



***UFCW Canada and the
Canadian Labour Congress***

***National Report:
Status of Migrant
Farm Workers in Canada
December 2002***

***Brief presented to the
Honourable Jane Stewart
Minister of Human Resources
Development Canada***

Executive Summary

In the fall of 2001, the United Farm Workers of America (UFWA) Canadian office presented a report on the *Status of Migrant Farm Workers in Canada* to the federal Minister of Labour. This report provided an analysis of Canada's *Seasonal Agricultural Workers* (SAW) program, itemizing the many areas within the program that were ineffective and failed to adequately protect the rights of migrant workers. The report recommended a number of changes the federal government needed to make in order to address and correct the inadequacies of this program. In the year since the report was received, the federal government has taken no action to address the many issues and concerns of migrant farm workers and the inadequacies of its SAW program.

The Canadian Labour Congress (CLC), in partnership with the UFWA Canadian office and UFCW Canada, began the *Global Justice CareVan* project in the summer of 2001. The congress's funding contributions to this important initiative underscored its commitment to worker global solidarity by providing outreach and support to migrant workers in Ontario. The *Global Justice CareVan* project was continued for the year 2002, with funding from the CLC and UFCW Canada. Additionally, UFCW Canada provided a full-time staff person to coordinate the project in order to open a *Migrant Agricultural Workers Support Centre* for migrant farm workers in the Leamington, Ontario area. The labour movement has assumed the role of advocate for migrant farm workers in order to fill the void left by a federal government that has ignored the concerns and difficulties these workers face.

The centre opened its doors this past summer and was overwhelmed by migrant workers. In addition to casework done on their behalf, a local legal clinic visited the centre on a number of weekends and provided free legal advice in both English and Spanish. Frontier College, an independent agency, conducted daily *English-as-a-Second-Language* (ESL) classes throughout most of the summer, and health-and-safety information and manuals in both English and Spanish were made available to all workers who visited the centre. The manuals were provided by the Occupational Health Clinic for Ontario Workers (OHCOW), Toronto and Windsor offices.

A review of the casework files and one-on-one discussions with the workers who visited the centre attests to the difficulties these workers confront year after year. This year, for the first time since 1966, assistance and support – from a union and community-based agency – were finally available to them.

Our experience working directly with and for these workers this past growing season further substantiates that:

- workers experience serious problems while working in Canada under the provisions of the SAW program;

- the federal government has made no changes to the SAW program to address any of these problems;
- the federal government offers no avenue, method, or system of support for the workers enrolled in their SAW program;
- migrant workers are extremely reluctant to bring their problems forward to their consulate, fearing reprisal and expressing little confidence in the consulate's ability or willingness to help; and
- without an appeal process or worker representation these problems remain systemic.

The report on the *Status of Migrant Workers in Canada* presented to the Minister of Labour last fall was summarily dismissed as “anecdotal”. Based on the four months of operation of the Migrant Agricultural Workers Support Centre and our outreach to migrant workers throughout southern and southwestern Ontario, we can confirm the findings in the report issued to the federal government last fall.

The Government of Canada refers to its Seasonal Agricultural Worker program as “managed migration”. We would attest to that. The program is managed quite well by the federal government, applicable consulates, and representatives of farm employers to meet all their respective needs and requirements. To date, however, the needs of the workers have not been part of the equation.

We view the SAW program more clearly as exploitation. It is Canada's shameful little secret. Operating since 1966, with virtually no public scrutiny and very little accountability, workers' concerns are finally being expressed and heard, answers are being demanded, and accountability is both expected and required.

Unemployed workers from developing countries, struggling to support their families, come to Canada to perform work that Canadians will not do. Their desperate need to find work is what makes them perfect for the needs of this program and so willing to endure the difficulties and hardships it entails. Surely we can expect more from the Government of Canada than to be the lead participant in a program that takes such obvious advantage of a group of such disadvantaged workers.

The report presented to the federal government last year provided a number of recommended actions for the government to initiate in order to address the systemic inequities and indignities their “managed migration” program creates for the migrant workers in this program.

