems due to seasonality, the need for operational flexibility, and almost constant logistical problems in the course of the harvest.

Because contemporary perspectives on organizational management are derived primarily from the concerns of large firms, the efficiency of "traditional" farm labor recruitment and management practices which are based on establishing solid, long-standing ties between an extended family or village network of workers and an agricultural producer, has seldom been recognized. Such informal labor recruitment and management strategies often function to stabilize a particular work force and foster cooperative interactions between employers and workers.

However, the feasibility of relying on these methods is limited by the size of agricultural operations. As the size and complexity of production units increase, farm labor management must become formalized. A key element in this process is developing a management structure that provides effective worker supervision and task coordination. The usual approach has been to identify responsible supervisors with the communication skills necessary to bridge the linguistic and cultural barriers separating farm managers and their workers.

Commission-sponsored case studies reveal a common theme running through supervisors' descriptions of their tasks, whether they are labor contractors, foremen, *mayordomos* (field supervisors), or "lead workers": the need to make workers and managers more responsive to each other's concerns, and their role as problem-solvers. From the workers' perspective, a supervisor's ability to organize tasks effectively, provide clear direction, be fair and impartial, address workers politely, and be responsive in providing support to workers (such as helping with personal emergencies), are qualities that distinguish good from bad supervisors. From the supervisor's perspective, key issues include worker reliability, attitude, and responsiveness to direction.

One factor in many producers' reliance on farm labor contractors is the desire to escape the burdens of increased regulation and paperwork and the unscheduled demands of labor management. While many contractors fail to keep up with these responsibilities, sometimes purposefully, other times inadvertently, others are attempting to run sophisticated organizations that respond to these

Case Study Box 7.6 — Innovative Labor Management Techniques

Smoothing the labor demand curve. Many producers who are concerned with labor force stability extend the period for performing off-season tasks, such as pruning, to provide a downsized work force of core workers with more days of off-season work than in the past. Where feasible, some producers are even downsizing their peak harvest labor force to maximize individual workers' earnings. Producers also use complementary cropping, in which employers produce one or more subsidiary crops on a break-even basis to create work during seasonal troughs in labor demand, to stabilize their labor force.

Improving worker housing. In labor demand areas relying on migrant workers, improvements in housing have been the key to many producers' efforts to maintain a stable labor force of regularly returning workers. Provided housing ranges from standard "motel-style" housing with interior bathrooms, to "model" projects which include child care facilities, television, recreation rooms, and laundry facilities. In virtually all areas, housing is currently provided to supervisors. Extending this benefit to more workers is another way to stabilize the seasonal work force.

Providing benefits. Some agricultural employers provide medical benefits to at least a portion of their seasonal work force. This has taken a variety of forms. One approach has been for growers to ask their workers to find a medical plan that they want, with the grower paying a portion of the bill. In Yuma County, Arizona many harvesting companies offer medical insurance to seasonal workers that is provided by clinics in Mexico, with relatively low premiums. Other growers have found they are able to provide medical benefits to their employees through associations.

Labor exchange activities. In many areas, informal labor exchange activities serve to stabilize the labor force. By establishing structured arrangements for workers to work in two non-competing crop tasks, local agricultural employers can insure that the labor supply will be adequate for each crop task. There are examples

of successful employer-operated associations that pool labor among growers in one region or crop and proposals for similar labor pooling arrangements among different sorts of crop producers. Interest in formal pooling of labor, however, has declined in the face of post-IRCA labor surpluses.

Management workshops. Several agricultural associations hold workshops for their members in attempts to support and improve labor management. These cover such topics as labor recruitment, wellness programs for farmworkers, setting goals and objectives, worker safety training, interviewing and counseling techniques, and leadership and conflict. Many times these are associated with a local university.

Migrant itineraries. Producers operating in multiple regions have coordinated the movement of labor crews from the harvest in one region to the harvest in another, or from one crop task to another. In the same way, many FLCs' success and popularity hinges on their ability to piece together a stable itinerary in which crop tasks dovetail well for their workers.

Negotiated furloughs. These agreements guarantee workers that their jobs will be available when they return after a negotiated period away. Many informal network agreements essentially guarantee regularly returning workers that they will have employment in the coming season. The best example of formally negotiated agreements is to be found in nursery operations where there is often a very short labor demand trough.

Career ladders. Many producers enter into informal agreements with workers that sketch out a series of increasingly responsible positions for workers who are judged to have supervisory potential or technical skills. Some agricultural employers also provide release time and sponsorship for worker training in such areas as pesticide safety or English as a Second Language, as part of worker upgrade efforts.

Source: Commission-sponsored Case Studies and Testimony at Hearings of the Commission on Agricultural Workers.

increasing challenges (see Example Box on Farm Labor Contracting). At the same time, many growers are recognizing the legal and operational risks of delegating full responsibility for labor management to a labor contractor. Yet the alternative of building an in-house supervisory structure is difficult to pursue because of the lack of qualified personnel or resources for training them.

In terms of the industry's labor needs, quality supervision is likely to become a bottleneck in the expansion of some operations and a barrier to increased productivity in others. The need for quality supervision becomes even more intense in situations where producers are considering adopting new forms of production technology.

Example Box — Farm Labor Contracting

DeMay Labor

Five years ago Clifford DeMay, a farmer in upstate New York, set up a business of supplying labor to other area growers. Since then, his job-matching business has boomed. In 1987, when DeMay Labor began, Clifford DeMay had 23 workers, 1 crew leader, and 2 farmers. In 1992, DeMay will supply 850-1,000 workers through 30 crew leaders to 174 farms in New York and South Carolina. DeMay serves as a consultant to farmworkers, crew leaders, and farmers and is in constant communication with all three.

If a farmworker needs work, he or she calls DeMay, the workers' qualifications and work authorization are verified, and he or she is referred to one of DeMay's crew leaders. All workers referred by DeMay are provided housing and are usually paid more than the average rate of pay. Eighty-eight percent of the 749 farmworkers contracted by DeMay Labor in 1991 earned more than \$5 per hour.

Before DeMay hires crew leaders, he checks their employment histories, verifies that they are registered with the U.S. Department of Labor, and makes sure they are well versed on all current agricultural labor regulations. He provides ongoing regulation and management

training for them and encourages crew leaders to hire small crews, thereby providing more hours of work at a higher wage for each individual. Through proper labor management, the farmer increases productivity, pays workers a higher weekly salary, and decreases labor costs per acre.

Clifford DeMay personally visits farmers interested in hiring workers through DeMay Labor before any business contract is signed. DeMay inspects the operation to make sure farmers provide decent housing, pay a competitive wage, provide safe working conditions, and follow all federal and state regulations. DeMay also provides assistance to farmers interested in seeking Farmers Home Administration loans. To date, he has been successful in helping to secure \$2.8 million for housing projects in upstate New York.

DeMay is currently working with an insurance agency to begin providing health insurance to crew leaders. Eventually, he would like to be able to offer an insurance plan to workers and their families.

Source: Telephone interview with Clifford DeMay; see also Appendix II, Testimony, Rochester, New York, 8/20/91.

CONCLUSION

Several different measures of wage trends in the post-IRCA farm labor market provide evidence that, on a national level, farmworkers' real hourly wages have remained relatively unchanged since the enactment of IRCA. However, hourly wages for some groups of workers, particularly harvest workers and farm labor contractor employees, and in regions of the country with high concentrations of recently arrived immigrants, have declined.

A more important measure, farmworker earnings, appears to be more directly influenced by changes in the labor supply. Case studies show in-

creased competition for jobs, with resulting declines in overall worker earnings. Likewise, working and living conditions for many farmworkers are deteriorating. The lack of adequate amounts of low-cost housing is a major problem.

Since IRCA's passage, there have been fewer union contracts in agriculture — although pockets of successful unions and other organizing efforts continue to exist. And while many individual growers and farm labor contractors are innovators in the area of labor management techniques, the overall labor surplus has not provided a strong economic incentive for such improvements.

CHAPTER VIII

THE POST-IRCA FARM LABOR MARKET

BACKGROUND

The Commission's most fundamental challenge has been to deliberate on the future of labor-intensive agriculture. The strongly held, often contradictory positions put forth by grower and worker advocates, and the lack of comprehensive data on the farm labor market, have hampered lawmakers' ability to devise clear and unequivocal policies. If future policy initiatives are to meet the challenges identified in this report effectively, they must be anchored on a better understanding of the dynamics underlying the farm labor market and the processes of migration which are key to its existence.

Changes in the dynamics of Mexican migration to the United States have important long-range implications for the U.S. farm labor market. The ease with which recently legalized workers can now move across the border, and the resulting frequency of cyclical migration, combined with a solid base of Mexican-immigrant farmworker households in the United States, indicate that migration flows into the U.S. farm labor market are likely to continue.

The continuing influx of unaccompanied male migrants from Mexico will make it difficult for settled special agricultural workers (SAWs) and their families, who must cope with the high living costs in the United States, to continue in farm work. To date, some of these SAWs have secured employment as core year-round workers, while others have moved into semi-skilled and supervisory work. This upward mobility is expected to continue. However, farmworker families who are unable to achieve employment stability will experience increasing pressure to leave farm work.

Workers in U.S. immigrant-receiving areas experiencing substantial labor surpluses are involved in a process in which marginal workers disperse into new labor markets and pioneer relationships with agricultural employers. This has led to the "latinization" of the farm labor market throughout the country. While this process has been facilitated by farm labor contractors (FLCs), as in the past, experience will allow pioneering migrants to rely less on such labor market intermediaries. These farmworkers will gradually build their own

employment networks and settle into regular patterns of migration. Also working to diminish the role FLCs play is the tendency in larger agricultural operations toward more recruitment via in-house personnel — such as foremen, crew chiefs, *mayordomos*, and core workers. FLCs' role in the farm labor market, however, will continue to be strong as long as new immigrants join the farm labor force and farm employers continue to turn to FLCs as a way to reduce their management burdens and perceived risks.

But what of the concern about the exit of U.S.-born and legalized U.S. resident farmworkers from the farm labor market? Increasing reliance on such practices as making available extended-season jobs consisting of successive crop tasks for one employer, structured migrant itineraries, and effective labor exchange mechanisms that facilitate movement from one crop task to another, will be key factors in allaying that concern. An unemployment insurance "safety net" can further strengthen a commitment to agricultural employment. Without initiatives to ameliorate the current high levels of seasonal unemployment, short-term unemployment during the harvest season, and underemployment, many legal farmworkers can be expected to seek to abandon farm work for more stable employment once the economy recovers. This is likely to happen even if hourly wages in competing nonagricultural work are lower.

In areas with reasonably priced family housing, settlement by IRCA-legalized farmworker families will help stabilize the labor supply. However, in "upstream" labor demand areas, where the only available housing is designed for unaccompanied male migrants, the employment of newly arriving, unauthorized workers is likely to intensify.

Two distinct processes and issues warrant special consideration: first, the dispersion of SAW and recently arrived, unauthorized immigrants into new farm labor markets, and second the implications of SAWs settling in U.S. immigrant-receiving areas.

In periods of rapid labor market transition, or when the market is particularly chaotic for other reasons, the use of farm labor contractors appears to expand.

DISPERSION INTO NEW LABOR MARKETS

The dispersion of SAWs and recently arriving immigrants (both authorized and unauthorized) into new areas is an important process in the evolving dynamics of the U.S. farm labor market.

My conclusion is that there is no shortage of farmworkers, rather there is a series of problems that obliges the workers to be in a state of constant migration.

Testimony of Ruben Nuñez, Project Coordinator, Farmworker Project, Catholic Diocese of Las Cruces, New Mexico.

In its earliest stages, such pioneering generally entails the assistance of labor market intermediaries. Later migration patterns, however, become self-sustaining. This process has been well documented with respect to the diffusion of Texas migrants throughout the United States between 1950 and 1970 (Kissam and Griffith 1991b). The same process is becoming evident in studies of the labor market following enactment of the Immigration Reform and Control Act (IRCA).

The Role of FLCs in the Geographic Mobility of Workers

While farm labor contractors are thought to be key to the migration of farmworkers new to an area, information regarding FLCs is often vague. Part of the problem stems from the definitional inexactness of commonly used terms — a problem which can be traced to legislative definitions. The Migrant and Seasonal Agricultural Worker Protection Act (AWPA) collapses together persons filling many different roles relating to farm labor recruitment, management, and transportation. As used in AWPA, the umbrella phrase “labor contractors and crew leaders,” includes executives of firms with millions of dollars in annual billings, small business persons, a wide variety of brokers providing different labor market services to workers for a fee, and informal leaders of extended family or village groups. Administrative data that track contract

labor expenditures or the payrolls of farm labor contractors thus provide only an approximate measure of reliance on labor market intermediaries. As a result, most observers believe that the role of such intermediaries is more extensive than payroll figures indicate.

In periods of rapid labor market transition, or when the market is particularly chaotic for other reasons, the use of farm labor contractors appears to expand. During the past decade, for example, FLCs have facilitated the dispersion of Latino agricultural workers throughout the country.¹ These contractors recruit workers in the immigrant-receiving parts of the United States, primarily California and Florida, and transport them to jobs often thousands of miles away. In later years, as many of these workers become more familiar with these new areas and learn some English, they venture on their own and seek work directly from the growers they previously had worked for through the contractor. An example of this process in its early stages of development is occurring in the apple harvest in western New York.²

Research indicates that FLCs are more efficient than producers in recruiting workers for lower wages, in short-season, repetitive tasks (Vandeman 1988). Other researchers (Thompson and Martin

1 Two Commission-sponsored case studies shed light on the process of dispersion. In Georgia peaches, a new immigrant-receiving area, 80 percent of the workers are unaccompanied males, most of whom (55 percent) began U.S. farm work between 1982 and 1985. All of the unaccompanied males return yearly to Mexico. All but one of the crew leaders interviewed began their career in Florida, usually as farmworkers, but have since shifted to work only in Georgia peaches, going from holding widely dispersed, independent contracting jobs to working exclusively for a single peach grower. As they shifted, so too did their workers. The Washington case study found that slightly more than half of the workers interviewed had originally worked in California. By 1991, however, only one-quarter still included California in their migrant itineraries. Most of the Washington cyclical migrants have gradually eliminated stops in California and Oregon because there was more competition for work in those areas. They now come directly from Mexico to Washington state.

2 In western New York, the transition from a work force composed primarily of African-American and Caribbean workers to one dominated by Latino workers has been particularly rapid. (See the Commission-sponsored case study on New York and Pennsylvania and Heppel 1992). Although there had been FLCs in western New York in the 1970s, by 1985, most employers hired Florida-based African-American workers directly. The resurgence in the use of FLCs in that area is directly tied to the introduction of Latino workers. This example also illustrates the development of new migration networks stimulated by changes in employment practices.

1990) emphasize the role of farm labor contractors in facilitating the rapid expansion of FVH production. Still others emphasize the concurrent move toward increasingly "formalized" patterns of labor recruitment and management as a function of agricultural concentration, leading to the eventual replacement of traditional FLCs with foremen (Kissam and Griffith 1991b).

Among the most important functions of farm labor contractors or crew leaders, then, is to match workers looking for agricultural work with employers looking for agricultural workers.³ Not all workers and not all employees need this assistance. Workers with well-established social networks and/or long-term relationships with particular employers can bypass such employment intermediaries. Likewise, employers with ties to a core of workers can depend on those workers' social networks to provide additional seasonal workers as needed.

Data from the U.S. Department of Labor's National Agricultural Workers Survey (NAWS) indicate that although only 8 percent of nonharvest workers nationwide are employed by farm labor contractors, 28 percent of the harvest work force is employed by FLCs. Over one-fourth of fruit and vegetable producers' labor bill is for contract labor (Oliveira 1991).

Earnings by Farm Labor Contractor Employees

According to the NAWS and several Commission-sponsored case studies, FLCs employ a disproportionate number of recently arrived, unaccompanied male migrants.⁴ Working conditions and wages, on average, are worse for FLC employees than they are for non-FLC employees. According to the NAWS, the average earnings of FLC employees is \$4.92 per hour, compared with \$5.14 per hour earned by workers hired directly by growers. Piece-rate earnings of workers employed through FLCs average \$1 less per hour than for workers of other employers. During the 3 years of NAWS data gathering, the hourly earnings of piece-rate workers employed by FLCs fell, in real terms, from \$7.11 in 1989 to \$5.01 in 1991. This was even more dramatic for harvest workers

employed by FLCs. For this group, hourly earnings in 1991 were just two-thirds of 1989 earnings (\$4.91 v. \$7.32). Not surprisingly, the average personal earnings for FLC employees were \$4,700 per year, compared to \$6,900 for non-FLC employees.

Opinions regarding farm labor contractors are mixed. Many argue that FLCs play a useful role in the farm labor market.

The labor contractor has the incentive to move quickly and by linking several opportunities together, he wins, the worker wins, and the grower wins. I have found out that farm labor contractors are like any other segment of society — there are good ones and there are bad ones — but by and large I have found most of them to be honest, hard working entrepreneurs trying to make a living.

Testimony of Alfonso Guilin, Executive Vice-President, Limoneira Associates, Visalia, California.

However, there are many reports of unscrupulous contractors continuing to take advantage of workers. These abuses continue despite federal and state attempts to monitor the system.

I went to work with a contractor...He would threaten us before we would start work. He would say that the one that would like the work and the conditions, enter. If you don't like it, you can leave. If you go, five of you will come in. And because we were lacking work, we had to start working there...For three days of work, I received \$42.

Testimony of Maria Carmona, farmworker, Coachella Valley, California.

3 This matching function is not the only reason employers rely on farm labor contractors. The desire to shift liability, for example, for the employment of unauthorized workers or paperwork violations under employer sanctions, or to shift responsibility for day-to-day field management, are other reasons.

4 At the same time, however, there is evidence that these overall patterns do not apply to all labor contractors and that recruitment strategies vary widely — from preferential hiring of unauthorized workers, to fill-in hiring of unauthorized workers, to preferential hiring of U.S.-resident workers.

Costs to Employers Hiring Farm Labor Contractors

A key question concerning FLCs is whether their use increases or decreases employer costs. The answer depends on the employer's initial labor costs. In most parts of the country, a labor contractor's overhead charge increases out-of-pocket expenses for growers. In a few areas, however, such as the Salinas Valley of California, growers have been able to lower their labor costs by turning to contractors. This is because growers in the Salinas Valley formerly offered higher wages and benefits to harvest workers, in large part due to union contracts. The reduction in wages and benefits resulting from a shift to farm labor contractors has thus more than offset the overhead charged by a contractor (Vaupel 1991).

Growers of labor-intensive commodities in some regions of the country rely on FLCs more than in others. There has been a substantial shift in favor of FLCs in California. Case studies in such other states as Michigan, Washington, Georgia, and South Carolina, however, show only small or no shifts in the use of FLCs.

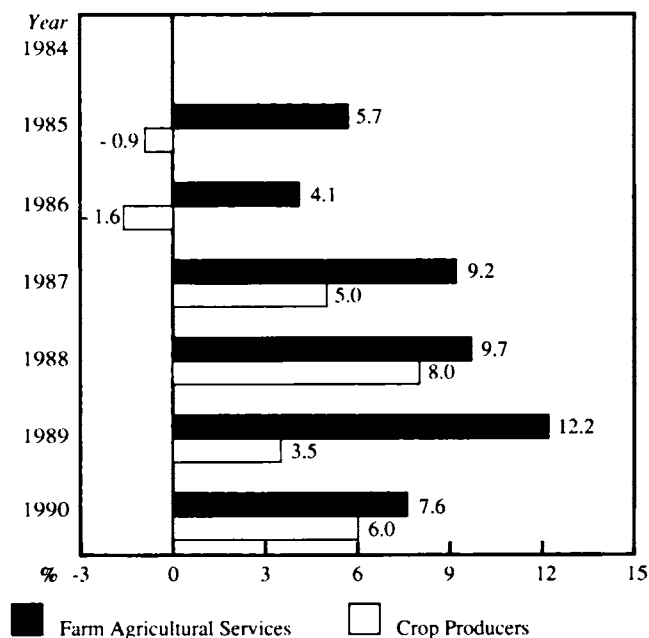
Farm Labor Contracting in California

The use of farm labor contractors in California is widespread and growing. According to the U.S. Census of Agriculture, in 1987, California accounted for fully one-third of U.S. farm contract labor expenses and for nearly one-quarter of the total U.S. farm labor bill. That year, the census reported that 20 percent of California's total labor expenses were for contract labor.

A 1988 mail survey of agricultural employers indicated that 20 percent of agricultural employers in California hired workers through farm labor contractors or custom harvesters. The range by agricultural region within the state was from 42 percent in the San Joaquin Valley to 9 percent in the desert region (Taylor and Thilmany 1992).⁵

California unemployment insurance data show that total wages paid by farm agricultural services (FAS) employers⁶ increased by 59 percent between 1984 and 1990. During the same period, wages paid

Figure 8.1 Percentage Increase in Total Wages Paid by Farm Agricultural Services and Crop Producers, California



Source: California unemployment insurance data.

directly by crop producers increased only 21 percent. The year of greatest change was 1989, when total wages paid to FAS employees increased by 12 percent in contrast to an increase in wages paid to crop workers of 3.5 percent (Figure 8.1).⁷

This table reflects both an expansion of labor-intensive agriculture, and a shift within that sector from directly hiring workers to hiring workers through farm labor contractors. When making the same comparison of wages paid directly by crop producers to those paid by farm agricultural services in three counties which are major fruit, vegetable, and horticultural specialty (FVH) producers

5 Another measure of the importance of farm labor contractors in the California farm labor market is the FLSS finding that 78 percent of the farmworkers in Parlier, California, had worked for an FLC at some point during 1989.

6 This includes SIC codes 0711 (soil preparation services), 072 (crop services), and 076 (farm labor and management services).

7 For a more thorough analysis of California unemployment insurance data, see Appendix I.

— Monterey, Imperial, and Fresno counties — the shift becomes even more pronounced. In Monterey County, for example, the total direct wage bill of crop producers declined by 10 percent between 1984 and 1990, while that for farm agricultural services employers increased by 103 percent. The increase in Imperial County was 5 percent in total wages for crop producers and 117 percent for FAS employers. And in Fresno County, there was a 16 percent increase for crop producers and a 62 percent increase for FAS wages.

With the exception of Fresno, the sharpest increase in farm agricultural services employment took place between 1987 and 1989. In Fresno, the upward trend was relatively smooth. This indicates that IRCA may have been a significant factor in the surge in employment through farm labor contractors.

Increases in the number of farm labor contractors are more difficult to interpret. On the one hand, it is thought that there are many unlicensed, illegally operating contractors. On the other hand, FLC registrations include large numbers of subcontractors, supervisors, recruiters, and persons involved in transporting workers. All of these individuals are required to register as FLCs under federal regulations, although they are not generally thought of as farm labor contractors. Further complicating the issue of who is or is not for legal purposes a farm labor contractor, and which “contractors” therefore must be licensed or can be legally unlicensed, is the fact that various states require farm labor contractors to register, but often use different licensing criteria.

Farm Labor Contracting in Florida

The state accounting for the second largest farm labor contracting bill is Florida. According to the U.S. Census of Agriculture, Florida’s hired farm labor bill for 1987 was approximately 8 percent of the national total, while its share of the nation’s contract labor bill was 15 percent. In Florida, 28 percent of the state’s total farm labor bill was for contract labor, the highest percentage in the country. Contract labor expenses for Florida increased by 62 percent between 1978 and 1987 — from

\$173 million to \$280 million. The greatest increase, 97 percent, occurred in vegetable and melon production — from \$35 million in 1978 to \$69 million in 1987 (Polopolus and Emerson 1991).

All of Florida’s winter vegetable employers interviewed by the Commission-sponsored researchers worked with farm labor contractors. However, the nature of their relationship varied. Contracting arrangements ranged from a “full” contract package in which the FLC was responsible for all harvest tasks and payroll, to contracts in which only certain tasks (such as picking and hauling) were contracted, to “nickel contractors” whose only function was to recruit small crews of workers.

The Florida case study also highlights the movement toward the development of specialized, in-house expertise in corporate agriculture. In Florida, as in other leading agricultural states, a variety of models exist for staffing and managing agricultural operations in which recruitment varies by production site, crop, job task, and season.

According to one study,⁸ 76 percent of Florida employers in Valencia oranges were farm labor contractors (Emerson et al. 1990). The study highlights the intricacy of contract services in Florida citrus, as contractors provide management and coordination of quite complex operations. The payment contractors receive for these services is twice the individual piece rates paid to workers, apparently reflecting the costs of additional administrative services, insurance, and hauling — rather than simply those for labor recruitment and supervision.

Farm Labor Contracting in Other States

Commission-sponsored case studies show several patterns of the degree and nature of FLC influence (Case Study Box 8.1). In discussing farm labor contractors with both employers and employees, case study researchers also uncovered a high degree of variation in the use and definition of the

⁸ This was a 1990 Valencia orange survey to determine the crop’s prevailing wage for the U.S. Department of Labor.

Case Study Box 8.1 — Role of Farm Labor Contractors

CALIFORNIA tomatoes — For workers interviewed, 55 percent obtained their first job in U.S. agriculture through a grower and 45 percent through a farm labor contractor. More would have been first hired through contractors were it not for the fact that many tomato workers obtain their initial job in San Diego, where farm labor contractors are seldom used. In other parts of the state, most workers are hired through contractors.

CALIFORNIA citrus — In Tulare County, 70 to 75 percent of the work force is employed by FLCs.

CALIFORNIA raisins — In 1986, 37 percent of employers reported using a farm labor contractor for the raisin harvest. By 1991, this had increased to 60 percent.

OREGON — No nurseries interviewed said they used farm labor contractors, although 70 percent of the nursery workers interviewed said they worked with a crew leader. Twenty-six percent of the Christmas tree operations reported using farm labor contractors, and 15 percent of the workers interviewed said they worked for a contractor. Thirty percent of the strawberry growers reported using a farm labor contractor, while only 7 percent of workers interviewed reported working for a contractor. Hood River pear growers reported they did not use contractors, and all workers interviewed reported they were employed directly by a grower.

WASHINGTON — Large asparagus producers began to absorb the functions played by labor contractors in the 1970s. While this arrangement included reliance on subcontracting with crew chiefs for recruitment and management, final responsibility rested with the producing firms. Concentration in the apple industry has resulted in virtually all recruitment and labor management being performed in-house by *mayordomos*. Current levels of reliance on farm labor contractors are quite low and have not increased substantially since IRCA.

ARIZONA — In Yuma County citrus, harvest tasks are performed by cooperative harvesting associations that are controlled by the packing houses. Crew bosses perform the labor recruitment and management func-

tions and are partially paid on a piece-rate basis in relation to their crews' production.

TEXAS — There is extensive reliance on farm labor contractors in winter vegetable harvesting. This form of labor recruitment and management, however, has been in place for many years and does not reflect any impact stemming from IRCA.

MICHIGAN — Well-established crew leaders who have had long standing relationships with producers continue to play an important role in the farm labor market. While several smaller, newer contractors provide fill-in labor for agricultural employers, most workers in the labor market are employed directly by small farmers as a result of extended family or village network contacts. Some large producers are now coordinating workers' movements from one crop region to another.

NEW YORK/PENNSYLVANIA — In the apple harvest, the crew leader system seems to be growing gradually. The principal role played by crew leaders is recruitment of workers.

GEORGIA — All peach growers interviewed hire migrant farmworkers through a farm labor contractor or crew leader. Crew leaders recruit and supervise workers. All negotiations for wages are conducted through the crew leaders, with no written contracts involved.

SOUTH CAROLINA — Virtually all growers using migrant labor rely on crew leaders. Crew leaders' relations with their workers are best described as comprehensive. Crew leaders recruit, train, supervise, and manage workers in the field and in the labor camp.

FLORIDA — Farm labor contractors occupy a valuable position in the Florida farm labor market. Crew leaders, who are often registered as FLCs, act as supervisors for an FLC who oversees a number of crews. FLCs occupy the more entrepreneurial role of assembling crews, hiring, and supervising crew leaders and field supervisors. They also occupy the intermediate position between farmworkers and growers. Fewer than 2 percent of the workers interviewed stated that they worked for someone other than a farm labor contractor.

Source: Commission-sponsored Case Studies.

Farmworker households of the 1990s will likely experience increasing levels of poverty and economic stress.

terms farm labor contractor, crew leader, crew boss, *mayordomo*, and field supervisor.⁹

Reliance on hired labor, and the extent to which such labor is contracted, varies greatly from crop to crop. Generally, fruit and tree nut farms and vegetable farms register the heaviest reliance on contracted labor (Oliveira 1990).

It is likely that the role played by labor contractors in the post-IRCA labor market will continue in areas where there is large-scale production of labor-intensive crops, high flows of unauthorized immigrants, and a variety of crops with short-term tasks. However, there is the countervailing trend among the largest firms to formalize and internalize the functions formerly played by intermediaries. Thus, the extent to which farm labor contractors continue to play a critical role in the labor market is likely to be played out in different ways in different parts of the country.

THE CONTINUED PARTICIPATION OF SETTLERS IN THE FARM LABOR MARKET

Farmworker families who obtained "green cards" and settled in south Texas after the Bracero Program continued to work in farm labor while seeking improved year-round stability. If their behavior is to be any guide, those SAWs who opt for settling in the United States with their families are likely to follow a similar pattern. Many of these SAWs' spouses and children are likely to move into non-SAS (seasonal agricultural services) employment in packing sheds and other agricultural support services. As in the past, younger, U.S.-educated children from the families of legalized SAWs will seek to leave farm work altogether.

These farmworker families are likely to need social service support, as the combination of high living expenses and seasonal unemployment will place them in economic jeopardy. In fact, the preponderance of the evidence the Commission has examined suggests that farmworker households of the 1990s will likely experience increasing levels of poverty and economic stress.

The NAWS shows that 24 percent of SAS farmworkers receive health insurance from their

employers. That figure must be understood as the high boundary because of the survey's heavy representation of permanent year-round workers in the Midwest and eastern United States. Commission-sponsored case studies of harvest workers indicate that, typically, health benefits are available only to the core labor force of year-round permanent workers.¹⁰

While the farm labor force's overall reliance on Government social service programs is currently low,¹¹ settled farmworker families can be expected to remain reliant on seasonal public assistance and qualify for unemployment insurance payments.¹²

Child care services provided by employers, non-profit agencies, or through public-private cooperation are, and will continue to be, a key factor in allowing women to work in agriculture. Extrapolating data from a 1983 survey of California farmworkers suggests that approximately one-fifth of the legalized, settled farmworker population is likely to need child care support (Mines and Martin 1986).

Migrant education services during the 1960s and 1970s have had an important positive impact on the educational attainment of farmworker children. This impact, however, may not be sustainable into the 1990s. Many rural schools in immigrant-receiving areas in Florida and California have not been able to keep pace with the influx of students with

9 29 Code of Federal Regulations defines farm labor contracting activity as the "recruiting, soliciting, hiring, employing, furnishing, or transporting of any migrant or seasonal agricultural worker." Many of these functions are, in fact, performed by individuals commonly referred to as foremen, "crew bosses," *mayordomos*, or *rateros*.

10 An exception to this is found in the Yuma County, Arizona citrus study. Here, most harvest employees live in Mexico and commute daily to work in the United States. Many workers are offered a health benefits package that depends on the use of health care providers in Mexico.

11 According to the NAWS, between 1988 and 1990, 18 percent of SAS workers received some form of needs-based Government assistance: 16 percent received food stamps; 3 percent Aid to Families with Dependent Children; 3 percent general assistance or local welfare; and 2 percent public housing.

12 NAWS data indicate that half (52 percent) of SAWs have applied for unemployment insurance (UI) at some point during the year. This percentage varies dramatically between regions. In established immigrant-receiving areas, 62 percent of SAWs applied for UI, while only 5 percent had presented such claims in new immigrant-receiving areas. Since UI is usually limited to 13 weeks and a replacement wage of approximately 50 percent of earnings (about \$100 per week for the typical farmworker) long-term reliance on unemployment insurance cannot become a lifestyle. Instead, as indicated in the Commission-sponsored New York case study, workers appear to use unemployment benefits only when work is not available.

limited English-speaking ability. An analysis of information from the California Basic Educational Data Systems, for example, shows that California's leading agricultural counties generally have experienced more than 50 percent increases in the enrollment of students whose home language is not English (Charns 1990). Moreover, and despite the Migrant Education Program's increasing attention to services for secondary school students, key resource materials for migrant students in many areas are not yet available in Spanish. Although rising levels of high school drop-out rates in immigrant-impacted states may lead to teenagers' increased participation in farm labor, previous experience suggests that few will remain in agriculture — except as occasional workers.

Finally, the availability of low-cost housing has played, and will continue to play, a key role in U.S.-resident farmworkers' decisions to settle in one community or another. More important for the purposes of this analysis is the recognition that the availability of either employer-provided or publicly financed migrant housing to a large degree will determine whether migration continues to be a viable economic strategy for farmworker families.

FUTURE MIGRATION OF WORKERS INTO THE FARM LABOR MARKET

The SAW program has had many direct and indirect effects on the farm labor market. By providing a large proportion of the then undocumented farm labor force with permanent resident status, it encouraged settlement of farmworkers (primarily those with families and long-term sojourners) and facilitated cyclical migration among male workers whose families remain in Mexico. Indirectly, it provided additional incentives for continued illegal migration by holding out the prospect of future legalization and enlarging the pool of anchor households that could provide support to recent arrivals from Mexico. Such immigration has continued due to the current ineffectiveness of border control efforts and employer sanctions in reducing illegal immigration and the ease with which counterfeit documents are available.

However, U.S. immigration policy is only one of many factors affecting migration between the two countries. Improvements in Mexico's transportation system have expedited northward migration from some remote areas which were formerly self-contained peasant communities. Increasing cyclical migration has strengthened the process of *nortinización* as exposure to and demand for a multitude of U.S. products rise.

Border industrialization and the growth of labor-intensive agriculture in northern Mexico have resulted in a population shift toward the north that may encourage stage migration — that is, movement to a border area first, then to the United States (Thompson and Martin 1990). Increasing Mexican industrialization is likely to intensify the pull of rural migrants toward urban areas such as Mexico, D.F., Guadalajara, Toluca, and Puebla — as well as northward toward Monterey and the border cities. The rural restructuring of Mexico (privatization of communal, or *ejido*, land) will also play a role in this process. With the current demographic momentum, it is unlikely that Mexico will be able to create enough jobs to accommodate such population shifts.

What does this mean for the U.S. farm labor supply as we approach the 21st century? In the absence of effective enforcement of employer sanctions, the most reasonable prognosis is that U.S. FVH agriculture will continue to be able to rely on Mexican workers. However, continuing increases in the U.S. cost of living and weak demand in other low-skill, low-wage economic sectors may make settlement in the United States less attractive than it has been at any time since the end of the Second World War.

Social, cultural, and economic changes in Mexico will gradually improve the qualifications of the Mexican work force. They will also increase the expectations and aspirations of Mexican migrant workers. The rural peasant villages which have been the source of migrants to the United States for decades will gradually become less rural and isolated. And as Mexico continues to develop economically, many of the newly arriving workers are likely to be better educated, will have increasingly well-defined expectations about earnings and work place rights, and will be less strongly committed to farm work than in the past.

If present trends continue, by the turn of the century, a very substantial portion of the overall U.S. farm labor force is likely to again be unauthorized.

The dominance of Latino immigrants in the U.S. agricultural work force will continue to ease the transition of new Spanish-speaking immigrants into many parts of California, Oregon, Washington, Texas, and Florida. However, a rise in anti-immigrant sentiment, common during times of economic stagnation, may cause additional friction; housing problems are likely to persist, and potential settlers will face serious difficulties in securing quality education for their children from a school system already unable to respond to the pace of change. New immigrant-receiving agricultural areas, particularly those along the Eastern Seaboard, are beginning to experience the formation of rural Mexican settlements similar to those established in Texas and the Midwest earlier in this century.

If present trends continue, by the turn of the century, a very substantial portion of the overall U.S. farm labor force is likely to again be unauthorized. The precise rate at which the SAW worker cohort will leave agricultural employment or unauthorized workers will enter the U.S. farm labor force cannot be predicted. However, the continuing influx of unauthorized migrants compels the conclusion that increasing proportions of the future SAS labor force will be unauthorized. By the end of the 1990s, many SAWs can be expected to have abandoned agricultural work and most of their children who settled in the United States are likely to have moved into other occupations. This will leave an increasing amount of the farm work to the Mexico-based children of cyclical migrants and their friends who will follow their older relatives and friends north.¹³

In the medium- to long-term, agricultural producers seeking to enhance labor force productivity and achieve cost efficiency will need to weigh the costs and benefits of developing specialized in-house capability to recruit and manage their labor force against reliance on labor market intermediaries. These may include not only farm labor contractors but, potentially, employer associations specializing in labor recruitment and management and unions or worker associations. As paperwork requirements for employers become more complex, many smaller firms may join the trend already under way and turn to the use of specialized service

firms for payroll services — while utilizing FLCs strictly for recruitment and supervision.

Some producers' efforts in labor-intensive agriculture to decrease turnover and train workers as a means of improving the quality of their work force provide valuable models for encouraging worker loyalty and assuring increased farm productivity. It is likely that such efforts will expand as producers' management information systems develop to the point where it is possible to measure production efficiency systematically and monitor different production costs carefully.

While some producers move aggressively to increase the productivity of their labor force, others will seek simply to cut costs, particularly the costs associated with labor management. Consequently, the labor market is likely to become increasingly stratified. Such stratification, in turn, threatens to destabilize the labor supply and further increase pressure for more stringent industry regulation.

CONCLUSION

Two simultaneous yet distinct processes — the dispersion of recently legalized immigrants into new farm labor markets and the settlement of these workers in established immigrant-receiving areas — are central to the changing dynamics of the farm labor market and the changing structure of rural America. The latinization of rural America is well under way, as Spanish-speaking immigrant families with distinctive needs settle in communities where services are sorely lacking. Ultimately, the processes of settlement and increased migration have also worked to facilitate continuing illegal immigration from Mexico.

Effective enforcement of IRCA's immigration control provisions could trigger a crisis in those portions of the industry which have come to rely again on the labor of unauthorized workers. Engaging actively in policies that create a stable work force of legal workers offers the most long-term benefits to labor-intensive agriculture, authorized farmworkers, and the general public.

¹³ Migration pathways, however, are likely to shift as new, nontraditional sending areas undercut the dominance exerted by traditional networks on farm labor recruitment.

PART III — RECOMMENDATIONS

The intent of the Special Agricultural Worker (SAW) program was to develop a legal agricultural labor force. It should have achieved a tighter labor market by preventing the future employment of unauthorized workers through effective border control and employer sanctions programs. It was further expected that this reorganization of the farm labor force would result in one or more of the following: (1) higher real wages and improved overall working conditions for domestic farmworkers (including the legalized SAWs); (2) changes in employers' individual personnel practices; (3) increased mechanization within the industry; (4) slowing of the expansion of fruit, vegetable, and horticultural specialty (FVH) production; (5) higher prices for consumers; (6) development of an efficient system for matching available workers with jobs; (7) increased reliance on the H-2A program for admitting foreign farmworkers; and/or (8) the admission of some farmworkers through the immigrant Replenishment Agricultural Worker (RAW) program. On a national level, none of these has occurred.

As detailed in Part II of this report, 6 years after the Immigration Reform and Control Act (IRCA) was enacted into law, immigration-related problems with agricultural labor remain. Since the mid-1980s, hired farmworkers' living and working conditions have generally not improved. Nominal wages have increased, partially as a result of mandated changes in the minimum wage, but these increases have seldom kept pace with inflation, causing real wages to fall. In some areas, piece rates have risen. But in others they have remained the same or have been replaced by hourly wage rates. In most areas, an increasing number of newly arriving, unauthorized workers compete for available jobs, reducing the number of hours available to and contributing to lower annual earnings for all workers. And while increasing numbers of workers are covered by state-mandated unemployment insurance, employers are less likely to provide such nonmandated benefits as housing, meals, and transportation.

At the same time, the United States has registered a continuing and significant expansion of FVH production, and, after a steep decline, a rise in farmland prices. Nevertheless, many individual agricultural producers continue to face annual economic losses.

Rather than stabilizing, the national farm labor supply is registering a pronounced surplus. Unauthorized immigrants continue to cross the southern border in large numbers. While the majority find employment in nonagricultural industries, a significant number have joined the farm labor force. With affordable fraudulent documents readily available, employer sanctions have been largely ineffective. The resulting labor surplus has reduced any incentive employers may have had to change their personnel practices in ways that would improve seasonal farmworkers' lives. The declines in real wages and annual earnings for farmworkers, which had begun almost a decade ago, have continued.

The continuing influx of unauthorized workers may also cause problems for farm employers who may not be prepared to operate in a tighter labor market should immigration control measures be effectively enforced. IRCA provided for delayed enforcement of employer sanctions in agriculture to give the industry time to adjust. This cushion may not be available again.

There are few disagreements about the key elements of a healthy farm labor market. It would be more structured and capable of an effective job matching function; it would exhibit higher labor retention rates (i.e., reduced turnover rates); it would nurture a dependable labor supply by offering workers opportunities for training and advancement; and it would maintain a better balance between labor supply and labor demand by allowing market mechanisms to decide on the appropriate incentives that would ultimately lead to a stable work force. By addressing seasonal farmworkers' needs for earnings that could sustain them economically, agricultural employers' persistent uncertainty over an adequate labor supply could, in turn, be addressed.