Our work on behalf of migrant farm workers has only just begun. We will continue to expose the unfair and inadequate provisions of the SAW program until they are addressed and corrected. We urge the federal government to show real leadership by immediately amending their “managed migration” program to address its systemic inequities.

Recommendations

- 1) Human Resources Development Canada under the Ministry of Employment and Immigration administers the SAW program. HRDC has only limited knowledge of labour legislation and employer and employee work-related issues, demands, and needs. The federal government should *transfer the administration of the SAW program to the Ministry of Labour*, which has the mandate and expertise for specific employer and employee work-related issues, policies, and legislation. This recommendation is all the more compelling since the Supreme Court of Canada declared in December 2001 that agricultural workers were entitled to the right of freedom of association.
- 2) The federal government should take immediate steps to ensure provincial governments participating in the SAW program *include agricultural workers – including migrant farm workers – under health-and-safety legislation and regulations*.
- 3) The federal government must begin to *provide training and employment services to migrant farm workers* while they work in Canada and are participants of Canada's EI plan. They have been paying premiums into this plan for 37 years and have received no benefit whatsoever. While they are not eligible to receive payment when they are unemployed, there is no reason that their mandatory participation in Canada's EI plan should not provide benefits in the form of desperately needed services and training.
- 4) To address the inadequacies of the current SAW program agreements, to provide a transparent and impartial national program for migrant farm workers, and to provide a forum for worker representation, the Government of Canada should *institute a national bipartite board*. The mandate of this board would be to develop national standards for working and living conditions of migrant workers and the methods of implementation, monitoring, and enforcement required to oversee these national standards. The board should be composed of representatives from the federal government and an affiliate of the Canadian Labour Congress, with advisory representatives from the consulates, farm employers, and community service agencies.

The national bipartite board would ensure that service delivery methods are implemented that would most effectively and efficiently provide services and resources to migrant farm workers. These service delivery methods should include the establishment of Migrant Agricultural Workers Support Centres, similar to the one opened in Leamington, Ontario. The centres would provide ESL training, occupational health and safety training, inspections of accommodations, assistance with workers compensation, assistance in accessing medical care, help with income tax preparation, and opportunities for social and recreational activities.

Foreword

The Government of Canada appears proud of its record with regard to migrant workers in Canada. We would like to respectfully remind this government of the compelling appeal of the *Anglican Church of Canada General Synod 2001*, which said, in part:

“Here in Canada and in other host countries, there are migrant workers who work in conditions where they are exposed to danger and are vulnerable to exploitation, human rights abuse, and violation of their legal rights. Host countries, including Canada, have some policies, laws, and practices (such as those pertaining to migrant workers employed in Canada as seasonal agricultural workers and domestic workers under the Live-In Caregiver Program) which discriminate against migrant workers or treat them less favourably than nationals (for example, in areas such as types of employment and contracts, trade union activities, the right to reside, etc.). The increase in migration of people has also resulted in growing manifestations of racism, xenophobia, and other forms of discrimination and inhuman or degrading treatment against migrants.

“The International convention on the Protection of the Rights of All Migrant Workers and Members of their Families establishes standards of protection for migrant workers and members of their families. It is a critical instrument to fight against exploitation, abuses, discrimination, racism, and xenophobia against migrant workers. Despite its adoption by the United Nations in 1990, the Convention has still not become an international law because it lacks the required 20 ratifications and/or accession by UN state members. The 16 countries that have ratified and/or acceded to it are all developing, migrant-sending countries. The Convention, which addresses a priority concern of peoples in the South, has largely been the initiative of developing migrant-exporting countries. But the Convention clearly places the responsibility of protecting the rights of migrant workers on the governments of both the sending and the receiving countries. Canada’s ratification will commit it to carry out this responsibility. It will also be a valuable gesture of solidarity with the peoples of the South.”

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Recent History

In the fall of 2001, the United Farm Workers of America (UFWA) Canadian office presented a report on the *Status of Migrant Farm Workers in Canada* to the federal Minister of Labour. This report provided an analysis of Canada’s *Seasonal Agricultural Workers (SAW)* program, itemizing the many areas

within the program that were ineffective and failed to adequately protect the rights of migrant workers. The report recommended a number of changes the federal government needed to make in order to address and correct the inadequacies of this program.