CHAPTER IX

RECOMMENDATIONS

BACKGROUND

A number of long-term changes and trends characterize the U.S. agricultural industry and the agricultural labor market. Paramount among them are changing economies of scale, patterns of land ownership and management within farm units, and the globalization of the agricultural system. These trends will not only create challenges for the future, but are likely to cast old problems in a new light.

These changes and trends bring to the forefront certain broad questions of public policy with respect to agriculture. One such issue is that of "agricultural exceptionalism." Historically, the agricultural employer-employee relationship has been looked at differently than in most other industries — by Congress as well as other governmental entities. As a result, farmworkers and farm employers are treated differently from other employees and employers in many federal and state labor laws and regulations. There are also numerous laws, programs, and regulations that apply only to farmworkers or farm employers, and not to other employment relationships.

It is this Commission's view that the long-range goal of U.S. policy should be to treat agricultural employment in the same manner as any other industry. Through the years, the distinction between agricultural and nonagricultural employment has been blurring, and the rationale for excluding farmworkers from certain protective legislation has become less and less valid. Likewise, the characterization of farms as self-sufficient production units which need to operate under unique rules and guidelines is increasingly less reflective of reality. Labor policies and regulations should reflect the actual situation.

While a gradual phasing out of agricultural exceptionalism should occur, this must come about after a thorough debate and with the assurance of adequate protections for both employers and workers during the transition period. The current problems that face fruit, vegetable, and horticultural specialty producers and workers must be addressed with that long-range policy goal in mind.

A stable and reliable work force is critical to the agricultural industry's health and provides clear benefits for both workers and employers. One prerequisite to achieving such stability is the curtailment of the employment of unauthorized workers in agriculture through the effective enforcement of immigration control measures. A second prerequisite is an effective system for matching agricultural workers with jobs — a function now performed, in large part, by farm labor contractors. This system could be either a public or a private sector initiative — in the latter case with either worker or grower associations matching workers with jobs. A third prerequisite is the aggressive regulation of farm labor contractors and the development of alternatives to their use.

IRCA's agricultural provisions were possible only through the cooperation of both industry and labor groups, and they represent a rare convergence of these historically disparate interests. The Commission's recommendations are the result of this same convergence. It is clear that the destinies of agricultural employers and employees are intertwined. It is with the fullest appreciation of the depth of this coexistence that the Commission has developed the following recommendations.

Any changes in various federal programs called for in this report should be achieved by reallocation of existing resources and not from increased fees or taxes. The Commission's recommendations can and should be realized through a reprioritization and reexamination of the efficacy of current programs.

SAW/RAW PROGRAMS AS IMMIGRATION POLICY

In crafting the agricultural compromise that allowed IRCA to pass, Congress passed an industry- and worker-specific legalization program of unprecedented scale. Implementing such a program and controlling effectively against fraud proved to be extremely difficult. Special treatment for an industry requires difficult definitional distinctions to maintain a consistent logic on who is and who is not eligible for the benefits of legalization. By legalizing workers, rather than workers and their

immediate families, the Special Agricultural Worker program contributed to the growing pool of immigrants who illegally enter the United States. Separating families contributes to the pressures for illegal immigration and forces the program to deviate from the immigration system's long-standing position of promoting family unity.

Worker-specific and/or industry-specific legalization programs as contained in IRCA should not be the basis of future immigration policy.

THE IMPLEMENTATION OF IRCA

Nonetheless, IRCA did contain such programs. The Commission's evaluation of the SAW program leads it to conclude that, in the program's implementation, some parameters regarding worker eligibility for legalization were unduly restrictive. Specifically, the Commission believes that the exclusion of sugar cane and sod workers from SAW program eligibility was unwarranted. Field work and workers in these two commodities are close enough to other qualifying work and workers to have warranted their inclusion within the SAW legalization provisions of IRCA. The exclusion of sugar cane and sod workers is relatively easy to rectify in as much as these workers filed applications for SAW status during the course of litigation. Notwithstanding the recent appellate court decision, the legal status of sod workers should not be rescinded, and the applications of sugar cane workers now in the Government's possession should be adjudicated.

Congress should amend the Immigration Reform and Control Act to specifically include field work in sugar cane and sod within the definition of seasonal agricultural services.

THE EFFECTS OF IRCA ON THE SUPPLY OF HIRED AGRICULTURAL WORKERS

The dominant characteristic of the U.S. agricultural labor market of the late 1980s and early 1990s is the oversupply of seasonal workers. Rather than

becoming stable in the aftermath of IRCA, the farm labor supply has continued to grow and the labor market has become less structured.

The SAW program conferred legal U.S. permanent resident status on more than 1 million undocumented farmworkers. So far, the majority of SAWs who were identified as being employed as farmworkers after gaining legal status have remained in the agricultural labor pool. Many of them have settled in the United States, serving as "anchors" and providing a base for family members and friends who are new entrants to farm labor. Others have continued with their cyclical migration patterns, but without the uncertainties and costs attached to illegal status. Still others have returned to Mexico, temporarily discouraged by the poor prospects for economic success in U.S. agriculture.

One thing that has not changed, however, is continuing illegal immigration to the United States. Family members and friends of those legalized under IRCA make the journey to the United States; others come on their own; still others continue to be actively recruited. Increased monitoring of the southern border does not appear to have affected the well-established immigration pathways between Mexico and the United States. With employer sanctions failing to curtail the employment of large numbers of these unauthorized immigrants, unauthorized entrants have continued to supplement the pool of available workers in the United States.

Attacking the Pull Factors

As long as the employment of unauthorized workers continues, it will be difficult to develop a structured and stable agricultural labor market. Employers will continue to be threatened with the potential loss of a significant portion of their work force, while workers will suffer the consequences of stagnating wages and deteriorating working conditions.

Illegal immigration must be curtailed. This should be accomplished with more effective border controls, better internal apprehension mechanisms, and enhanced enforcement of employer sanctions. The U.S. Government should also develop a better

employment eligibility and identification system, including a fraud-proof work authorization document for all persons legally authorized to work in the United States, so that employer sanctions can more effectively deter the employment of unauthorized workers.

If these immigration control mechanisms ultimately prove ineffective, after being given ample time for implementation, alternatives to employer sanctions should be explored.

Attacking the Push Factors

An earlier Commission also established by IRCA, the Commission for the Study of International Migration and Cooperative Economic Development, was asked to explore ways that might mitigate migration pressures within the sending countries. That Commission focused on the principal migration cause — the lack of adequate economic opportunities at home — and recommended various ways to stimulate economic growth in developing countries.

The Commission on Agricultural Workers agrees with its sister body on the need for cooperative sending country/receiving country efforts that encourage economic development.

The Need for Additional Foreign Workers

An important part of the Commission on Agricultural Workers' mandate is the question of whether the domestic agricultural labor force should be supplemented with legal foreign workers during periods of labor shortages. The authors of IRCA sought to create statutory mechanisms that would respond to a shrinking agricultural labor supply. The RAW program was one of those mechanisms. Streamlining and continuing the H-2A program was the other.

The RAW program was designed specifically to supplement the farm labor force in the event of a worker shortage as U.S. perishable crop agriculture was adjusting to the new circumstances IRCA was expected to create. To accommodate any labor

shortage, the RAW program would allow the admission of new probationary immigrant workers in each of 4 years beginning with October 1989. Program workers would be required to work in Seasonal Agricultural Services for 90 days for each of 3 consecutive years before they could gain U.S. permanent resident status.

However, with the failure of immigration control efforts, the projected tightening of the labor supply, with its concomitant changes in labor-intensive agriculture, has not materialized. Nor does the Commission believe that this situation will change in the near future.

Neither an extension of the RAW program nor any new supplementary foreign worker programs are warranted at this time. However, adequate labor supply-and-demand statistical programs must be continued and an ongoing analysis performed to provide a basis for immediate action by Congress and/or the Administration should future agricultural labor shortages develop.

By "immediate action," the Commission means whatever measures may be necessary to avert crop losses due to a shortage of labor, without weakening protections for domestic workers. Such measures could include the effective recruitment of domestic, including Puerto Rican, workers through cooperative efforts between private and public sector agencies (including unions), and the importation of legal foreign workers.

Accurate determinations of the adequacy of the agricultural labor supply are a critical prerequisite to successful responses to crises.

The U.S. Departments of Labor and Agriculture should continue to coordinate efforts to determine the adequacy of the agricultural labor supply, including the proportion of legally authorized workers. This information should identify possible agricultural labor shortages and the need for any new supplemental foreign agricultural worker program. These findings should be reported to Congress on an annual basis.

The Department of Labor should continue to sponsor research on farmworkers and their evolving migration patterns, both within the United States and between the United States and immigrant-sending countries. The Department should issue an annual report on the status of U.S. farmworkers.

The Commission recognizes that there is an oversupply of workers in most agricultural labor markets. Yet instances of crop-specific local labor shortages continue. This indicates that the supply of workers is not yet coordinated well enough with the demand for workers. This mismatch encourages some employers in some areas to rely on the U.S. Department of Labor-administered H-2A program.

The H-2A program has been the target of both criticism and litigation. Many growers feel that the H-2A procedures are too cumbersome to respond to an emergency situation in a timely fashion. In testimony before the Commission, they argued that the complicated procedures and costs involved, particularly the need to provide worker housing, make the program prohibitively expensive. In view of the criticism of and litigation surrounding the current H-2A program, its provisions should be reviewed.

Congress should reexamine the H-2 provisions of the Immigration and Nationality Act with the goal of having the same program available to agricultural and nonagricultural employers, both in law and regulation, for the importation of temporary nonimmigrant workers.

MATCHING AGRICULTURAL WORKERS WITH AGRICULTURAL JOBS

The fruit, vegetable, and horticultural specialty industry will continue to rely on a seasonal work force for many tasks. The seasonal nature of the demand means that many farmworkers are unable to find enough work during the course of the year to be economically self-sufficient. Resolving this dilemma is a precondition not only for the survival of this economically at-risk population, but the industry's long-term viability.

The U.S. Employment Service

Individual agricultural employers will continue to need seasonal workers for relatively short periods of time. The coordination between available jobs and available workers, however, can be improved. The U.S. Department of Labor's Employment Service currently plays a negligible role in farm placement — despite a statutory mandate to do so. The Commission is sensitive to the relatively high cost of offering placement services for short-term jobs and is cognizant of the mission conflict inherent in the Department of Labor's dual mandate of enforcing work place and housing standards while soliciting jobs for workers. Nonetheless, the Commission urges the Department to consider redirecting its efforts to utilize the resources devoted to the agricultural sector more effectively.

The Department of Labor's U.S. Employment Service should develop a new and/or alternative system for recruiting qualified farm labor to meet agriculture's constantly changing labor needs. The focus of this initiative should be to facilitate the efficient movement of farmworkers from one crop task or job to the next, including the use of job itineraries or annual worker plans. Special funding should be provided to develop this program.

The Department of Labor's U.S. Employment Service should expand efforts to distribute information to farmworkers regarding labor needs by crop and area, including updates reflecting rapidly changing conditions. Outreach efforts should include information on the availability of housing for arriving workers.

The Department of Labor should consider separating the job matching function of the U.S. Employment Service from its non-labor exchange functions.

Congress should establish a task force to oversee implementation of the above recommendations.

Farm Labor Contractors

In recent years, farm labor contractors (FLCs) increasingly have filled the role of matching seasonal workers with jobs. Concurrently, the extent to which the Employment Service performs this function has declined steadily. Workers employed by farm labor contractors generally receive lower wages and are employed under working conditions which are inferior to those offered farmworkers hired by other agricultural employers.

Farmers who hire labor contractors can be held jointly liable for these contractor's violations of labor laws. Many times, however, there are special problems in collecting judgments against farm labor contractors. FLCs, even when fully responsible for the actions resulting in judgments, are often unable to satisfy them. In cases of joint liability, the payment then falls on the fixed-site employer, or farmer. Furthermore, unlicensed farm labor contractors are thought to be more likely to violate protective labor statutes than licensed ones. The Commission believes that the FLC system must undergo significant reforms.

Licensing for farm labor contractors should be conditioned on adequate bonding for the services provided.

Participation in and adequate completion of educational and training programs, and a testing procedure, should be a prerequisite to an individual being certified as a farm labor contractor.

Persons who knowingly use the services of an unlicensed farm labor contractor should be solely liable for any claim arising from any violation of the applicable federal protective labor statutes or regulations.

Despite specific legislation designed to regulate farm labor contractors, the laws and regulations that govern farm labor contracting have failed to protect farmworkers and have provoked much litigation. In the absence of collective bargaining agreements, there has been an increase in the use of farm labor contractors, particularly in California. In light of

this trend, steps must be taken to better protect employers and employees. Regulation of labor contractors is another area in which the utility and efficacy of exceptional treatment for agriculture should be reconsidered.

The body of federal statutes and regulations that govern contracting activities in the farm and nonfarm labor markets should be reexamined to bring all contracting activities under a uniform federal system.

MANAGING AGRICULTURAL LABOR

In addition to the farm labor market's organizational problems, many individual labor-intensive farm operations are also riddled by organizational inefficiency. Worker dissatisfaction and turnover increase employer costs and reduce farmworker earnings. Mutual employer-worker benefits are possible through the adoption of modern labor management techniques. Yet both managers and workers receive little training on how these might be accomplished.

The U.S. Department of Agriculture's Extension Service, the U.S. Department of Labor's Employment Service, and state agencies and universities, should undertake a major effort to educate growers, packing house operators, farm labor contractors, crew leaders, workers, and worker organizations in the need for and benefits of improving labor management practices in agriculture. This effort should include encouraging appropriate state agencies and universities in those states with a high incidence of hired farm labor to employ advisors, teachers, and researchers with expertise in farm labor management. Research on the need for and benefits of good labor management in agriculture, and the development of training and teaching programs, including outreach programs, in modern labor management must be supported.

DIFFERENTIAL TREATMENT OF HIRED AGRICULTURAL WORKERS

There are several areas of labor law where exceptional treatment for agriculture is no longer warranted and puts agricultural workers at a disadvantage compared to other workers. This dichotomy can also be confusing and costly to agricultural employers.

Unemployment Insurance

Seasonal agricultural workers are, by definition, employed for less than a full year. As a result, significant unemployment and underemployment among farmworkers is common — particularly within the fruit, vegetable, and horticultural specialty sector. Continuing labor surpluses have contributed to even lower average annual earnings. It is thus essential that FVH farmworkers receive the full protection of unemployment insurance programs and that the differential coverage of farmworkers across the unemployment insurance programs of various states be eliminated.

Agricultural employees should be provided with federal/state unemployment insurance coverage that provides them with protection against unemployment comparable to that of other workers in the United States.

The Commission recognizes the difficulty of administering unemployment insurance programs when multiple employers are involved in a relatively short period of time and believes that close monitoring would be necessary to ensure program integrity.

Workers' Compensation

An additional area requiring policy attention concerns agricultural workers' access to workers' compensation statutes. Agricultural employment remains one of the most hazardous occupations. Yet many farm employees are poorly served by the uneven coverage of hired agricultural workers under

state workers' compensation statutes. This must be remedied.

Congress should encourage all states to provide workers' compensation insurance coverage to agricultural employees comparable to that of other workers in the United States. Workers' compensation should be the exclusive remedy for all U.S. employees.

A recent judicial decision in *Adams Fruit Company v. Barrett* may have a negative effect on the likelihood of states including farmworkers within workers' compensation legislation. The court held that a state workers' compensation program does not serve as the exclusive remedy for injuries resulting from violations of the Migrant and Seasonal Agricultural Worker Protection Act. Ongoing negotiations in Congress are attempting to address this possibility.

The Commission recognizes the difficulty of administering workers' compensation programs when multiple employers are involved in a relatively short period of time and believes that close monitoring would be necessary to ensure program integrity.

The Right to Organize and Bargain Collectively

Farmworkers face special problems if they attempt to organize and bargain collectively to improve their working conditions. Effective organizing is made more difficult by the fact that farmworkers are essentially powerless, both in objective terms and relative to the agricultural employers who oppose organizing. This powerlessness is compounded by the explicit exclusion of agricultural employees from legislation designed to afford U.S. workers this basic right.

Farmworkers should be afforded the right to organize and bargain collectively, with appropriate protections provided to all parties.

LIVING CONDITIONS FOR HIRED AGRICULTURAL WORKERS

Housing

The scarcity of low-cost housing continues to disrupt many seasonal agricultural workers' lives. Thus, a serious examination of the overall farm labor system cannot be complete without paying proper attention to the housing needs of farmworkers. Those who try to address the problem in a meaningful way, however, must overcome administrative obstacles and community resistance, in addition to obtaining only seasonal returns on their investment. Few states have been eager to finance, much less operate, housing projects for seasonal farmworkers. As a result, workers live where they can — many in overcrowded, substandard units, temporary camps, or with no shelter whatsoever. The Commission believes that housing seasonal farmworkers is a critical step to developing a stable and committed labor force. Housing must thus be addressed more realistically and effectively. A necessary first step in this process is a reassessment of the federal Government's role in supporting farmworker housing.

The Farmers' Home Administration, as well as any other agencies involved in providing funds for farmworker housing, should review current housing programs to facilitate and expand funding to provide publicly and privately constructed and/or rehabilitated housing for agricultural workers.

Federal and state standards for farmworker housing should be reviewed to allow more flexibility in design and construction of conceptually different seasonal farmworker housing which responds to workers' needs and is economically viable. This could take the form of in-transit camp sites, trailer camps, or direct housing subsidies to farmworkers. Federal and state funds should be provided for such construction and assistance.

Services to Farmworker Children

The conditions in which many children of seasonal farmworkers live is of critical concern to the Commission. An unstable child care environment, and, at best, intermittent access to health care and educational opportunities place an unjust burden on these children. Between fiscal years 1988 and 1992, federal funding for migrant health, education, and day care programs increased 28 percent. Yet many children remain unserved and most children are at risk.

Providing adequate services for farmworker children must take into account the mobility of the parents, language problems, and other elements that are unique to the farmworker population.

Federal, state, and local government programs and policies should ensure that the children of migrant and seasonal farmworkers are provided the same opportunities for health care, education, day care, and child development as are provided the children of other U.S. workers.

Coordinating Farmworker Service Programs

A 1992 report by the Administrative Conference of the United States, prepared at the request of the National Commission on Migrant Education, addressed the problem of regulatory barriers to coordinating federal programs that provide benefits to migrant and seasonal farmworkers.

The Commission on Agricultural Workers endorses the recommendations of the Administrative Conference to ensure the efficient and effective delivery of services to farmworkers and their dependents by improving the coordination of farmworker programs at the federal, state, and local levels. A better data collection system could help to achieve these goals.

An interagency coordinating council on migrant and seasonal farmworker programs should be established to strengthen national coordination of these service programs. The Council would be

charged with identifying specific coordination tasks to be accomplished, in most cases under the primary responsibility of a designated lead agency.

A farmworker data base designed to meet the needs of federal agencies involved in designing and allocating resources at the local level for programs for migrant and seasonal farmworkers should be created. This data base should be developed by a multi-agency federal group representing the various farmworker programs.

Within the President's budget, there should be an ongoing review of all programs that expend funds for delivery of services and enforcement of protective statutes for farmworkers and their children to determine whether these programs are effectively meeting farmworker needs.

ENFORCEMENT OF FARMWORKER PROTECTIVE STATUTES

Enactment of the above recommendations would help stabilize the farm labor market. However, it is clear that a sustained commitment to enforce protective legislation for farmworkers is also essential. This must occur both within and between federal and state agencies. One model is the recently initiated Targeted Industries Program (TIP) in California. In that program, teams of state and federal investigators target those industries with a history of labor law violations and undertake a coordinated effort to educate employers and identify violations in those industries.

The Commission was made aware of numerous violations of worker protective statutes in both its research and hearings. Clearly, this must stop.

The enforcement of protective statutes for farmworkers should be made more effective, and should be coordinated within the federal enforcement agencies and between responsible federal and state enforcement agencies. When it is apparent that an agency has failed to properly interpret, enforce and apply laws and regulations assigned to it for enforcement, and an agricultural em-

ployer has relied upon that agency's interpretation of those laws and regulations in the conduct of its business, then the agency and not the agricultural employer should be held legally responsible for any monetary damages, fines, and penalties arising therefrom. All laws related to farm labor should be uniformly enforced by the agencies concerned so that employers not in compliance do not gain an unfair competitive advantage over those employers in full compliance with the various laws and regulations.

The U.S. Department of Labor's Farm Labor Coordinated Enforcement Committee should play a leading role in the allocation and coordination of resources to effectively enforce agricultural labor standards. To this end, it should convene a special task force of industry, labor, and public representatives to conduct a comprehensive review of present U.S. Department of Labor enforcement policies and practices that affect farm labor contractors, farmworkers, and farmers, including enforcement strategies. This task force should direct enforcement toward those violations that endanger the health and safety of workers, while encouraging agencies to work with employers to correct the problems rising from other violations.

CONCLUSION

Congress charged the Commission on Agricultural Workers with addressing issues specific to the effects of IRCA, but also to certain long-term concerns that surround agricultural labor in the United States. In addressing its mandate, the Commission identified certain significant trends which are changing the structure of agriculture. Increasing economies of scale in production and distribution have led to more levels of supervision, changing the relationship between employers and employees. The globalization of agriculture has allowed labor-intensive fruits, vegetables, and horticultural specialty products to be grown and distributed by countries whose wages are only a fraction of comparable U.S. wage costs. How FVH agriculture in the United States can remain competitive in the world market while affording a decent life for its

workers has been a central theme of the Commission's discussions.

The Commission examined the farm labor market in the aftermath of a policy designed to reduce the number of people who worked and lived illegally in the United States, curb illegal immigration, and provide an adequate legal agricultural work force. While the SAW program was successful in legalizing large numbers of workers, ineffective enforcement of employer sanctions and inadequate border controls have curbed neither illegal immigration nor the employment of unauthorized workers in agriculture.

The 1986 law and its effects cannot be analyzed as if they occurred in a vacuum. The overall U.S. economy, consumer expectations of inexpensive yet high-quality fresh produce, changing patterns of agricultural production, the economic and political situation in immigrant-sending countries, and changing trade opportunities and challenges must all be taken into account. Furthermore, international migration must be understood as the social process it is. The strength of networks in continuing migration patterns and as a time-tested and preferred method of worker recruitment has proven to be unyielding, despite expectations that changes in the legal framework would alter long-standing labor market dynamics.

There is currently an oversupply of agricultural workers — at least at the national level. The attrition of newly legalized workers from agriculture has been much less rapid than expected. At the same time, illegal immigration has continued and

the work force in many parts of the country now includes proportions of unauthorized workers that rival those of a decade ago. This is particularly clear in the case of the harvest work force, which has become increasingly latinized and more likely to be employed through farm labor contractors than in the pre-IRCA period.

Wages and working conditions for most hired farmworkers have remained relatively stagnant since the passage of IRCA. For many seasonal and particularly short-term workers, real earnings and working conditions have deteriorated.

The response of the United States to competition from countries that pay even lower wages should be the development of a more structured and stable domestic agricultural labor market with increasingly productive workers. An industry must modernize to remain successful in the increasingly competitive international market place. Agriculture is no exception.

To assure its long-term competitive position, agriculture must improve its labor management practices. This report suggests ways to stabilize the labor force, improve productivity, and increase earnings for farmworkers through longer periods of employment.

In a fundamental way, IRCA's goal of controlling illegal immigration may be better served by such reforms. The prospect of employment remains a magnet for unauthorized workers. To the extent that job opportunities are secured by legal workers in a more stable labor market, the "pull" factor for illegal immigration is reduced.

SUPPLEMENTAL VIEWS OF MEMBERS

STATEMENT OF COMMISSIONER LLOYD W. AUBRY, JR.

In the introductory section to Chapter IX, the Commission makes the broad statement that "agricultural exceptionalism" should be ended and that the long-range goal of U.S. policy should be to treat agriculture in the same manner as any other industry. While at first blush this general philosophical approach is attractive, I do not believe it necessarily provides a sound basis for developing or analyzing policy either from the producer or worker point of view. There will always be unique factors in this sector which includes easily exploited, mostly non-English speaking workers and the producers of our food supply. These and other factors will always lead to exceptions to the general rules. Indeed, consonant with this reality, some of the Commission's recommendations appear to be inconsistent with ending agricultural exceptionalism.

The Commission made a number of suggestions which would end agricultural exceptionalism for certain labor protection statutes. I supported these recommendations. These include unemployment insurance coverage for farmworkers, workers' compensation coverage for farmworkers, and protections for organizing activity and collective bargaining under the National Labor Relations Act. On the other hand, several other Commission recommendations either maintain or expand agricultural exceptionalism. For example, the Commission recommends increased job service programs for recruiting, tracking and matching jobs for farmworkers. The Commission recommends more creative methods for providing housing for farmworkers and that the President's budget contain a specific review process for farmworker programs and protective legislation. Finally, the Commission recommends joint liability for growers who use unlicensed farm labor contractors and expanded testing and bonding for farm labor contractors. I supported these recommendations as well because they recognize the unique circumstances and problems of the farm labor sector and attempt to deal with them.

No mention is made, however, of the fate of migrant education programs, migrant health pro-

grams, migrant legal services and migrant day care, or all federal programs targeting migrant farmworkers because of their unique problems. Nor is any mention made of the fate of farm subsidies, either direct or indirect, provided to producers. The purpose of many of these programs is laudable but presumably, if ending agricultural exceptionalism is taken to its logical conclusion, all of these programs would ultimately be on their way to elimination.

My point is that while the Commission enunciates the broad doctrine, it doesn't really implement it except in the two areas set forth below. Rather, what the Commission has for the most part done, and which I support, is to look at each situation where a particular program or legal protection is involved and decided whether or not it makes sense to continue the distinction between the farm and nonfarm sectors. Or, conversely, if due to the unique circumstances of farmworkers or farm production, special programs are needed to address a specific problem such a program is recommended. In any case, ending agricultural exceptionalism is simply not a very useful tool for examining the problems and programs of farmworkers and farm producers; instead it will simply be used as a doctrinal weapon for ending the perceived abuses in the programs and protections favoring or hurting one side or the other.

Accordingly, I dissent from the recommendation which suggests that federal and state statutes and regulations that govern contracting activities in the farm and nonfarm labor markets should be re-examined with a view to bringing all contracting activities under a uniform system of federal and state regulations. The recommendation suffers from both technical and conceptual difficulties. First, I do not understand how contracting activities can be brought under a uniform system of federal and state regulations. Normally, when a uniform nationwide system of regulation is needed, it is done through federal law which preempts all state law. It is unclear to me how fifty states in conjunction with the federal government will develop uniform laws and regulations to cover all contracting activities in the farm and nonfarm sectors.

I also believe the recommendation is conceptually difficult to justify. The Commission's hearings and activities found that the farm labor contracting system is becoming more prevalent as well as more abusive. Additional measures are needed to bring farm labor contracting under stricter legal and enforcement controls and the Commission has made such recommendations. On the other hand, the Commission has no evidence that in the nonfarm sectors contracting activities suffer from anywhere near the abuses that we've seen in the farm labor contracting system. It is difficult to understand why *Kelly Girl* or *Manpower* should operate under the same rules as farm labor contractors. Accordingly, there is no justification for importing the more burdensome regulations on farm labor contracting activities to the nonfarm sector.

One implication of the recommendation might be that regulation of farm labor contractors should be relaxed to make such regulation co-equal with the less burdensome controls on nonfarm sector contracting activities. (If this is so, then this recommendation is inconsistent with the stricter regulation of farm labor contractors also recommended by the Commission.) In any case, based on the evidence that we have received, I cannot support this recommendation.

For similar reasons, I also dissent from the recommendation suggesting that the H-2A and H-2B provisions should be consistent for temporary nonimmigrants foreign workers in the farm and nonfarm sectors. While I recognize that the H-2A program is perceived to be overly-cumbersome and that its highly technical provisions have provided the basis for some non-productive litigation, the solution is not to make the program requirements the same for both low-wage, generally uneducated farmworkers and highly-skilled, highly educated workers. Rather, if necessary, the program should be reformed taking into account the unique circumstances of the workers and employers involved.

Fair Labor Standards Act

The Commission has made a number of recommendations to end the exemption of farmworkers from certain labor protection statutes. For example,

the Commission has recommended that all farmworkers be afforded unemployment insurance coverage, workers' compensation coverage and union organizational rights. While the Commission seriously considered recommending some form of overtime protections for farmworkers under the Fair Labor Standards Act (FLSA), it ultimately rejected making such a recommendation.

In 1938, the FLSA was enacted, providing most workers with an overtime premium after 44 hours in a workweek (during the next two years this was phased down to 40 hours). At that time, agriculture was exempted from the minimum wage and overtime provisions of the FLSA. In 1966, minimum wage coverage under the FLSA was extended to some farmworkers but the overtime exemption was maintained and has remained in the FLSA ever since. In California, the largest agricultural state in the nation, Order 14-80 of the Industrial Welfare Commission, recognizes some of the unique factors in agriculture and currently provides agricultural employees in California with an overtime premium after ten hours in a workday and, effectively, sixty hours in a workweek. Overtime premiums for farmworkers in California were first established in 1976.

Under these circumstances, I believe it appropriate for Congress to provide some form of overtime protection to farmworkers under the FLSA.

Agency Responsibility for Damages and Penalties

It is with some reluctance that I comment on the Commission's recommendation that government agencies should be financially responsible for any penalties or damages which arise based on an employer's reliance on that government agencies' interpretation of its laws and regulations as applied to that particular employer. The concept is evidently based on the Internal Revenue Service (IRS) practice of issuing private letter rulings which bind the agency. Obviously, such a concept is very appealing as a matter of fairness and one I wish could be as workable in the labor law enforcement area as in the tax area. Certainly, nothing is more frustrating for an employer or destructive of respect for government than the situations which have lead to

this recommendation. I am well aware that these situations do occur and, when proven, penalties should be and have been waived. To this extent, the concept is already in place where it has proved workable, though in a less formal sense than the Commission is evidently recommending.

However, I am not sure this concept is as fully workable in the labor law area as in the tax area; it may in fact create more problems than it will solve. First, private letter rulings are usually based on the discrete set of facts of a particular deal or tax situation — the facts are clear, the facts are usually only relevant at one point in time (though this is not always the case), and it is easy to determine whether the facts have changed or not. In labor law enforcement the issues that generate the most controversy do not normally involve discrete, time-specific facts. It would be administratively very difficult to determine and certify whether a particular independent contractor was always legally operating as such, whether a professional, administrative or managerial exemption from overtime always existed, or whether two originally separate employers have always remained separate

and not evolved, over time, into a joint employer. Moreover, in the tax area, the only dollars at risk are lost tax revenues, whereas in the labor law enforcement area wages of workers as well as penalty revenues are at stake. Finally, many labor laws are enforced by workers or third parties in addition to government agencies.

It is also true that in times of declining government resources, if the demand were too great, it would be difficult to divert the necessary personnel to staff such a function. Indeed, the IRS now charges a fee of \$2500 for each private letter ruling. My main concern, however, is that many enforcement agencies would simply not give meaningful advice to employers for fear of being held liable for damages or penalties. Thus, rather than give employers more comfort, I believe this provision might actually lead to government agencies, and the employees who work in them, being less helpful and responsive.

Concurring:

Commissioner Dolores Huerta

Commissioner Philip L. Martin

STATEMENT OF COMMISSIONER MICHAEL V. DURANDO

Introduction

I consider it a privilege and an honor to have been able to serve at the appointment of the President as a member of the Commission. Throughout my participation in the hearings, workshops, case studies and spirited debates, I have always viewed any potential output of this body as a compromise between the varying interests represented. By supporting the final work product, I have implicitly endorsed its contents. However, I do so recognizing the impossibility of every commissioner agreeing to my ideas and positions, and therefore have chosen to utilize this opportunity to express my supplemental and dissenting views on those issues of key importance to me.

Scope of the Commission Report

In the preface to the report the Commission states:

The breadth and compelling nature of the information obtained through its research program and hearings has encouraged the Commission to adopt an expansive reading of its charge. This report and its recommendations reflect this decision.

I disagree with this premise as a basis for intrusion by the Commission into labor policy areas not mandated for study by the Congress. Although there was ample information presented to this body in the form of anecdotal testimony, very little, if any serious examination was given to issues regarding farm labor contractors, unemployment insurance, workers' compensation insurance, and federal/state laws governing the ability of farmworkers to organize and collectively bargain. Most important, in none of these areas did the Commission publicly solicit testimony, conduct workshops to receive expert advice, or implement any economic studies to validate its theories and ultimately its recommendations.

It is correct that the Commission was mandated to study and report on the impact of IRCA and the SAW/RAW programs on the wages and working conditions of farmworkers and their ability to organize. It was not, however, charged with the responsibility of recommending changes to major federal and state protective labor statutes such as the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), the National Labor Relations Act (NLRA), or the Fair Labor Standards Act (FLSA). Implicit in the recommendations is the possible amendment of these statutes, and possibly many others at both the state and federal levels. Loosely or improperly interpreted, this report could be viewed as a call for major labor law reform, which it is not.

Therefore, based on the issue of scope, I oppose the inclusion in the report of the entire section entitled: "Differential Treatment of Hired Agricultural Workers" and urge the Congress to disregard the recommendations contained therein. Those recommendations include: "Unemployment Insurance," "Workers' Compensation," and "Right to Organize and Bargain Collectively." I also similarly oppose inclusion of the sub-section entitled: "Farm Labor Contractors" and urge the Congress not to consider those recommendations.

Agricultural Exceptionalism

As background to its recommendations, the Commission states its view that:

...the long-range goal of U.S. policy should be to treat agricultural employment in the same manner as any other industry.

The Commission adds:

...a gradual phasing out of agricultural exceptionalism should occur....

I have strong reservations with these statements, as they oversimplify the solutions to a variety of problems that exist in the agricultural employment sector. Agriculture continues to exist as a unique industry in this country due to not only its seasonality, but its unpredictability and the dynamics of

changing markets and production patterns. To suggest that those exceptions in current labor law which exist to address the peculiarities of this industry should be eliminated, will not tackle the primary problems of uncontrolled illegal immigration and a flawed system of legally authorized worker identification.

These statements are also inconsistent with the Commission's recommendations concerning worker housing, education, social services, and the U.S. Employment Service. In each of these areas, the Commission calls for special treatment of agriculture, even in the targeting of additional resources or in the creation of new programs. The Commission must be cautious with its enthusiasm in calling for such change. Any revision must involve compromise by all parties, not just the employer sector.

An Overall Evaluation of the Saw Provisions of IRCA

In its findings, the Commission states:

In retrospect, the concept of a worker-specific and industry-specific legalization program was fundamentally flawed. It invited fraud, posed difficult definitional problems regarding who should or should not be eligible, and ignored the long standing priority of U.S. immigration policy favoring the unification of families.

The Commission continues in its recommendations:

Worker-specific and/or industry-specific legislation programs as contained in IRCA should not be the basis of future immigration policy.

I strongly disagree with these statements, as they attempt to lay blame for the proliferation of fraudulent documents and the legalization of aliens who were not legitimately qualified for the program on the design of the SAW program itself. Any law or program is only as good as those responsible for its implementation, and in this case, the largest

share of the blame rests with the U.S. Immigration and Nationalization Service (INS).

Due to inadequate resources being dedicated to the implementation of all aspects of IRCA, the INS failed to effectively stop the flow of unauthorized aliens across the border from Mexico, while simultaneously falling short in the area of fraudulent document enforcement. In reality, those aliens who fraudulently obtained legal status did so due to ease of movement into and within the United States, as well as the ease with which useable (although fraudulent) identification and work records could be fabricated.

Contrary to the Commission's view, I believe that it was most appropriate that the SAW and RAW programs had nothing to do with family unification policies, as they were programs designed to mitigate the negative impacts on a specific industry of major new immigration enforcement legislation. IRCA itself was not a family unification measure. Its primary purpose was to re-establish and maintain control of our nation's borders, ultimately stopping the flow of unauthorized aliens into the United States. Only for political purposes was the general legislation (pre-1982) program included to provide amnesty to a large block of aliens already in this country. This was a matter of acknowledging the impossibility of deporting five million people, not some generous family unification effort. In the same vein, the agricultural provisions were structured both to protect a key industry and to avoid the need to deport more than one million people.

Finally, the Commission was not charged with the responsibility of reviewing the impact on family unification of these programs. Once again, this body has extended itself into an area outside of its scope by considering the merits of the SAW program with relation to family unification.

I urge the Congress to reject the notion that worker-specific and industry-specific immigration programs are fundamentally flawed. Instead, the Congress and the Administration should consider the priority of maintaining key industries such as agriculture in this country, and the importance of ensuring a viable labor supply to support them in the context of future changes in immigration law, international trade agreements, and the overall world economy.

Supplementing the Labor Force

In the recommendations, the Commission states:

Neither an extension of the RAW program nor any new supplementary foreign worker programs are warranted at this time. However, adequate labor supply-and-demand statistical programs must be continued and an ongoing analysis performed to provide a basis for immediate action by Congress and/or the Administration, should future agricultural labor shortages develop.

I disagree with the first sentence of this recommendation, and support the enactment of a new program to be available on a standby basis for the future.

While the Commission has properly concluded that there is currently an adequate supply of labor in the seasonal agricultural workforce, there is no way to predict what will occur in the future. The Commission in its deliberations focused on the present, and failed to consider the inevitability of additional immigration legislation, labor law reform, and international trade agreements that are all going to impact the need for agricultural workers. The simplest example is a scenario in which the Congress decides to appropriate the necessary funds to effectively control our nation's borders, which implies a stop to the current flow and an internal deportation "sweep" of unauthorized aliens in this country. Should this occur, the Commission's own evidence suggests that a massive worker shortage would develop, given the very high rate of fraudulent document usage in both the agricultural and non-agricultural sectors. It makes no sense to wait for a crisis to develop before designing and implementing a program to allow for the "importation of foreign workers" as suggested by the Commission in language immediately following its recommendation. Such programs are complex, controversial, and require a diligent effort by all parties to enact.

In this regard, it is prudent to move ahead and develop a supplementary foreign worker program, one that will ensure a viable supply of seasonal foreign agricultural workers while serving the needs

and protecting the rights of both employers and employees in an efficient and responsive manner. Absent such a "standby program," the importation of foreign workers on a short notice or emergency basis can, at best, only be accomplished through the existing H-2 program or by an executive order of the President utilizing the existing parole visa authorization. Neither of these options is suitable due to either their inability to respond quickly to a need, or the inherent politics and administrative maneuvering necessary to implement them. In the meantime, farmers suffer, crops are lost, and the nation as a whole faces economic decline.

Conclusion

I urge all who read this report to do so with detail, for it contains a wealth of information never before collected and assembled in such a fashion. Those who work in the agricultural labor policy area should find the data, hearing records, and case studies to be useful in charting the future course of action at the state and federal levels. The findings and recommendations, except as noted above, provide important direction to this nation's policy makers, and should be viewed as a starting point for future discussions.

I wish to compliment and thank my colleagues on the Commission, and its chairman and staff, for their high level of cooperation and involvement that has resulted in this report. It is my view that all of us proceeded with the best interest of farm employers, employees, and our nation's agricultural industry in mind. I believe our efforts are well reflected in this ultimate work product.

Concurring:

Commissioner Ben M. Gramling, II
Commissioner Honorable Richard B. Abell

Concurring Statement:

Commissioner Clarence E. Martin, III

I concur in the statement of Commissioner Durando as it applies to the scope of the Commission's report only.

STATEMENT OF COMMISSIONER DOLORES HUERTA

Introduction

While the Commission Report admirably makes recommendations that, if carried out, will help alleviate some of the burdens that farmworkers now bear, these recommendations will not solve the human rights violations that farmworkers are suffering.

The Commission Report reflects the historic pattern of abuse of the immigrant work force by agribusiness, who use the Border Patrol to deport workers when they are no longer needed. The Commission's Report emphasizes the effects of unauthorized workers, as part of the oversupply of workers and as the major contributor to the horrendous working conditions of the farmworkers. What the report does not point out is that these conditions are created by the agricultural employers who still have the attitude towards their workers that they are peons or serfs with no purpose in life but to make their employers rich. The role of the agricultural employers who establish, maintain and finance this exploitive system of hiring workers is barely mentioned.

The Commission received testimony after testimony about the treatment and the inhumane abuse of the unauthorized workers by employers. Many workers are forced to work without any wages at all, just to be in line for a job. The fear that this creates among the total work force, authorized and unauthorized, when workers have themselves and their families to feed cannot be overemphasized. This creates a situation where all workers are afraid to complain about the horrid working conditions because of their inability to have the basic human requirements of food.

By calling for an increased Border Patrol presence on the Mexican Border and enhanced apprehension methods, the agribusiness industry hopes to accomplish, with the aid of the Immigration Service, a de facto "guest worker" nonimmigrant worker program that it was unable to accomplish by legislation (the Wilson-Panetta amendment) which was defeated in

Congress. Workers can be used, abused, discarded, and deported and employers are not obligated to take any responsibility for them.

As we approach the 21st century, we need to address the indignity of the fact that farmworkers, who toil arduously in the heat and the cold, are suffering from malnutrition in the richest country in the world.

The agricultural industry continues to treat its farmworkers as serfs. The political and financial power of the farm employers is so great that they can prevent any attempts to remedy the problems of farmworkers. With their political influence, agribusiness has reversed hard-won reforms made through legislation by preventing adequate funding of enforcement or, as in the case of the Agricultural Labor Relations Board of California, influencing the appointments so they are employer dominated, thereby perverting and preventing the purpose of this law to encourage the organization of farmworkers.