In the year since the report was received, the federal government has taken no

In the 37 years since the SAW program began, migrant farm workers have received no training, no employment support services, and no unemployment benefits.

action to address the many issues and concerns of migrant farm workers and the inadequacies of its SAW program. The government has continued to operate this program with only minor changes or improvement, essentially as it has since the program's inception in 1966, when it began with fewer than a thousand migrant workers. This year nearly 18,000 migrant workers were brought to Canada to work in our agricultural industry under the terms and conditions of the SAW program.

In the 37 years since the SAW program began, migrant farm workers have received no training, no employment support services, and no unemployment benefits under Canada's Employment Insurance (EI) program or through any other federal government program. They have paid into the EI fund yet have not experienced a single benefit for their payments. For the year 2000, it is

estimated that migrant farm workers and their employers paid approximately \$11-million in premiums. They are ineligible to receive EI benefits, because the terms of the SAW program require that they return to their home country immediately following cessation of work.

In March of 2002, Canada's Auditor General once again drew the government's attention to the growing balance of the general EI fund. The surplus in this account was \$36-billion as of March 2001. The premiums the government of Canada collected from workers for the year 2001 totalled \$19-billion. The Chief Actuary of Human Resources Development Canada (HRDC) considers a reserve of \$10- to \$15-billion sufficient. Yet the federal government continues to set the rate for EI premiums and continues to accrue an ever-increasing surplus. Canadian workers continue to receive less and less benefit from their EI plan, and migrant farm workers receive nothing at all. This is unconscionable and must be rectified.

Summer of 2002

The Canadian Labour Congress (CLC), in partnership with the UFWA Canadian office and UFCW Canada, began the *Global Justice CareVan* project in the summer of 2001. The congress's funding contributions to this important initiative under-

scored its commitment to worker global solidarity by providing outreach and support to migrant workers in Ontario. Because the federal government has ignored the concerns and difficulties of these workers, and because migrant workers legitimately fear reprisal including repatriation if they speak out on their own behalf, the labour movement has assumed the role of advocate for migrant farm workers.

The *Global Justice CareVan* project was continued for the year 2002, with funding from the CLC and UFCW Canada. Additionally, UFCW Canada provided a full-time staff person to coordinate the project in order to open a *Migrant Agricultural Workers Support Centre* for migrant farm workers in the Leamington, Ontario area. In the early summer of this year, with both volunteer and paid staff, and support from one of the local churches and many community organizations, the centre opened and began its work to assist and advocate for migrant workers.

The centre was overwhelmed by migrant workers. In addition to casework done on their behalf, a local legal clinic visited the centre on a number of weekends and provided free legal advice in both English and Spanish. Frontier College, an independent agency, conducted daily *English-as-a-Second-Language* (ESL) classes throughout most of the summer, and health-and-safety information and manuals in both English and Spanish were made available to all workers who visited the centre. The manuals were provided by the Occupational Health Clinic for Ontario Workers (OHCOW), Toronto and Windsor offices.

A review of the casework files and one-on-one discussions with the workers who visited the centre attests to the difficulties these workers confront year after year. This year, for the first time since 1966, assistance and support – from a union and community-based agency – were finally available to them.

The report submitted to the Minister of Labour last fall and a similar report presented to the Mexican Consulate highlighted the following issues:

- delays in receiving Ontario Health Cards, and subsequent difficulties receiving reimbursements for paying for medical care;
- inadequate and/or substandard accommodations;
- problems with working conditions, hours of work, rest periods, and overtime pay;
- pay issues including deductions for CPP, EI, Income Tax, transportation costs, food, and entitlement to vacation pay;
- filing Canadian Income Tax returns and receiving tax refunds;
- recovering payments for prescription drugs from the mandatory health plan;
- pesticide and chemical use and exposure, with inadequate training and knowledge and lack of proper equipment;
- language barriers for Mexican workers in every aspect of their life in Canada,



Grand opening of the *Centro de Apoyo para Trabajadores Migratorios* (Migrant Agricultural Workers Support Centre) in Leamington, Ontario, June 2, 2002

- most seriously when receiving medical care; and
- isolation and lack of recreation and socialization opportunities.