Workers today, in 1992, are working and living under the most indecent, horrendous conditions. These have been reported in many newspapers, such as the Sacramento Bee series in December of 1991 and other periodicals. Worker testimony given to the Commission in the numerous hearings bears out what has been reported.

The Commission Report is slanted and puts the blame on the undocumented workers for the decline in their wages and working conditions. At no time does the Commission Report place the blame for the horrible working conditions of farmworkers where it belongs, on the agribusiness industry which exploits the workers for profits, with no regard to their human condition.

Education of farmworker children is also adversely affected by the poverty and underemployment of their parents. The drop-out rate of Mexican-American children in the high school is from 40 to 60 percent, with the rural areas showing a higher rate. Furthermore, they are not hired in the farms because they are immigrants or citizens and are left on their own, leaving them vulnerable to be victims of crime and gang violence.

The Health of Farmworkers

Throughout the United States, farmworkers are living in conditions so horrible they defy description. The overall statistics are shocking:

- The average farmworker life span is 49 years; the average life span for a U.S. worker is 73 years.
- The farmworker infant mortality rate to age five is 50 out of 1000; the U.S. national average is 14 out of 1000.
- Children of migrant farmworkers are vitamin deficient and have symptoms of malnutrition.

A study by Public Voice in 1989 found that 50 percent of the migrant farmworkers surveyed had diets that did not meet the daily allowance for vitamin A, iron, or calcium. Almost a third reported running out of food or not having enough food at some time during the year. Fewer than 25 percent participated in the food stamp program because of their belief that they were ineligible.

Women receive little or no prenatal care. Lack of money and transportation are cited as reasons for not receiving care. Data collected by the Migrant Clinicians Network of the Midwest notes, "Factors such as poverty, malnutrition, infectious and parasitic diseases, poor education, a young population, and poor housing equate to a highly vulnerable population in need of resources."¹

The epidemic growth of pesticide and fungicide poisonings in the fields have added to the occupational health hardships of farmworkers and their families. Pesticide spraying affects whole crews of workers, so mass poisoning takes place when workers are placed into fields that have been sprayed. Spraying by airplane affects vast areas as the wind drift carries the poisons from one farm to another. Pesticides and fungicides are also used in the irrigation water that workers apply, leaving them subject to long term exposure.

The deaths of farmworker children in the table grape growing areas of the San Joaquin Valley of California have shown childhood cancer rates as high as 400 percent above the national average in the small rural town of McFarland and 1200 percent

above the norm in Earlimart, California. In addition to the deaths, many farmworker children are born with birth defects and deformities — missing parts of their spine, fingers, and even arms and legs. Many women have had an unusual number of miscarriages. In addition, long term neurological damage to the immune system stems from the use of pesticides.

The United Farm Workers has appealed to the public as a last resort. Cesar Chavez, founder and President, fasted on only water for thirty-six days to call attention to the damage pesticides cause to the farmworkers and their children who are dying of these poisons, the environment, and consumers. The United Farm Workers Union has called for a third international California table grape boycott to curtail the use of these dangerous pesticides and fungicides.

With all of the health problems that the farmworker population suffers, less than 15 percent are reached with the present health care systems available to them. As is their normal stance, the employers, with their vast wealth of financial resources, have generally not provided any type of health care for their workers. The Commission Report does not address the health of farmworkers. (It does, however, report in detail on the health of the agricultural industry.) It is obvious that low wages, hard conditions, and feudal living standards exact a severe toll on the health of farmworkers and their children.

The first attempt to provide health plans for farmworkers was initiated by the United Farm Workers in their collective bargaining agreements. Under these agreements, AFL-CIO farmworkers receive full medical benefits including major medical, x-ray, ambulance, surgeries, dental, vision and death benefits. The medical benefits cover the entire family. Recently, the UFW signed a contract with the social security of Mexico to provide full medical benefits in Mexico for families of workers in the United States.

Under the administration of California Governor Edmund Brown, Jr. (Jerry Brown) when the Agri-

1. Farmworker Health for the Years 2000, 1992 recommendations of the National Advisory Council on Migrant Health.

cultural Labor Relations Law was being enforced, employers attempting to compete with the union provided similar health benefits to workers. Once the Republican administrations of Governors Duke-mejian and Wilson came into power, and the workers no longer had the protection of the Agricultural Labor Relations Board, employers stripped workers of their health plans.

Benefits Through Union Contracts

As lack of enforcement of the ALRA, (the collective bargaining law) took place, employers refused to renegotiate contracts, and using many subterfuges, were able to avoid their responsibilities in bargaining as required by law. Thousands of workers lost benefits they had enjoyed under the protection of union contracts.

The following protections workers have under United Farm Worker contracts were especially needed by these workers:

- Seniority - which gives workers the job security to know they will have a job after the seasonal layoffs which are inevitable in agriculture.
- Protection from Discharge unless it is for Just Cause - this prevents mass or capricious firings by untrained supervisors or firings because of intimidation if workers complain about severe working conditions.
- Rest Periods - during the day so workers can rest every four hours from the arduous labor in the heat or cold.
- Pension Plans - a multi-employer pension plan, Juan de la Cruz, to help workers with their pensions as most workers will receive the minimum in social security benefits.
- Medical Plan - Robert F. Kennedy medical plan as described above.
- Wages - negotiated wages, hourly and piece rate, considerably above the minimum wage.
- Health and Safety Protections - Workers do not work in unsafe working conditions. They are provided protection from pesticides, clean toilets, hand washing facilities, cool drinking water, safe equipment, and safe working practices to prevent injuries.

- Direct Hiring by Employers and No Use of Labor Contractors — Direct hiring is the only way to make employers take some segment of responsibility for their workers. Although the relationship is still impersonal, especially with the vast expansion of corporate agriculture, at least there can be accountability when issues of unpaid wages or other labor violations arise. (See section on Farm Labor Contractors).

Agribusiness creates the problems and then violently opposes any attempt by workers to solve them

There is not a farmworker problem. There is an employer problem. The extreme poverty of farmworkers which results in the health and other problems addressed by the Commission can be solved. In the absence of employer initiatives to remedy the situation that they have created, attempts by workers to alleviate their working and living situations have been met with violent opposition by employers.

Over the course of workers' attempts to improve their working conditions through their union, the United Farm Workers, five people have been killed: Nan Freedman, a student, in a sugar workers strike in Florida in 1970; farmworkers Juan De La Cruz and Nagi Daigfallah, in the grape workers strike in Lamont, California in 1973; Rufino Contreras who was placed in a cross fire during the vegetable strike in the Imperial Valley in 1978; and most recently, in 1986, Rene Lopez, a 21 year old farmworker who was murdered for organizing an ALRB union election at his ranch in Fresno County, the biggest agricultural county in California. In addition to the deaths, dozens of workers have been injured, many critically, and thousands jailed for manning picket lines and daring to strike. Needless to say, law enforcement is on the side of the employer in a labor dispute.

The gains made in twenty years of union organizing and improvements in workers' wages and working conditions were rapidly erased with the changes in California's state administration. The hundreds of contracts that the United Farm Workers held, many which had improved wages in 1982

to a rate of \$8.00 minimum hourly wage plus health care and pensions, were rapidly erased by the changes in administration and the election of Republican Governor George Dukemajian. (Governor Pete Wilson has continued his anti-union policies.)

Once it became clear that the Agricultural Labor Relations Board was no longer going to advocate for workers but would be used against them, the employers began replacing their union work force en masse. They did this by various management tactics, knowing there would be no sanctions against them. The most common was to turn the workers over to labor contractors as a work condition.

Removing themselves one step from the responsibilities of hiring, they then dropped wages precipitously, stripped benefits, and left workers in the hands of these unscrupulous contractors. Immediately, working conditions and wages deteriorated. The old system of bribes and sexual harassment for jobs, age discrimination, and brutal treatment on the job with unreasonable demands for production returned as a norm.

The Immigration Reform And Control Act

The passage of IRCA, while adding more workers to an already swollen labor supply, would have worked had the employers utilized the existing domestic plus legalized SAW workers, as SAW workers were already in the work force. But they continued recruiting workers, knowing full well that there was already an excess of labor. They pushed for issuance of permits at the border with the help of their political allies in Congress, while SAW eligible workers were having to pay exorbitant fees for verification of employment from their employers. In other words, agribusiness took advantage of the easy eligibility of the SAW program to bring in additional unauthorized workers. Recruitment and public cries of labor shortages were heard throughout the U.S. and active recruitment by the growers took place in Mexico. Their motive was to replace established, sometimes older, unionized workers with newer, more exploitable workers. The cries of fraud are hypocritical when the indus-

try encouraged and participated in the production and acceptance of "fraudulent documents."

Furthermore, if the employers obeyed the law there would be no need for sanctions. But sanctions are to their advantage, as it is the workers who are jailed in this massive entrapment scheme. Employers hired workers who had registered under the RAW program knowing full well that they did not have the authority to work. They kept them on with promises of future immigration if they continued to work compliantly, under sub-human conditions, and of course resist any organizing attempts by other workers.

And if this were not enough, the recruitment and hiring of unauthorized workers continues, primarily by the agents of the employers, while the employer looks the other way. The unauthorized workers are victims of the worst instances of abuse.

The Congress, the public, and the labor movement all agreed to the SAW program, with the hopes that this would lead to improvements in the conditions of workers. But the growers perverted the law by noncompliance and, as usual, turned this into an unfair advantage to increase their profits at the expense of the workers and the taxpayers.

Farm Labor Contractors

The Commission identifies the problems inherent in the farm labor contractor (FLC) system and makes minor recommendations designed to protect both employers and workers from abuses. However, the basic fundamental flaw in the farm labor contractor system is not addressed. The Commission does not come to grips with the fundamental linch-pin of the farm labor contractor system: growers are responsible for the creation of the contractor system. Labor contractors work for the grower, are paid by the grower, and the abuses will stop only when growers are prevented from using this system.

The Farm Labor Contractor System Needs to be Totally Abolished

By refusing to hire workers directly or through union hiring halls, growers make the farmworkers

totally dependent on the labor contractor. Growers are cognizant of the abuses that workers suffer. The community also suffers, not only because of the reduction of wages that the workers get, but also due to a loss of tax revenues.

Unable to make direct contact with the grower for a job, the worker becomes totally dependent on the labor contractor to be able to work. In many cases, the workers are also totally dependent on the contractor for food and housing. Through this system, the grower retains total control over the worker, with no accountability.

These abuses were documented by John Steinbeck in the 1930's, the Harvest of Shame documentary in the 1950's, and by Congress in the 1960's, the 1970's and the 1980's, with passage of the Farm Labor Contractor Registration Act and later the Agricultural Worker Protection Act. The farm labor system seems to be immune from reforms. Legislative protections have failed.

The abuses of the farm labor contractor system infect every aspect of farmworkers' lives. They are recruited under false pretenses and promises about wages and working conditions. Often they do not know what wage they will receive, and if they inquire as to wage or name of employer they can be fired for "making trouble." Labor contractors pay the lowest wages, by any standards. They push workers at brutal speed as their commissions are often set on a production standard. They verbally abuse, sexually harass, and dehumanize workers. Housing provided by contractors was found "shocking" by Secretary of Labor Elizabeth Dole. Workers are charged exorbitant rates for food, mattresses, implements used for their work, etc. Workers are transported in unsafe vehicles and are killed and disabled with shocking frequency. On occasion they are beaten, intimidated, locked up and often are in a state of peonage and bondage. Cases of farmworker slavery have been reported in several states.

Licensed contractors are some of the most notorious such as John Miller and Willie Simmons. When licenses are revoked, they simply get a relative or friend to take out the license and operate as before. The Commission recommendations on labor contractors assume that if farm labor contractors

are licensed, the abuses will end. The core of the problem is the system, and the system must be eliminated.

Society as a whole suffers as a result of the continuation of this system. There is a wholesale loss of revenues and benefits due to contractors keeping deducted contributions that are due to the state and the federal government. Contributions of Unemployment Insurance are not made in those states where farmworkers have full coverage. On the federal level, FLCs fail to report federal income tax and social security. The country and the workers both lose these benefits.

Currently, agriculture promotes the fiction that there is a three party relationship in which the obligations inherent in the employer-employee relations are carried out by the farm labor contractor, thereby insulating the employer from responsibility. This fiction must be eliminated.

The only effective solution is to make the grower responsible in every case and in every respect for abuses committed by farm labor contractors. Only when the growers are responsible for the direct hiring of workers will the abuses be eliminated.

"Control" of The Borders

The recommendation by the Commission to reinforce the borders and the enhancement of enforcement procedures was not adequately heard or researched, and I would recommend strongly against that recommendation. Further militarization of the Mexican Border would lead to more violence and result in unnecessarily harsh treatment for people who are seeking escape from situations they cannot control.

At the hearing of the Subcommittee on Human Rights and International Organizations of the Committee of Foreign Affairs of the House of Representatives on April 18, 1990, Congressman Esteban Torres commented as follows:

"We, as a nation have vilified and admonished other nations of the world, the Soviet Union, and South Africa. We were very critical of East Germany at the time that they were also perpetrating these kinds of abuses. We do it against Haiti.

.....We, as a nation, who has been a trend setter in the kinds of human rights standards around the world cannot allow ourselves to fall into this trap of also emulating those countries who have maligned and mishandled their citizens and others."

Congressman Mel Levine at this same hearing commented:

"We as a society, as a country, should be requiring fairness. We should be requiring a policy that is just and one that eliminates the type of brutality and inhumanity that has been occurring (at the Mexican border)."

An American Friends Service Committee report demonstrates that this is a complex problem. The Commission of Agricultural Workers did not study the border issues in depth.

The intent of this Commission, dominated by grower representatives, seems to be to shift the focus to the entry of unauthorized workers and to deflect the blame and responsibility for the miserable plight of farmworkers from the growers.

I strongly urge the Congress not to consider the recommended solutions which have already been tried and failed. We cannot repeat these same failed strategies at such terrible human cost. New approaches that are humane must be considered, especially now that we have a better relationship with Mexico. The current racist border policies with their human rights violations cannot be justified.

I support the report of the American Friends Service Committee entitled: *Sealing Our Borders-The Human Toll* (excerpts of which appear in Appendix II). The report cites incidents of violence along the border, demonstrating that people who are seeking a better way of life are treated like criminals. I strongly urge the Congress to conduct hearings on this terrible situation with a view towards a more humane approach. The report also demonstrates that increasing the enforcement at the Mexican Border under current policies, will lead to

more violations of human rights. This is a complex issue in which further hearings and studies are needed, by the Congress and others, before any recommendations should be made. I don't feel that this Commission has sufficient information or expertise to make the recommendations, in this area, it has made.

Other Recommendations:

The H-2A program should also be abolished. We cannot justify institutionalized slavery in the form of H-2A workers. These workers are totally helpless and at the mercy of their employers and the Immigration Service. The United States of America should not have any type of foreign worker programs where workers cannot become permanent residents. We cannot just take people's labor as a contribution to our society, and deny them the benefits the society offers.

The recommendations to give farmworkers the benefits that other workers have enjoyed for fifty years will remain only that, recommendations, unless there is a strong political will on behalf of the Congress and state legislatures. Agribusiness needs to support and not oppose these recommendations to bring some segment of human rights to farmworkers. If the employers do not do this, then they should not get the type of support such as subsidies from the state and federal governments, until these human rights violations are corrected.

Agribusiness enjoys full government support and special legislation to organize their industries, such as marketing orders which obligate a "check-off" by all agricultural employers to their organizations to help them sell their crops. Without this mandatory system of financing their organizations, they would not be as successful. But they violently oppose workers being able to organize to improve their conditions.

STATEMENT OF COMMISSIONER CARDINAL ROGER MAHONY

I am compelled to express my strong reservations about the Commission's recommendation that the Administration increase its efforts to enforce employer sanctions. Although the Commission was expressly mandated only to study the impact of employer sanctions on the supply of agricultural labor, I believe that it is necessary to consider all the effects that sanctions are having in order to assess accurately the desirability of their continued implementation.

The National Conference of Catholic Bishops (NCCB) has strongly opposed employer sanctions since November 1988 for two reasons: employer sanctions have driven the undocumented further underground with no recourse to report the abuses which they suffer at the hands of unscrupulous employers, and the potential for employer sanctions-

generated discrimination against authorized workers. Our concern has been verified by the General Accounting Office, which found in March 1989 that employer sanctions have caused widespread discrimination against workers who look or sound "foreign."

We believe that the discrimination caused by employer sanctions is an unacceptably high price to pay in the effort to control undocumented immigration. This is particularly true in light of the fact that sanctions are having only a negligible effect, if any, on curbing the flow of undocumented individuals across U.S. borders.

I therefore respectfully dissent from the Commission's recommendation for stronger sanctions enforcement and instead call for their repeal.

Concurring:
Commissioner Dolores Huerta

**STATEMENT OF COMMISSIONERS
CLARENCE E. MARTIN, III AND
HONORABLE RICHARD B. ABELL**

In Chapter IX, the Commission sets forth its recommendations concerning unemployment insurance and collective bargaining which are purportedly based upon the analysis of the Commission, the analysis of Commission staff, the case studies, testimony taken at the different hearings and a review of literature pertaining to these issues.

Unfortunately, the Commission has strayed far afield from issues which are remotely raised by the mandated questions and in this instance has done so without any case studies or other evidence to support its recommendations.

There is no mandate from the Congress to the Commission to study the effects of the lack of unemployment insurance on the wages, working or living conditions of farmworkers. The only mandated question pertaining to the wages of farmworkers was number seven which referred to the effects of "the Special Agricultural Worker (SAW) provisions on the wages of domestic farmworkers."

Likewise, the Commission's recommendation which calls for farmworkers to be afforded the right to organize and bargain collectively pursuant to the National Labor Relations Act is also completely outside the parameters of the mandated questions from the Congress. While question nine required the Commission to determine the impact, if any, of the Special Agricultural Workers (SAW) program on the ability of farmworkers to organize, there was no request to study whether or not the NLRA should be amended to include farmworkers. Furthermore, there is not one case study or any identified literature to support the Commission's recommendation.

The above two recommendations would require sweeping changes in the agricultural industry in the United States and while extremely worthwhile to consider and study, should not be made, let alone embarked upon, without extensive study and analysis, none of which is present in the Commission's studies or deliberations.

There are very important ramifications to these recommendations which should be considered and studied such as:

1. The effect upon the small farmer;
2. The effect upon the price of agricultural commodities in the U.S.;
3. The effect upon U.S. agricultural subsidy programs;
4. The effect upon the international competitiveness of U.S. agricultural commodities; and
5. The effect upon the national economy and the national policy of affordable food.

These are only a few of the very important issues raised but not studied by the Commission in relation to these recommendations.

The crux of the problem with the Commission's recommendations is that they are made without identifying or analyzing and studying all the issues that are inherent in them. In that respect, these recommendations are illusory and unsubstantiated by any careful analysis and study.

For the above stated reasons, the undersigned respectfully dissent from the Commission's Recommendations regarding unemployment insurance and organization and collective bargaining pursuant to the NLRA.

Concurring:

**Commissioner Michael V. Durando
Commissioner Ben M. Gramling, II**

STATEMENT OF COMMISSIONER PHILIP L. MARTIN

Introduction

The Final Report of the Commission on Agricultural Workers is a consensus document which finds that the Immigration Reform and Control Act (IRCA) of 1986 was a case of good intentions gone awry in the farm labor market. The Final Report recommends a renewed effort to reduce illegal immigration, and federal and state actions to mitigate some of the hardships experienced by farmworkers since IRCA.

I supported most of the Commission's recommendations. However, I fear they deal with symptoms rather than causes and remedies of farmworker problems in three important respects. First, the Final Report attributes the problems of farmworkers entirely to continuing illegal immigration. Thus it avoids assigning any responsibility to farmers for expanding a labor market in which most workers are poor immigrants. Second, the Final Report does not deal effectively with the most important actor in today's farm labor market: farm labor contractors (FLCs). These intermediaries are considered to be employers in their own right, and they have in many cases privatized immigration policy by employing newcomers and providing housing and transportation services to them. Third, the Final Report ignores several troubling legacies of IRCA, including the creation in the United States of needy mixed families – mixed in the sense that the legal status of members of one family may range from U.S. citizen to immigrant to undocumented.

The following supplemental views provide a background on IRCA's agricultural provisions and a summary of the Commission's findings and recommendations. They set out what I regard as the three areas which the Final Report avoided or downplayed that are fundamental to resolving farmworker problems. My purpose is not to detract from the Final Report's recommendations; I believe that most of them should be implemented as soon as possible. However, even if the Commission's recommendations are implemented, they will not keep a further expansion of fruit and vegetable agricul-

ture from creating more farm labor problems, FLCs from opening immigration side and backdoors into the United States, and needy immigrant families from falling through the holes of the U.S. social safety net.

Background

IRCA was enacted to reduce the presence of unauthorized or illegal alien workers in the U.S. work force, largely by imposing sanctions on employers who knowingly hire unauthorized workers and by legalizing many of the undocumented residents in the United States and most of the undocumented workers employed in U.S. agriculture. IRCA sought to cushion agriculture's transition to a legal work force by including several provisions only for agriculture, such as the Special Agricultural Worker (SAW) legalization program, the deferred enforcement of sanctions, and a Replenishment Agricultural Worker (RAW) program that would admit probationary immigrant farmworkers if farm labor shortages developed.

IRCA's agricultural provisions were not suggested in the Final Report of the Select Commission on Immigration and Refugee Policy (SCIRP) in 1981, the impetus for IRCA. Nor were IRCA's agricultural provisions included in the immigration reform proposals debated in Congress between 1981 and 1983. However, as the sanctions and legalization proposals recommended by SCIRP moved through Congress in the early 1980s, farmers expressed concern that the illegal immigrant workers on whom some of them relied would no longer be available. The Congressional architects of IRCA offered to streamline the H-2 program so that farmers could more easily recruit foreign workers if U.S. workers were not available, but farmers in California and other western states objected to going through a government certification process in order to employ foreign workers. The certification procedure would involve too much red tape and litigation, they argued, and the need to provide workers with contracts that guaranteed them at least a minimum amount of work would require them to plan their need for seasonal labor impossibly far in advance.

Western farmers demanded and initially won a non-contractual foreign worker program through which foreign workers could be employed without a government agency first certifying that the farmer had sought U.S. workers by offering them suitable housing, wages, and working conditions. Farm-worker advocates opposed this free-agent guest-worker program: many preferred no immigration reform to a program that permitted foreign workers to migrate around rural America in search of farm jobs. The compromise that was reached just before IRCA was enacted in November 1986 included a separate SAW legalization program for most of unauthorized workers employed in U.S. agriculture, the deferred enforcement of employer sanctions and other changes in enforcement practices in agriculture, and both the streamlined H-2A and the RAW programs through which farmers could obtain legal foreign workers if labor shortages developed.

The SAW program and related IRCA provisions affecting agriculture were not subject to extensive public hearings and debate. There was a great deal of uncertainty about their probable effects on farmers and farmworkers, and this uncertainty as well as the 4-year life of the RAW program gave CAW its mandate to review the effects of IRCA and especially its SAW provisions on the farm labor market.

What the Commission Did

The Commission was charged with "reviewing" nine questions and conducting "an overall evaluation of the special agricultural provisions" of the Immigration Reform and Control Act (IRCA) of 1986 (Figure 1). These questions ask about the impact of the SAW program on, *inter alia*, U.S. farmworkers and their wages as well as the extent of unemployment among farmworkers in light of IRCA and other factors affecting the farm labor market.

On the basis of case study research and hearings, the Commission made findings that can be grouped into three categories (Figure 2). First, in its overall evaluation of the SAW program, the Commission concluded that the majority of SAW-eligible undocumented workers gained legal status in a flawed

worker- and industry-specific legalization program that has been described by Robert Suro in the *New York Times* as "what may be one of the most extensive immigration frauds ever perpetrated against the U.S. government."² Second, the Commission noted that although the SAW program legalized many undocumented farmworkers, the continued availability of illegal workers prevented the newly legalized SAWs from obtaining improvements in wages and benefits from farmers. Third, the Commission found that the farm labor market continues to leave the average committed or professional farmworker with below-poverty level earnings: an average farmworker earns about \$200 weekly or \$5000 for 25 weeks of farm work, and then is unemployed for another 20 weeks.

The Commission recommended steps to develop a legal farm work force, to improve social services for farmworkers and their families, and to improve the enforcement of labor laws (Figure 3). In response to IRCA's failure to reduce significantly illegal immigration into the United States, the Commission report recommends a renewed effort to reduce illegal immigration with more enforcement and a fraud-proof work authorization card. To combat declining real wages, the absence of benefits like health insurance, and the exclusion of some farmworkers from federal and state programs that would make them eligible for unemployment insurance benefits and workers compensation, the Commission recommends that the federal government provide more services to farmworkers and their children and that farmworkers be covered under protective labor laws. Finally, the Commission recognized that federal and state agencies today have only a limited ability to enforce farm labor laws, and recommended that enforcement efforts should be better coordinated and targeted.

The Commission also made several recommendations that may undermine some of these efforts to reduce farmworker poverty. For example, the Commission recommended that the same regulations govern the importation of nonimmigrant farm and nonfarm workers. This recommendation was made in the spirit of ending agricultural exception-

2 Reprinted in the *Sacramento Bee* November 12, 1989, pA1.

Figure 1 — CAW's Mandate

1. Conduct an overall evaluation of IRCA's Special Agricultural Worker (SAW) provisions and recommend appropriate changes.

2. Review the impact of the SAW program:

- on the wages and working conditions of U.S. farmworkers
- on the adequacy of the supply of labor
- on the ability of agricultural workers to organize
- on the international competitiveness of U.S. crops
- on whether SAWs stay in the farm workforce
- on whether employer sanctions affected the supply of farm labor

3. Determine the extent:

- to which agriculture relies on a temporary workforce
- of unemployment and underemployment among U.S. farmworkers
- to which farmers are unable to find workers because they do not use modern labor-management techniques
- to which the supply of farm labor is adequate
- to which certain geographic regions need special programs to secure labor

Figure 2 — CAW Findings

1. Overall Evaluation of the Special Agricultural Worker (SAW) Provisions

- The majority of SAW-eligible workers gained legal status; there was also significant fraud in the sense that non-qualified aliens achieved legal status through the SAW program.
- The SAS workforce in 1992-93 continues to include a significant share of undocumented workers.
- The combination of U.S. citizen and immigrant farmworkers, SAWs, H-2A workers, and undocumented workers produced labor surpluses that make it unnecessary for farmers to improve wages or working conditions in order to obtain a seasonal work force.
- The SAW legalization program was flawed – limiting eligibility to workers ignored the reality that workers have families and that U.S. immigration policy favors family unification. Limiting eligibility to one subsector of one industry led to pressures for a far more expansive definition of SAS than was intended. Inadequate documentation requirements encouraged fraudulent applications.
- The probationary immigrant RAW program that was not implemented was also flawed. The formula for determining whether a national labor shortage was expected included answers to hypothetical questions, and was thus open to political manipulation. Most RAW applicants appear to be undocumented workers already working in the United States, so their “admission” would not add to the supply of farmworkers or ensure that these now legal workers go to areas experiencing labor shortages.

CAW Findings (continued)

2. IRCA, SAW, and Farm Labor

- Employer sanctions have not reduced significantly the employment of undocumented farmworkers.
- The SAW program granted legal status to over 1 million mostly young Mexican men. Almost all of those who have been observed working in agriculture since IRCA continue to be farmworkers.
- The SAW program did not reverse the decline in real farm wages that began in the early 1980s. It may have contributed to a more uniform average farm wage by adding to the labor supply and reducing the premium over the minimum wage that many Western farmers once paid, and by spreading Mexican SAW farmworkers throughout the United States.
- The SAW program contributed to the oversupply of farmworkers, dampening pressures on farmers to improve housing and working conditions in order to attract and retain seasonal workers. Legal status encouraged some SAW workers to make demands, but the oversupply of workers limited their ability to achieve wage or working condition improvements.
- The SAW program had little direct impact on the international competitiveness of U.S. crops. By stabilizing wage and benefit costs, it may have contributed to making the United States a net exporter of labor-intensive crops.

3. Farmworkers and Farmers

- Seasonal farmworkers are concentrated on a few large farms in a few states that grow fruits and nuts, vegetables and melons, and horticultural specialty (FVH) commodities.
- These farms can obtain seasonal workers for temporary tasks, and so they offer only temporary jobs and depend on temporary or seasonal workers to be available to fill them.
- The supply of farmworkers is adequate and does not need to be supplemented further with foreign workers except for the current H-2A program.
- Almost all less-than-year-round farmworkers experience unemployment during a typical year. Those farmworkers who obtain most of their income from farm work average about 25 weeks of such work and earn \$5000. They are unemployed about 20 weeks. Unemployment in farm worker communities ranges from 10 to 30 percent.
- Many farm employers do not have modern personnel systems to recruit and train workers, to identify and encourage the return of the best workers, and to make hiring and layoff decisions on the basis of objective criteria such as seniority.
- Farm labor markets vary by geography, but there is no need for special programs for particular geographic areas.

alism, the practice of not providing farmworkers with coverage under protective labor laws and with developing special immigration programs for agriculture. However, the employer certification and worker protections in the agricultural H-2A program are there because of past problems. The Commission developed no evidence that the nonfarm H-2B program needs these extra procedures and

protections, but heard testimony that current protections in the H-2A program are inadequate. Thus, the intent of this recommendation can only be to substitute weaker H-2B procedures for stronger H-2A rules, and this flies in the face of the evidence that was developed. The H-2A program may need to be reviewed, but probably not with the goal of substituting H-2B criteria for H-2A criteria.

Figure 3 — CAW Recommendations

1. To have a legal farm work force*

- Make a renewed effort to reduce illegal immigration with better border and interior enforcement; develop a fraud-proof work authorization document.
- Do not extend the RAW program or begin any new supplementary foreign worker program.
- Re-examine the H-2A temporary farm worker for temporary U.S. job program.
- Do not have another worker- and industry-specific legalization program despite significant levels of undocumented worker employment today.

2. To Improve Services for Farmworkers

- Improve Employment Service worker-job matching services by having the ES plan migrant itineraries and distribute information to workers about available farm jobs.
- Educate farmers about the need for and benefits of modern labor-management practices for farmworkers, such as systems to employ fewer workers for longer periods.
- End the exclusion or differential treatment of farmworkers under Unemployment Insurance, Workers Compensation, and labor relations laws.
- Provide more funding and flexibility to promote the availability of public and private farm worker housing.
- Develop programs for farm worker children so that they are not disadvantaged because of their parents' occupation.
- Establish a federal council to coordinate the services available to farmworkers and their children.

3. To Improve the Enforcement of Labor Laws in Agriculture

- Improve coordination between federal and state agencies so that employers who violate labor laws do not gain a competitive advantage.
- Create a task force to target enforcement efforts on the most serious violations and violators.
- Increase the bonding and testing requirements for Farm Labor Contractors (FLCs).
- Make farm operators who use unlicensed FLCs solely liable for any federal labor law violations the FLCs commit while employing farmworkers in their operations.
- Make federal and state agencies that enforce labor laws in agriculture liable for fines levied on employers who were told by the agencies that they were in compliance.

* CAW recommended that the definition of Seasonal Agricultural Services (SAS) be amended so that alien workers employed on sugar cane and sod farms in 1985-86 can apply for legal status under the Special Agricultural Worker (SAW) program. CAW also recommended that USDA and DOL data collection efforts established to monitor the farm labor market between FY1989 and 1993 (while IRCA permitted RAW workers to be admitted if farm labor shortages were expected) be continued.

What The Commission Did Not Do

Most of the consensus recommendations in the Final Report are a useful step in the right direction, but they fail to deal with the root causes of the farm labor problem and the legacies of IRCA's agricultural provisions. Dealing with the root cause

of farmworker poverty may have been within the Commission's mandate, and was certainly discussed by Commissioners and witnesses, but was not the focus of the Commission's research or recommendations. In retrospect, it may have been better for the Commission to focus on these root causes.

The federal government has permitted immigration to be a subsidy for the labor-intensive fruit and vegetable subsector of U.S. agriculture. This immigrant labor subsidy encourages its expansion in spite of the fact that the majority of farmworkers earn below poverty-level incomes. The Commission recognizes this farmworker poverty, and recommends more federal protections and services to mitigate it, but avoids the question of who is responsible for the farmworker's plight. By evading this question, the Commission's recommendations cast poor farmworkers in the role of yet another needy group asking for federal assistance in a time of tight budgets.

Several Commissioners and some witnesses argued that poor farmworkers are the price that the society must pay for cheap food. But the Commission did not study the relationship between cheap farmworkers and cheap food. If such studies had been conducted, I believe that they would have concluded that low farm wages are an economically inefficient and morally wrong means of lowering food prices. Surely, instead of urging more federal funds to mitigate the poverty in today's labor markets, it would be better to have called for a reform of the farm labor market so that farmworkers can earn enough by working so that they would not need special federal assistance. Second, the Commission report identifies but does not deal effectively with the dynamic element that is reducing the government's ability to regulate the farm labor market and reduce farmworker poverty: farm labor contractors (FLCs). Given ineffective immigration controls and insufficient farmer-provided and public services, such as housing for newly-arrived immigrants, FLCs have privatized important parts of both immigration policy and immigrant services. FLCs are analogous to the ship captains of the 19th century who often recruited the immigrant workers that they transported. Today, FLCs find workers abroad, provide them counterfeit documents, and then are their first U.S. employers. These immigrant workers need housing and social services, which FLCs, for a fee, provide to them. As the FLC share of farm employment rises, federal and state agencies lose their ability to regulate the farm labor market because the FLCs often know the workers they

hire and are thus able to discourage them from complaining of labor law violations. The Commission report acknowledges the FLC problem, but its recommendations do not promise a remedy.

Third, the Commission report does not deal with several problems that developed in the wake of the IRCA's agricultural provisions. The SAW program legalized mostly young Mexican men who were working illegally in U.S. agriculture. By legalizing only these working men, some hoped that they would be encouraged to continue to return to their families each winter. Many continue to commute between the United States and Mexico, but many others are bringing their families to the United States. These mixed families – mixed in terms of the legal status of family members – need education, health, and social services if they and their children are to succeed in the United States. However, their settlement in rural America and their mixed legal status makes it difficult to provide them with the social services that they need.

Cheap Farmworkers and Cheap Food

The federal government intervenes extensively in U.S. agriculture. Water programs enable farmers to grow crops even in desert environments. Government-guaranteed prices or government-authorized marketing orders help to stabilize farm prices and incomes. And once a crop is harvested, federal programs often subsidize its sale at home and abroad. Americans are told frequently that the U.S. food system gives them an abundant supply of cheap food. Farmers often oppose changes in the federal policies by arguing that change would mean higher food prices.

The linkage between federal intervention in agriculture and lower food prices has, however, been shown to be exaggerated. Federal subsidies are soon capitalized into land prices, enriching land owners. These subsidies are not necessarily passed on to consumers. However, the myth that cheap farmworkers ensure cheap food persists.

The Commission had several discussions of the link between cheap farmworkers and cheap food, but it did not conduct research or make findings on this linkage. I believe that the question deserves serious study. If farmworker poverty holds down

food prices, then Americans need to know the amount of money that is saved. The U.S. government should be prepared to spend at least a share of these savings on additional services for impoverished farmworkers.

I believe that serious study of the theory that low wages mean cheap food is avoided because such a study would show that the facts do not bear it out. The numbers speak for themselves. Two-thirds of the nation's farm work is done by farmers and their families. Hired workers do only one-third of the nation's farm work. Immigrant farmworkers, the poorest hired workers, do about two-thirds of the work done by hired workers. This means that, if there were no immigrant farmworkers, almost 80 percent of the nation's farm work would be done without them. In other words, holding down the wages of seasonal farmworkers, while it impoverishes more than 1 million American workers, holds down the average family's food bill only a little. Even in the case of the fruits and vegetables that immigrant workers harvest, farm wages account for less than 10 percent of the retail price of a head of lettuce or a pound of apples. Doubling farm wages, and thus practically eliminating farmworker poverty, would raise retail food prices by less than 10 percent.

Retail food prices may not even increase if the U.S. government aimed to increase rather than depress farm wages. The farmers who relied on Mexican Bracero workers in the early 1960s argued that "the use of braceros is absolutely essential to the survival of the tomato industry."³ What happened when they nonetheless disappeared? The termination of the bracero program in 1964 accelerated the mechanization of the harvest in a manner that quadrupled production to 10 million tons between 1960 and 1990. Cheaper tomatoes permitted the price of ketchup and similar products to drop, helping to fuel the expansion of the fast food industry.

Not only is it inefficient to hold down food prices by holding down farmworker wages; it is also morally wrong. Why should immigration exceptions hold down the wages of farmworkers, who average \$5000 annually, in order to lower food prices for nonfarm workers, whose average earnings are \$25,000 per year?

Some people believe that farm labor problems will correct themselves as trade and mechanization eliminate farm jobs. This is a false hope. Labor-intensive agriculture is expanding,⁴ and neither trade nor mechanization is likely to eliminate many farm jobs in the 1990s. The value of U.S. fruit, vegetable, and horticultural specialty (FVH) production rose by 65 percent during the 1980s to \$28 billion, making these mostly labor-intensive commodities worth about one-sixth of total farm sales. The Commission discussed the question whether farm employers who plant labor-intensive crops and make no provision to attract and house the workers they need have a right to expect the federal government to permit the employment of immigrant workers who will not demand housing and other benefits—all to make their investments profitable. However, there was no consensus on the farmer's responsibility for creating jobs that, in today's farm labor market, are likely to be filled by immigrants.

Farmers assume considerable risk when they plant an apple or orange tree that will not yield fruit for five years. The Commission heard testimony from farmers who noted that they carefully studied soil, climate, disease, and marketing conditions before planting more apple and orange trees. These same farmers, however, admitted that they did not give much thought to the availability of seasonal workers to harvest their apples and oranges. They simply assumed that such workers would be available when they were needed. They further assumed that if U.S. workers could not be found, the federal government would open the border gates to immigrants, as it has done so many times in the past.⁵

3 California Senate, Senate Fact Finding Committee on Labor and Welfare, *California's Farm Labor Problems: Part I* 1961, p105.

4 FVH sales rose 64 percent from \$10.5 billion in 1978 to \$17.2 billion in 1987. Total farm sales rose 26 percent during this period, from \$108 billion in 1978 to \$136 billion in 1987. The United States is a net exporter of FVH commodities, exporting an all-time high of \$6 billion worth in 1991, or more than the value of U.S. wheat exports.

5 Numerous commissions have called attention to the federal government's tendency to guarantee farmers a work force. A 1959 commissions recommended that growers should have "the responsibility for recruiting and retaining a labor supply." Instead, "the Government has in effect guaranteed the grower a supply of labor" by making Mexican Braceros available. National Advisory Committee on Farm Labor, *Report on Farm Labor* (1959) (p. 31).

The Commission implicitly endorses the further expansion of fruit and vegetable agriculture by failing to note the connection between farmer decisions that create a need for workers, and the availability of the workers. But the expansion of labor-intensive U.S. agriculture in a way that guarantees continuing shortages of U.S. farmworkers raises a fundamental question about the linkage between immigration and agriculture: what responsibility does a farmer have to plan for a seasonal work force when he or she plants a crop that will require seasonal harvesters? If a manufacturing firm were to build a plant in a remote area, and then ask for government permission to import alien workers who would work there at the federal minimum or some higher wage, most Americans would reject the request, reasoning that a manufacturer should think about the availability of workers for himself.

Agriculture is assumed to be different because land is immobile. But there are fewer differences between farm and nonfarm factories than are apparent at first blush. Fruits and vegetables used to be grown near population centers (the reason New Jersey is called the Garden State), but lower land costs and the availability of labor encouraged the production of many crops to occur farther and farther from consumption.⁶ The federal government has traditionally validated producers' decisions—for example, to plant fruit trees in remote locations—by making immigrant farmworkers available to employers who ran into labor shortages.⁷

Since government in the past made immigrant workers available to farmers who planted labor-intensive crops in remote areas, landowners, bankers, processors and others who invest in orchards or vineyards expect the government once again to make workers available at "reasonable costs." Reasonable costs have come to mean wages low enough to get the crop harvested and to keep farmers in business, not wages high enough to induce Americans to do seasonal work in remote areas. The basic question of who has the responsibility to ensure that any crops planted can be harvested was not studied, much less resolved, by the Commission.

By avoiding the question of where responsibility lies for the expansion of a farm labor market that

leaves workers in need of special federal services, the Commission was able to sidestep the question of who should pay for the additional farmworker services that are recommended. The provision of only a need rationale for more federal funds and programs to alleviate the problems stemming from today's farm labor market makes it less likely that the funds and programs will be forthcoming.

The Final Report's recommendations are only the first step toward ending farmworker poverty. In the past, poor farm labor market conditions have done little more than prick the nation's conscience. These conditions should now attract another kind of interest. Low farm-worker earnings have always encouraged farmworkers and their children to seek nonfarm jobs. More than one quarter of the adult immigrants who entered the U.S. labor market during the 1980s entered as farmworkers. They and their children will not remain farmworkers. Perhaps 10 percent, or 200,000, will leave the farm work force each year and, if they and their children are ill-prepared for success in the nonfarm labor market, then all Americans have to share the cost of supporting, educating, and retraining them.