Our experience working directly with and for these workers this past growing season further substantiates that:

- workers experience serious problems while working in Canada under the provisions of the SAW program;

Since the workers usually put in 12- to 15-hour days, the centre saw most of its activity on weekends and in the later hours of the evening throughout the week.

- the federal government has made no changes to the SAW program to address any of these problems;
- the federal government offers no avenue, method, or system of support for the workers enrolled in their SAW program;
- migrant workers are extremely reluctant to bring their problems forward to their consulate, fearing reprisal and expressing little confidence in the consulate's ability or willingness to help; and
- without an appeal process or worker representation these problems remain systemic.

The hours of operation for the centre were Wednesday to Sunday from 1:00 p.m. to 9:00 p.m. Since the workers usually put in 12- to 15-hour days from Monday to Saturday and worked part of Sunday, the centre saw most of

its activity on weekends and in the later hours of the evening throughout the week.

Services

In the first four months of its operation the centre offered the following the services:

Training and Education

- Pesticide clinic – 105 workers
- CPP clinic – 80 workers
- Legal clinic – 78 workers
- Workers Compensation clinic – 30 workers
- Health-and-safety meeting at a Newmarket, Ontario church – 150 workers
- Workshop & video for tobacco workers in La Salette, Ontario – 150 workers
- ESL classes held at the centre – 146 workers

In addition, more than 3,600 English/Spanish *Health & Safety Issues for Agricultural Workers* manuals were distributed to workers in 18 communities throughout southern Ontario

Special Events

- Migrant Workers Fathers Day Dinner – 300 workers
- Movie night and barbeque – 32 workers

- Mexican Independence Day (assisted St. Michael's Church in Leamington in organizing this event) – 400 workers

Case Work and Referral

In addition to the many workers who dropped into the centre requesting information or to simply enjoy a welcoming place to socialize, the centre opened more than 150 individual casework files for workers including, but not confined to, the following areas:

- difficulties with health-and-safety matters;
- pay issues;
- CPP concerns;
- obtaining Social Insurance Numbers;
- accompanying workers to the hospital in order to provide Spanish translation;
- Income Tax problems;
- inadequate living conditions;
- difficulties with the mandatory Royal Bank Health Insurance coverage;
- voluntary returns to Mexico; and
- forced repatriation.

Ongoing Need for Support Centres

Many farms in the Leamington area have participated in the SAW program for a number of years. Approximately 3,000 to 4,000 migrant workers a year work in this area, a majority of them returning season after season. In spite of the many years of enrolment within the SAW program in the Leamington area, workers there still experience serious problems and concerns.

The *Global Justice CareVan* project did not have the resources to open centres in other areas of Ontario where migrant workers are located. Some of these areas have a high number of first-time migrant workers and their needs are that much greater. The Caribbean workers who work for tobacco farmers in the Simcoe-Delhi area also experience specific problems related to the nature of working in the tobacco sector of this industry. They, too, represent a large group of migrant workers with little to no opportunities available for assistance and support.

The report on the *Status of Migrant Workers in Canada* that was presented to the Minister of Labour last fall was summarily dismissed as “anecdotal”. The federal government reaffirmed its disinterest in migrant workers’ living and working conditions by its lack of any reme-

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dial action to improve these conditions or examine ways in which it could offer any measure of assistance and support to the migrant workers. Based on the four months of operation of the Migrant Agricultural Workers Support Centre and our outreach to migrant workers throughout southern and southwestern Ontario, we can confirm the findings in the report issued to the federal government last fall. We will, once again, outline the major areas in need of improvement and/or legislative amendments in order to respond to and redress the migrant workers' difficulties with living and working conditions in Canada.

Canada, not unlike most developing countries, offers little to agricultural workers in legislative protections for occupational health and safety – many are simply excluded.