The Commission would have done better to recommend that the federal government should collect data and conduct studies on the true costs of cheap farmworkers. These costs are significant, and as the farm work force includes more and poorer immigrants, the cost will rise.

6 Zepp et al. in Martin, Philip (Ed.) *Migrant Labor in Agriculture: An International Comparison* (Berkeley: Giannini Foundation, 1984) explain how U.S. potato acreage and processing vegetables shifted from the northeastern and midwestern to the western states during the 1950s because of new production and storage technologies and the availability of federally-subsidized inputs in the west, including water and labor.

7 I have found one Congressional reference that U.S. farmers should have easy access to alien farmworkers so that they do not switch to growing crops that are eligible for government price supports. Senator Hatch (R-UT), arguing in support of the Wilson nonimmigrant farmworker program in 1985, argued that without it, "many of the perishable (FVH) growers may be forced out of business or may be forced to shift their production to nonperishable crops which are capable of being mechanically harvested. In light of the massive surpluses currently produced by wheat, corn, and soybean farmers, I believe the last thing Congress wants to do is to discourage perishable fruit farmers by unrealistic immigration restrictions. The alternative may be for them to enter other flooded agricultural markets." Congressional Record, September 12, 1985, p. S-11325.

FLCs and the Farm Labor Market

Farm labor contractors (FLCs) are the intermediaries who, for a fee, recruit, transport, and supervise farmworkers. Since IRCA was enacted in 1986, the share of all seasonal job matches made by FLCs has increased. Today it exceeds 50 percent in many harvest labor markets. Worker, farmer, and agency testimony as well as research suggest that FLCs are practically a proxy for the employment of undocumented workers and egregious or subtle violations of labor laws.

The increase in FLC activities has been driven by several factors, including farmer efforts to minimize enforcement risk, the arrival of more diverse immigrant workers, and the legalization of people with the requisite experience to get into the game. IRCA's employer sanctions increased the potential cost of hiring illegal alien workers, so growers rationally tried to shift these risks to FLCs, since they, under IRCA, are employers in their own right. Second, the "new-new" immigrants arriving since IRCA have in many cases needed non-traditional intermediaries for language, recruitment, or social service reasons – farmers used to dealing with Mexicans from the Central Highlands were not necessarily capable of dealing with the Mixtecs and Guatemalan Indians arriving today. Third, the SAW program legalized more persons who could be FLCs; FLC registration usually requires legal status, and some newly-legalized SAWs became FLCs.

Employer risk, diverse new workers, and aspiring legal FLCs provided the foundation for the surge in FLC activity which followed the passage of IRCA. There was an economic rationale as well. With more workers and more FLCs, employers could shift any IRCA-related documentation and sanctions costs to FLCs *at no additional cost*, since a new influx of workers, and competition between FLCs, kept the commissions or overheads paid to FLCs at their early-1980s levels even as the minimum wage rose and payroll taxes increased. In California's San Joaquin Valley, workers are typically paid the minimum wage (\$4.25 per hour after July 1, 1988), or a piece-rate wage of say 16¢ per 25 pound tray of raisin grapes cut and laid on paper.

The FLC got the same 30 percent commission or \$1.30 per hour overhead in the early 1990s as was paid in the early 1980s for recruiting and supervising raisin harvesters. Since "the employer" is liable for Social Security (7.5 percent), Unemployment Insurance (4 to 5 percent), and Workers Compensation (10 to 20 percent) payroll taxes, farmers who would in any event be paying wages plus 25 to 30 percent of these wages in payroll taxes, plus additional costs for immigration paperwork, recruitment, supervision, and social services, while incurring some risks in the event of INS or DOL enforcement, rationally turned recruitment and supervision over to FLCs. Thus enforcement risk, worker supply, and FLC availability combined neatly with economics to fuel the expansion of FLC activities.

The expansion of FLC activities in the wake of IRCA has helped to lower wages and incomes in rural America. FLCs are perhaps the most important dynamic actors in bringing the new-new immigrants to the United States. As they play the role of 19th Century ship captains in recruiting, transporting, and employing new arrivals, their activities promise to bring into rural communities some of the neediest immigrants – relative to the average American – that have ever arrived in the United States.

The Final Report recognizes the FLC problem, emphasizing the role of FLCs in "Mexicanizing" or "Latinizing" the farm work force throughout the United States. However, the Commission's recommendations for better data, higher bonds, and more enforcement will not solve it. The federal government has tried to regulate FLC activities since 1964 by requiring FLCs to identify themselves by registering with a government agency. Since then, FLCs in many states have been required to post bonds, to pass tests, and to take other steps designed to screen out individuals who might abuse farmworkers.

The Commission's FLC recommendations try to improve a system that may be fundamentally flawed. A contractor operates between a farmer and a farmworker, but the power of the two over the contractor is very different. Farmers typically know what the going overhead or commission is, and thus

FLCs are unlikely to extract an extra-high fee from them. Newly-arrived immigrants, on the other hand, may not know the minimum or the prevailing piece-rate wage, so that FLCs can turn what appears to be a money-losing deal with farmers into a profit-making deal by extracting money from workers. As the U.S. Industrial Commission observed in 1901, "the position of the contractor...is peculiarly that of an organizer and employer of immigrants...He holds his own mainly because of his ability to get cheap labor...(he) succeeds because he lives among the poorest class of people, knows them personally, knows their circumstances, and can drive the hardest kind of bargain."⁸

Many FLCs do not openly violate the laws that the Commission's recommendation aims to better enforce. Most FLCs do not pay workers below minimum wages. However, many indirectly rent workers the housing they need, charge them for rides to work, and sell them other services. Additionally, some fail to forward payroll taxes to government agencies.

Labor contractors who select immigrants and provide them with jobs and social services are privatizing both immigration policy and social service programs. The U.S. government thus has a diminished ability to regulate immigration and the farm labor market. For example, workers employed by FLCs often receive 25 percent less income just because they must pay for housing and transportation to work. A worker earning \$5 hourly for 40 hours or \$200 weekly must typically pay \$6 daily for housing (\$42 weekly) and \$4 daily for transportation (\$20), so that moving migrant farmworkers off the farm, as often occurs when a farmer switches to hiring workers through a FLC, can lower their take-home pay significantly even if wages remain the same.

The power of farmers over FLCs, and the power of FLCs over farmworkers, distinguishes labor contracting activities in the farm and nonfarm sectors. I must therefore dissent from the CAW recommendation to bring all labor contracting activities under one federal body of law and regulation. A labor contracting firm that supplies engineers or doctors, or secretaries and nurses, needs a different regulatory framework than a FLC supplying farmworkers.

Perhaps the Commission would have been better advised to recommend the German system of prohibiting labor contracting in industries in which contracting has proven difficult to regulate. So long as farm and nonfarm employer-labor contractor and worker differences persist, I believe that special laws and regulations will be needed to regulate farm labor contracting.

SAWs, Mixed Families, and the New Rural Poverty

For the past century, immigration to the United States has been primarily an urban phenomenon. However, about one-fourth of the current fourth wave of immigrants is arriving in a rural America that is ill-prepared to assist them. Furthermore, the new-new immigrants arriving in rural America are often the neediest immigrants – relative to the prevailing American average – that have ever arrived.

IRCA's most important legacy may be the foundation it laid for a new wave of rural poverty in the United States. The rural poverty that many thought was reduced when millions of small white and Black farmers left agriculture in the 1950s and 1960s may be recreated through immigration in the 1990s.

This rural poverty may prove even more difficult to reduce. Most of the immigrants arriving in rural America are young men with primary school educations or less. They are seasonal farmworkers for only 10 or 15 years so that, at age 35 to 40, many can no longer find jobs harvesting fruits and vegetables. In the past, most returned to Mexico, and sent their sons to replace them in U.S. fields and orchards. Today, more appear to be settling in the United States.

There are no reliable data on the new immigrants and the new rural poverty. SAWs were excluded from the INS-funded study of the newly legalized population, and so there are no data on what a random sample of SAWs is doing 3 to 5 years after receiving an immigrant status. There is even less information available on whether SAWs are uniting

8 Reports, U.S. Industrial Commission (Washington: Government Printing Office, 1901), Volume XV, Part III, pp. 320-21.

their families in the United States, and how these families are faring.

There is little disagreement that farmworkers need help. IRCA prompted the U.S. Department of Labor to begin the National Agricultural Workers Survey (NAWS) in order to determine whether the exit of newly-legalized SAWs would lead to farm labor shortages. The NAWS found that three-fourths of the farmworkers are minorities, usually immigrants from Mexico who have been in the United States less than 10 years. Most of these farmworkers are married men who are poorly educated and live with their families at their U.S. work sites. In farmworker households, almost everyone works — 85 percent of the household members who are 15 and older have a job sometime during the year. Yet 46 percent of all SAS workers, and 77 percent of the recently-arrived unauthorized SAS workers, have below-poverty level incomes.⁹

Many casual estimates and case study reports also refer only to harvest workers, who in the NAWS were only 42 percent of all workers (840,000; coincidentally, the number of harvest workers is equal to the number of migrant workers in the NAWS). Even if 40 percent of the harvest workers were unauthorized, as is sometimes asserted, 40 percent unauthorized times 42 percent harvesters means that only 17 percent of the total SAS work force is unauthorized.

The current SAS work force is probably 10 to 20 percent unauthorized. However, there is general agreement that the unauthorized percentage is increasing, and that NAFTA may intensify the factors which push rural Mexicans into rural America, and thus push the unauthorized percentage of the U.S. farm work force higher in the 1990s.

The SAW program was worker- and industry-specific. Most of those legalized under the SAW program were young men from Mexico. Many of these men have families, and some of them have brought their families to the United States without authorization. Immigration policies developed in deference to family ties mean that most of these large Mexican families will be tolerated in the United States. The SAW program does not necessarily exclude family members; it merely puts them in an illegal status until the reality that they are

here and will not be deported is eventually accepted and they, too, are legalized.

However, while these mixed families—mixed in the sense that the members have a variety of immigration statuses—wait for this reality to be accepted, their presence raises important social policy questions. In some SAW families living in the United States, the father is a Permanent Resident Alien, the mother and older children are unauthorized, and there are one or more U.S.-citizen babies. The SAW father is barred from some federal assistance programs for 5 years, and other members of the family may be ineligible for most services, but the U.S. citizen family member is not barred from any service on grounds of immigration status. The SAW program produced far more “mixed family” situations than the general legalization program because 82 percent of the SAW applicants were men.

As SAWs bring their families to the United States, they raise the issue of how social policies should deal with families, some of whose members are legal and others unauthorized. Nowhere is this mixed family issue more prominent than in agriculture, primarily because only agriculture had a worker-and industry-specific legalization program.

Conclusion

The Commission's Final Report does not have a descriptive title because there was no consensus on a unifying theme such as *Good Intentions Gone Awry* or *Bringing Farm Labor into the Mainstream*. Instead, almost four years of study and debate produced a final report without a clearly articulated justification for action. The Final Report recommends incremental changes that, if implemented,

⁹ There are a variety of estimates of the percentage of U.S. farmworkers who are currently unauthorized. In hearings and case studies conducted by or for the Commission on Agricultural Workers (CAW) in 1990 and 1991, estimates of 10 to 40 percent unauthorized workers were made. However, it should be emphasized that many of the estimates offered are highly speculative, and in some instances are made by persons who have an incentive to overestimate the percentage (e.g. employers who are asked “if IRCA were strictly enforced, would you face a shortage of labor?” have an incentive to overestimate their employment of unauthorized workers if they are also advocating a program which would give them easy access to legal foreign farmworkers in the event that unauthorized workers were no longer available).

would reduce the immigration and labor law exceptions that now apply to farm labor, but the Commission develops no overarching theory and no sense of urgency to justify Congressional action on its recommendations.

I believe that there is a theory to justify action. Immigration and labor law exceptions for agriculture have acted as a subsidy that encouraged the expansion of a subsector of a U.S. industry in a manner that leaves the majority of its workers in poverty. Cheap farmworkers do not provide consumers with cheap food, but they do act as a regressive tax on some of the poorest American workers. Furthermore, fruit and vegetable agriculture does not employ seasonal farmworkers for a lifetime; when they leave through agriculture's revolving-door labor market, they increasingly become the neediest residents in American towns and cities.

Americans want a prosperous farm economy that can provide them with an abundant supply of food. But the fruit and vegetable subsector of American agriculture is expanding in a manner that requires all taxpayers to alleviate the human suffering it produces. Making the fundamental changes in the farm labor market that are necessary in order to reduce or eliminate farmworker poverty, instead of merely mitigating it, is the economically and morally right thing to do. I wish that the Commission had em-

braced the idea that fruits and vegetables can be produced in the United States without farm-worker poverty and without requiring federal assistance programs to overcome labor market deficiencies. The Commission did not tackle the issue of eliminating the farmworker poverty problem at its source. For this reason, while I endorse most of its recommendations, I fear they deal with symptoms rather than causes and remedies.

Concurring:

Commissioner Dolores Huerta

Concurring Statement:

Commissioner Clarence E. Martin, III

While I do not agree with all of the statement of Commissioner Martin, I do agree with his ultimate conclusion that the recommendations of the Commission deal with symptoms rather than causes and remedies.

I believe this was because the time allotted to the Commission to prepare its report was not sufficient. The time only allowed the Commission to address the symptoms rather than the causes and remedies. Because of the extensive background work performed by the Commission, I believe it should be continued to prepare a report dealing with the causes and remedies identified in its report.

Statement Of Commissioner Russell L. Williams

In drafting of the Report of the Commission, a number of alternative Findings and Recommendations were discussed and considered — some are contained in the body of the report, others were not adopted for inclusion. While the Commission embraced a broad view of its mandate, background discussion of matters should not be interpreted as reflecting a finding, recommendation or conclusion.

One theme of this report is that labor statutes which result in employment-based differentiations should be reevaluated. While it may be neither possible nor desirable to vacate all such distinctions, divergent and inconsistent approaches under law often give rise to unenvisioned effects upon all whose interests such laws are intended to advance. Below are supplemental views — concurring in part and dissenting in part — regarding certain of the Findings and Recommendations of the Commission, as well as one matter discussed by the Commission but ultimately not included in the report.

The Commission's Findings place great emphasis on the existence of a surplus of seasonal agricultural workers in the post-IRCA period, and suggest illegal immigration induced by the SAW program as the cause. There is little question that illegal immigration into the United States is continuing. However, this appears to be nothing more than a continuation of that which occurred for years prior to the enactment of IRCA, and that IRCA has thus far been ineffective in curtailing. While SAW-related factors have undoubtedly encouraged some aliens to enter this country illegally, most observers agree that illegal immigration is economically motivated. The Commission heard little substantive evidence that unauthorized entry has significantly increased because of the SAW program. There is little justification for the conclusion there would have been more than marginally less illegal immigration had there been no SAW program.

The Commission's Findings also stress the "stagnation" in farmworker wages since the enactment of IRCA, attributed largely to the surplus of farmworkers. This "wage stagnation" was contra-

dicted by USDA witnesses and others who testified on a preliminary discussion paper released by the Commission in March, 1992. National hired farmworker wage data suggest that while wage increases for such farmworkers were modest in the 1986-1991 period, this was due more to national economic factors than to factors affecting the agricultural labor market. In fact, data presented to the Commission showed that U.S. hired farmworker wages have risen at a faster rate than U.S. nonfarm worker wages during the post IRCA period. A conclusion that farmworkers' economic welfare has been adversely affected by IRCA-related factors, or that farmworkers' economic welfare has even declined, relative to all workers, since 1986 is not supported by the national wage statistics provided to the Commission.

This apparent contradiction is vexing to the non-economist. On one hand those employed by the Commission suggest one interpretation of the data, while on the other hand the USDA (the source of the data) argues for a differing interpretation. Perhaps in this political year during which referrals to President Harry Truman have been in vogue, his remarks regarding economists and their "two-handed" interpretations is appropriate. President Truman, being faced with a difficult economic decision, requested the advice of a prominent economist who opined that "...on one hand" the data suggests such and such, while "on the other hand" it suggests a different interpretation. President Truman, in frustration, instructed his staff only to bring him one-handed economists in the future. Here it appears we may have a case of two, one-handed economists each espousing his or her view. Despite the Commission's Findings, this matter remains unresolved and because of the potential policy consequences open to debate. It requires and deserves a more complete treatment than given it by the Commission.

In 1964, contemporaneous to the repeal of Public Law 78 (the "Bracero Program"), Congress enacted the Farm Labor Contractor Registration Act (FLCRA) to regulate the activities of farm labor contractors (FLCs) operating across state lines. The early 1970s saw the first of the NAACP vs. Secretary of Labor lawsuits contending dissimilar treat-

ment of farmworkers by the federally funded state employment services. In 1974, FLCRA was amended and broadened to include intrastate FLCs and organizations not previously considered to be FLCs (e.g. nonprofit harvesting associations, packinghouses, etc.). In 1982, FLCRA was repealed, and the Migrant and Seasonal Agricultural Workers Protection Act (MSPA) was enacted. However, neither FLCRA nor MSPA has proven effective in protecting either farmworkers or farmers.

For a variety of reasons, including the NAACP vs. DOL litigation, the U.S. and state employment services have largely ceded the job-matching function they once performed to labor contracting firms. As businesses have become less self-sufficient and increasingly dependent on specialized assistance, the contracting of labor services has proliferated. Although such activity assumes various forms and labels, there is little substantive difference. While a company may turn to a "Kelly girl" or a "Jobs Are Us" or a developer may turn to a building contractor or "subcontractor" to satisfy its "specialized" or "short term" labor requirements, the essential service provided is the contracting of labor to perform services necessary for the functioning of another organization. However, excepting the agricultural sector, such employee "contracting" or "leasing" appears to be largely unregulated at the federal level and unevenly regulated at the state level.

While the state employment services have been tasked with an enforcement requirement which is seemingly at cross purpose to their placement role and which they are unequipped and illsuited to fulfill, both the federal and/or state labor agencies have surrendered much of their enforcement responsibility to third parties. At the same time, employers endeavoring to operate within the law find they are unable to legally rely on the representations of the federal and/or state agencies charged with enforcement of the labor statutes. This is both contradictory and counterproductive. It has resulted in uneven enforcement, in exacerbation of the issues and in protracted, Jihad-like litigation which serves neither to advance the public interest nor that of the parties.

Legislated distinctions governing the contracting of labor, based upon sector-of-the-economy differences, should be replaced with a uniform body of federal law to govern all such activity. Congress should scrutinize the continued appropriateness, effectiveness, and cost/benefit of third party enforcement of protective statutes. Employers should be held harmless if they rely on the representations of government agencies to direct their employment practices and are later sued and found not to be in compliance.

The right to organize and bargain collectively is generally recognized under federal law. A federal statute, objectively and neutrally governed, protective of the rights of all — the public, the agricultural employee and the agricultural employer — should be enacted.

The Commission's Findings conclude that following a brief hiatus immediately following the enactment of IRCA, there is a substantial component of the agricultural work force that is illegal. Yet because of the current surplus of agricultural workers, taking these workers into account, the Commission has recommended against any new or emergency labor force program. However, the Commission recommends that Congress closely monitor labor supply so that it could act quickly should effective enforcement or employer sanctions, etc. occur and a labor shortage develop.

Given the protracted political debate over IRCA, it seems unrealistic to expect Congress to be able to act in a sufficiently timely manner should such a change occur. That was the problem Congress was trying to address by having an emergency mechanism in IRCA.

Although agriculture may be an industry in which short-term seasonal labor shortages are likely, it is not the only industry where such shortages could occur. Since the passage of IRCA, Congress has enacted two additional immigration bills aimed at creating mechanisms for addressing the labor needs of employers. One responsible approach for addressing emergency short term needs for large numbers of nonimmigrant alien workers on a seasonal or temporary basis, would be to create in immigration law a general mechanism that would meet the legitimate needs of *all* employers while

protecting the long term interests of domestic workers and the national economy.

One of the issues deliberated upon by the Commission, but ultimately not included in the report, was the matter of the coverage of agricultural employment under some form of overtime standard. While concurring in the Commission's decision not to make such a recommendation, in the event Congress should in the future consider such a requirement, the California model — involving the largest agricultural employment in the nation — may be informative.

In 1980, California provided agricultural employees with an overtime premium after ten hours in a workday and for all hours on the seventh day of a workweek. However, the California regulation (California Industrial Welfare Commission Wage Order 14-80) exempts irrigators from overtime because of the bifurcated nature of irrigation work. Similarly, shepherders involved in the range production of livestock are exempt from the provisions of the wage order because they are technically at work 24 hours a day, 7 days a week.

Recognizing that agricultural production is a biological and not a manufacturing process, an examination of the continued appropriateness of the complete exemption of agricultural employment from the overtime provisions of Fair Labor Standards Act (FLSA) should consider the effects of the climatic, seasonal, and perishable aspects of crop production on agricultural employment. Exceptions, such as those provided in the California wage orders, should be included in an amendment to the FLSA bringing agricultural employment under any overtime requirement. Consideration should be given to an exemption for hours worked during emergencies based on weather conditions (freeze, rain, hail, hurricane, etc.) and other acts of God outside the control of the employer.

In agricultural employment, any overtime regulation should be based on hours of work per day not on total hours of work per week. Additionally, to minimize adverse economic consequences, a limited exemption based on seasonality and perishability, perhaps similar to those found at Sections 7(c) and 7(d) of the FLSA prior to the 1974 amendments, are one approach worthy of evaluation.

Concurring Statement:

Commissioner Honorable Richard B. Abell

I concur in the statement of Commissioner Williams except with respect to collective bargaining.

Concurring Statement:

Commissioner Clarence E. Martin, III

I concur with the statement of Commissioner Williams except for the provision pertaining to the right to organize and bargain collectively as set forth therein, for the reasons set forth in my statement.

Concurring Statement:

Vice-Chairman George F. Sorn

This commissioner agrees with most of the views of Russell L. Williams, but dissents in his view concerning the need for some form of overtime standard. Having worked in agriculture for over 50 years, much of that time in the field, it is this commissioner's opinion that overtime coverage, either on a daily or weekly basis, will not accrue to the benefit of the workers. Unfortunately, most of fruit and vegetable agriculture is seasonal and subject to weather, market, and other conditions which preclude any guarantee of continued employment either on a daily, weekly, or yearly basis. Crop maturity, weather, and market conditions can dictate the need for 14 or more hours of work one day and none the next, or 70 or more hours in one week and very little the next. Workers understand this and generally want to work when work is available. An overtime provision could well have the effect of reducing work available (particularly in the current labor market) and, therefore, reduce overall earnings for field farmworkers in fruit and vegetable harvesting operations. Employers would use more workers in order to reduce the possibility of overtime. The commission in its deliberations leaned heavily on the necessity for farm employers to attempt to increase and lengthen periods of employment. The impact of overtime pay would have the opposite effect. It is proper that overtime pay is *not* one of the recommendations in the full commission report.

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GLOSSARY

Alien: Any person not a citizen or national of the United States.

Anchor households: Households established by immigrants in the United States that serve to ease the transition into U.S. society and the U.S. labor force for new immigrants — both authorized and unauthorized.

Bracero Program: The term commonly used to refer to the set of agreements between the U.S. and Mexican governments that allowed for the importation of contracted agricultural workers from Mexico into the United States. These agreements began August 4, 1942, and ended in January, 1964, with a several year interruption during which time there was no formal agreement. Throughout the course of the program, between 4 and 5 million Mexican agricultural workers were admitted to the United States for temporary employment.

British West Indies (BWI) Program: The British West Indies Program functioned between 1943 and 1952, at first through an intergovernmental agreement and then under the ninth proviso of the Immigration Act of 1917. Between 1943 and 1952 approximately 90,000 workers from the Caribbean were admitted for temporary employment in U.S. agriculture.

Colonias: Hispanic settlements along the southern border of the United States that generally have few zoning restrictions and lack access to municipal services.

Coyotes: Persons who, for a fee, provide assistance to international migrants crossing the border illegally.

Cyclical Migrants: International migrants who spend a portion of the year working in the United States, but return, on a regular basis, to their homes in another country.

Employer Sanctions: Penalties imposed under the Immigration Reform and Control Act for the hiring, recruiting, or referring for a fee of unauthor-

ized aliens or for the failure to verify the employment authorization of each new hire.

ESA-92: Employment Security Administration Form No. 92 on which employers report quarterly the number of SAWs employed and person-hours worked. This reporting requirement was in place for the duration of the RAW program to allow the Bureau of the Census to estimate the number of person-hours worked by SAWs as required for the calculation of the RAW shortage number. (Appendix I includes an analysis of data from ESA-92 forms.)

Farm Labor Contractors (FLCs): Labor market intermediaries who, for a fee, recruit, assemble, and supervise crews of farmworkers. FLCs are also referred to as “crew leaders,” “crew bosses,” or *contratistas*. Many FLCs also provide transportation, housing or other services to farmworkers.

Farm Labor Supply Study (FLSS): A study conducted for the U.S. Department of Labor. The FLSS is one of several research initiatives undertaken by the Department to examine the impacts of the Immigration Reform and Control Act of 1986 as mandated in that Act. The study dealt specifically with the effect of improvements in wages, working conditions, and enhanced recruitment efforts on the farm labor supply. The study is referenced in this report as Kissam and Griffith 1991.

Farm Labor Survey (FLS): A survey conducted by the U.S. Department of Agriculture that estimates farm employment, hours worked, and average agricultural wage rates for the United States. These estimates have been published for 80 years. (Appendix I includes a report prepared by the U.S. Department of Agriculture on the effects of the Immigration Reform and Control Act.)

Fruit, Vegetable, and Horticultural Specialty (FVH) Production: A classification that includes the production of most labor-intensive crops. Fruit includes berries, grapes, citrus fruits, deciduous tree fruits, avocados, bananas, coffee, dates, figs, olives, pineapples, tropical fruit, and tree nuts. Vegetable

includes all vegetables and melons grown in the open. Horticultural specialties includes bedding plants, bulbs, florists' greens, flower and vegetable seeds, flowers, foliage, fruit stocks, nursery stock, ornamental plants, shrubberies, sod, mushrooms, and vegetables grown under cover.

H-2 Program: A program authorized under the Immigration and Nationality Act of 1952 that allowed for the importation of temporary foreign workers, including agricultural workers. Employers who anticipated a shortage of U.S. workers could request nonimmigrant alien workers. This involved a request to the U.S. Department of Labor for certification, with final approval by the U.S. attorney general. To obtain approval, the Department of Labor had to certify that a labor shortage existed and that the wages and working conditions of U.S. workers similarly employed would not be adversely affected.

H-2A Program: The H-2 program as amended by the Immigration Reform and Control Act of 1986. As amended, the H-2 program is divided into agricultural (H-2A) and nonagricultural (H-2B) employment categories. The procedure for obtaining workers under the H-2A program is very similar to that specified for obtaining agricultural workers through the former H-2 program.

Home-base States: The states of California, Florida, Texas, and the commonwealth of Puerto Rico where most agricultural workers, many of whom migrate to northern states on a seasonal basis to find agricultural work, live.

I-9 Form: A form that employers are required to complete by the Immigration Reform and Control Act to verify that they have seen valid identification from each new hire that proves the employee is authorized to work in the United States.

Immigrant: As defined in the Immigration and Nationality Act, an alien in the United States other than a nonimmigrant.

Latinization: The process whereby a high concentration of Latinos move into a certain area in the United States bringing with them language and cultural attributes, thereby transforming the area into a culturally Latin area.

Mayordomo: An agricultural foreman or field supervisor, hired by either farm labor contractors or farm employers. Often these individuals meet the criteria of farm labor contractors as defined by the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), yet they are distinguished in common usage from labor contractors.

National Agricultural Workers Survey (NAWS): A survey conducted for the U.S. Department of Labor to monitor the supply of workers performing seasonal agricultural services as mandated by the Immigration Reform and Control Act. The study collects information on the characteristics and work patterns, including job history data, used to estimate fluctuations in the labor supply. Reports from the NAWS are referenced as USDOL 1990 and 1991. (Appendix I includes a report prepared by the Department of Labor based on NAWS data for the Commission on Agricultural Workers.)

Nonimmigrant: An alien legally admitted to the United States for a temporary period of time for a reason specified in the Immigration and Nationality Act.

Nortización: The process by which villages in Mexico become increasingly socially and economically oriented toward the United States as a result of high levels of northward, primarily cyclical, migration.

Pioneer Migrants: An immigrant who moves to a new part of the country or sector of the economy without the benefit of network contacts with friends or family.

Pre-1982 Program: The general legalization program of the Immigration Reform and Control Act that granted legal status to unauthorized immigrants who had lived continuously in the United States

since January 1, 1982. There were approximately 1.7 million applicants through this program.

Raiteros: Persons who charge farmworkers for rides to work. The term includes both short-distance commuting to the fields and long distance travel. Generally these individuals are not licensed as farm labor contractors to provide such transportation services.

Replenishment Agricultural Worker (RAW) Program: A program created by the Immigration Reform and Control Act through which additional foreign farmworkers could be admitted to the United States in the event that an agricultural labor shortage was determined to exist. The program is scheduled to expire on September 30, 1993.

Seasonal Agricultural Services (SAS): Defined by the Immigration Reform and Control Act (IRCA) as the performance of field work related to planting, cultural practices, cultivating, growing, and harvesting of fruits and vegetables of every kind and other perishable commodities. The term was further defined by the U.S. Department of Agriculture. Such work determined eligibility for the SAW program.

Special Agricultural Worker (SAW) Program:

A program created by the Immigration Reform and Control Act that allowed farmworkers who could prove that they had completed at least 90 man-days of work in seasonal agricultural services between May 1, 1985 and May 1, 1986 to apply for legal status. There were approximately 1.3 applicants through this program.

Unauthorized Worker: The term used to refer to workers lacking the legal status to work in the United States. This term is more accurate than the previously common term "undocumented worker," as many unauthorized workers now possess counterfeit documents.

Upstream States: States that do not have substantial agricultural labor communities and must rely on migrant farmworkers who live in home-base states or other countries.

U.S. Employment Service: Provides federal funds and support to associated state agencies that collect and disseminate job market information, place individuals on jobs after ascertaining that those jobs meet minimal conditions of employment, and provide a range of other services associated with matching prospective employees with employers.

CHRONOLOGY OF SELECTED IMMIGRATION LEGISLATION

- 1862** Act to Prohibit "Coolie Trade" restricted trade in labor from Asia (12 Stat. 340, 37th Cong. 2nd sess., 19 Feb. 1862.)
- 1864** Contract Labor Law facilitated the importation of contract laborers (13 Stat. 385, 38th Cong. 1st sess., 4 July 1864.)
- 1875** Immigration Act reenforced "Coolie trade" restrictions and prohibited the importation of prostitutes and convicts (18 Stat. 477, 43 Cong. 2nd sess., 3 March 1875.)
- 1882** Immigration Act represented a comprehensive effort by federal government to regulate immigration and expanded the list of excluded classes of aliens (22 Stat. 214, 47th Cong. 1st sess., Aug. 3, 1882.)
- Chinese Exclusion Act curbed immigration from China and prohibited Chinese from becoming citizens (22 Stat. 58, 47th Cong. 1st sess., May 6, 1882.)
- 1885** Anti-Contract Labor Law (Foran Act or Alien Contract Labor Law) prohibited the importation of contract labor and repealed "all laws or parts of laws conflicting" with its prohibition of importing laborers and assisting immigrants. This Act underwent minor amendments in 1877, 1888, 1891, 1893, 1894, and 1903, 1907, including expanding the list of excluded classes of aliens (23 Stat. 332, 48th Cong. 2nd sess., 26 Feb. 1885.)
- 1917** Immigration Act codified previously excluded classes; virtually banned immigration from Asia and included a literacy test to exclude those over 16 who could not read any language. Persons escaping religious persecution and a few other classes of aliens were exempt from the literacy test. The Act's "Ninth Proviso" of Section 3 allowed, under certain circumstances, temporary importation of contract laborers for the first time since 1885 (39 Stat. 875, 64th Cong. 2nd sess., 5 Feb. 1917.)
- 1921** Immigration Act set national quotas to limit immigration from each country to 3 percent of U.S. residents of each nationality as determined by the 1910 census. Contained numerous exemptions, including anyone who resided in Canada, Mexico, Cuba, South or Central America, or the Caribbean for at least a year immediately before coming to the United States (42 Stat. 5, 67th Cong. 1st sess., May 19, 1921.)
- 1924** Immigration Act revised the quota system. Lowered the annual quota to 2 percent; changed the base year to 1890; and reduced the number of exemptions (43 Stat. 153, 68th Cong. 1st sess., May 26, 1924.)
- 1942** United States and Mexico agreed to permit temporary agricultural contract labor from Mexico to work in the United States. *See* 56 Stat. 1759. This agreement, which came to be known as the Bracero Program, stipulated that the employment of Mexican workers not displace domestic workers or reduce their wages. It received statutory authorization in 1951. *See* 65 Stat. 119. As the program developed, the requirement that agricultural employers make reasonable efforts to attract domestic workers was added.
- 1952** Immigration and Nationality Act (McCarran-Walter Act) eliminated race as a bar to immigration and naturalization; reaffirmed the national origins system but gave every nation a quota; provided for a more thorough screening of immigrants; established preferences for those with relatives in America or with skills; and provided for the importation of temporary workers under the "H-2" provisions (66 Stat. 163, 82 Cong. 2nd sess., June 27, 1952.)

- 1953** Refugee Relief Act allowed special non-quota visas for eligible refugees (67 Stat. 400, 83rd Cong. 1st sess., Aug. 7, 1953.)
- 1964** The United States and Mexico terminate the Bracero Program.
- 1965** Immigration Act abolished the national origins system; established a limit of 170,000 outside the Western Hemisphere, but placed a limit of 20,000 on any one country; admitted immigrants on a first-come, first-qualified basis; established preferences for close relatives, refugees, and those with occupational skills needed in the United States; and placed a ceiling of 120,000 on immigration from the Western Hemisphere. These limits and ceilings were extended and modified in 1976, 1978, and 1980, establishing a worldwide ceiling of 290,000 and uniform preference system in 1978 (79 Stat. 911, 89th Cong. 1st sess.)
- 1978** Established a 16 member Select Commission on Immigration and Refugee Policy to study and report on immigration and refugee laws, policies, and procedures (95th Cong. 2nd sess., Oct. 5, 1978.)
- 1986** Immigration Reform and Control Act revised procedures for temporary entry of foreign agricultural workers and established a distinction between nonimmigrant aliens coming to the United States to perform temporary agricultural labor and those coming to perform other temporary service or labor; provided a legalization program for certain undocumented aliens who entered the United States prior to 1982; provided penalties for employers who knowingly hire unauthorized aliens; established a Special Agricultural Worker (SAW) Program whereby eligible alien agricultural workers could obtain permanent resident status without regard to numerical limitations on immigration; and established the Commission on Agricultural Workers and the Commission for the Study of International Migration and Cooperative Economic Development (100 Stat. 3359, 99th Cong. 2nd sess., Nov. 6, 1986.)
- 1988** Immigration Act promoted diversification in legal immigration (102 Stat. 3908, 100th Cong. 2nd sess., Nov. 15, 1988.)
- 1989** Immigration Nursing Relief Act provided for the adjustment of status for eligible nurses admitted as nonimmigrants and established conditions for the admission of foreign registered nurses. The Act amended the SAW Program to provide for termination of temporary resident status for fraud and to restrict eligibility for SAW status (103 Stat. 2099, 101st Cong. 1st sess., Dec. 18, 1989.)
- 1990** Immigration Act revised the numerical limits and preference system regulating legal immigration; provided transition permanent residence visas for certain spouses and children of aliens legalized under IRCA; codified the Immigration and Naturalization Service's administrative program of "family fairness" providing for voluntary departure for certain spouses and children of aliens legalized under IRCA; revised the terms and conditions under which foreign professional workers could come temporarily to work in the United States; eased other immigration restrictions; and established the Commission on Immigration Reform. Technical corrections and amendments were made in 1991 (104 Stat. 4978, 101st Cong. 2nd sess., Nov. 29, 1990).

IRCA'S LEGALIZATION PROGRAMS

General Legalization Program

Program Description

- 12-month application period
- may apply only in the United States
- prior to permanent residence status may travel on brief and casual trips abroad (occasioned by a family obligation involving an occurrence such as the illness or death of a close relative or other family need)

For permanent residence:

- must apply for permanent residence during the one-year period beginning with the nineteenth month after the grant of temporary residence
- must establish continuous residence since the date of grant of temporary resident status
- must demonstrate a minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States
- must otherwise be admissible as an immigrant

Eligibility Requirements

- must have entered the United States before January 1, 1982
- has continually resided in US in an unlawful state between January 1982 and date of application
- continually present in the U.S between November 6, 1986 and date of application
- must be admissible as an immigrant
- no conviction of a felony or three misdemeanors
- if so required, is registered or registering under the Military Service Act

Evidentiary Standards

- continuous residence and physical presence in the United States must be established through documents, together with independent corroboration of the information contained in such documents, and the documents provided should be employment related, if such documents are available

Restrictions

- during the five year period after the grant of temporary residence is not eligible, with few exceptions, for any program of financial assistance, furnished under Federal law on the basis of financial need

Special Agricultural Worker Program

Program Description

- 18 month application period
- may apply within or outside the United States
- has the right to travel abroad during temporary residence (including commutation from a residence abroad)

For permanent residence:

- is automatically adjusted to permanent residence status

Eligibility Requirements

- resided in the United States
- performed seasonal agricultural services in the United States for at least 90 man-days during each of the 12-months periods ending on May 1, 1984, 1985, and 1986 (SAW I) or in the 12-month period ending on May 1, 1986 (SAW II)
- must otherwise be admissible as an immigrant
- applicant is not ineligible due to being inadmissible under the "public charge" rule if he/she demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance

Evidentiary Standards

- must produce sufficient evidence to show extent of employment as a matter of just and reasonable inference — in such a case the burden shifts to the Attorney General to disprove the applicant's evidence with a showing which negates the reasonableness of the inference to be drawn from the evidence

Restrictions

- during the five year period after the grant of temporary residence, is not eligible for some programs of public assistance

Other Programs

In addition to updating the Registry date from June 30, 1948 to January 1, 1972, IRCA also provided for the legalization of certain Cuban/Haitian entrants who arrived in the United States before January 1, 1982. Later amendments established a special adjustment program for nationals of specific countries who met particular criteria.

RECORD KEEPING REQUIREMENTS

Fair Labor Standards Act

- Maintain records of wages, hours, employment conditions and practices for each employee.
- If claiming one of FLSA's exemptions for agriculture, provide proof the exemption applies.

Occupational Safety and Health Act¹

- Develop, implement and maintain at the work place a written hazard communication program describing how the requirements for labels and other forms of warnings and information and training will be met. It must include a list of hazardous chemicals known to be present and how the employer will inform the employees of hazards.
- Ensure hazardous materials containers are properly labeled.
- Maintain and make readily accessible copies of materials safety data sheets obtained from manufacturer or importer, and other information for each hazardous chemical used.
- Maintain records of occupational injuries and illnesses for five years from the end of the year in which they occur.

Federal Insecticide, Fungicide, and Rodenticide Act²

- Maintain records and reports showing compliance with requirements that: (1) only certified applicators use or supervise the use of restricted use pesticides; (2) reentry intervals have been observed; and (3) all state laws and state and federal regulations have been complied with.

Migrant and Seasonal Agricultural Worker Protection Act

- Maintain records of certification of farm labor contractors and employees who perform farm labor contractor activities.
- Proof that transportation vehicles meet safety and insurance coverage requirements.
- Provide migrant workers with written information on wages, hours, working conditions, housing, place of employment, period of employment, crops, transportation, and any other benefits to be provided and any costs to be charged to workers at time of recruitment.

- Provide each worker with a written statement of earnings, deductions, and net pay. Preserve records on each employee which include the basis on which wages are paid, the number of piecework units earned, if applicable, number of hours worked, total earnings, withholdings, and net pay for three years.

Immigration Reform and Control Act

- Maintain records verifying the eligibility of each employee hired to work in the United States.
- Complete work day reports (ESA-92) for each quarter of employment of an alien whose INS identification number begins with "09" or "9" (through October 30, 1992).

Federal Insurance Contributions Act (Social Security)

- For those workers covered, maintain employee earnings records, file reports of earnings annually, and separately report withholdings for Social Security and Medicare.
- File "Employer's Quarterly Federal Tax Return" for nonagricultural employees as well as "Employer's Annual Tax Return for Agricultural Employees" at the time the employers file their agricultural employees' Social Security taxes.
- Keep for at least four years after the tax is due or is paid (whichever is later) for each employee receiving wages: name, address and occupation; periods of employment; Social Security number; employer's identification number; total amount and date of each wage payment; amount of each wage payment subject to Social Security and Medicare, and the amount withheld; and duplicate copies of the quarterly and annual returns on which employees' wages are reported for Social Security purposes.

1 Appropriations riders have provided exemptions to the Occupational Safety and Health Act for many agricultural operations.

2 Regulations of the Federal Insecticide, Fungicide, and Rodenticide Act are currently being revised by the Environmental Protection Agency.

Federal Unemployment Tax Act

- Requirements vary based on level of state coverage.

Federal Income Tax

- Maintain same records as other employers except that employers of agricultural workers who

do not qualify for FICA are not required to withhold income taxes unless both the employer and employee voluntarily agree. However, when the worker is not performing "agricultural labor" as defined in the Internal Revenue Code, the employer must withhold income tax from those earnings.

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