Health and Safety

In 1997, the International Labour Organization (ILO) released a report on farm safety. This organization, of which the government of Canada is a participating member, issued a warning that agriculture mortality rates were high and pesticides posed major health risks to the global workforce. It further remarked that even in developed countries, such as Australia, Canada, and the United States, agriculture ranks consistently among the most hazardous industries.

Canada, not unlike most developing countries, offers little to agricultural workers in legislative protections for occupational health and safety. In fact, in Ontario, where 90% of the nearly 18,000 migrant farm workers are located, all agricultural workers are simply excluded from health-and-safety legislation.

In June of this year, Ned Livingston Peart – a migrant farm worker from Jamaica – was killed at a tobacco farm just outside of Brantford, Ontario. Mr. Peart was killed when a tobacco bin slipped from the kiln and crushed his chest. The CLC supports the UFCW Canada appeal to the Chief Coroner for Ontario to conduct an inquest into this incident to determine if yet another agricultural worker's death in Ontario could have been prevented. Should an inquest be granted, it is expected that the jury's recommendation will follow an ever-increasing number of similar jury recommendations and call for agricultural workers to be included under occupational health-and-safety legislation. We are strongly urging the provincial government to take immediate action to provide legislative protection to workers in the agricultural industry before another fatality occurs.

In the absence of legislative protection for these workers, the Migrant Farm Workers Help Centre undertook a health-and-safety outreach program to meet the needs of migrant farm workers that the federal government has continued to neglect. We have provided more health-and-safety information and training to migrant farm workers within the first four months of operation than the federal

government has in the past 37 years.

More than 3,600 *Health & Safety Issues for Agricultural Workers* (Spanish/English) booklets were distributed to workers in 18 communities throughout southern and southwestern Ontario. A pesticide clinic was conducted for workers in Leamington and a safety clinic including a video on “green tobacco illness” was held for tobacco workers in La Salette, Ontario.

Many hours of our staff and volunteer time were devoted to accompanying workers to the hospital in order to provide Spanish translation. Farm employers have utilized this service by dropping workers off at the centre, requesting staff to transport them to the hospital in order to provide translation services.

We have been fortunate to obtain the services of a volunteer who has past work experience as a worker advisor for workers’ compensation cases. We have referred numerous individual migrant workers to this volunteer for assistance with their claims before the Workplaces Safety and Insurance Board (WSIB). Migrant farm workers are not readily advised of their right to claim WSIB benefits. We are working with a number of workers who have lost as much as a month from work because of work-related injuries – they had not been made aware of their right to make a claim for benefits. Additionally, many of the workers asking for help with WSIB indicate that their employers did not fill out accident reports as required.

A number of our casework files deal with skin irritations and respiratory problems, red and sore eyes, headaches, and nausea associated with pesticide use. One worker was required to use a liquid pesticide with a very strong smell of ammonia – his employer refused to identify this pesticide. The worker experienced nausea, sore throat, headaches, and irritated eyes as a result of his exposure. He mitigated the effects of this exposure somewhat by diluting the pesticide with water.

It should be noted that a representative from the Mexican Consulate responded to workers’ concerns about adverse health effects from pesticide exposure. He referred to the bees that live in greenhouses without dying, and contended that there was therefore no danger to workers either. Many farm employers display this same disregard for workers’ health by not providing training, proper protective equipment, or any information on the particular chemical or pesticide being used. There is no legislative requirement to do so and, in this legislative void, health-and-safety training and even the most basic minimal protective requirements remain optional.

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Representation, Repatriation, and Process of Appeal

The terms, agreements, policies, procedures, wage rates, grounds and process for repatriation, allowable deductions, and provision for accommodation for the SAW program – to name just a few – are all determined by the federal govern-

ment through HRDC. This ministry consults with the consulates from the participating countries and the farm employers through their organization, Foreign Agricultural Resource Management Services, or FARMS. The migrant farm workers have no voice and no representation in this process, and therefore no opportunity to participate in this program that will shape their lives while working in Canada.

No distinction was made by the Supreme Court that would disallow migrant workers. The government must now make changes and recognize migrant workers as equal partners.

The federal government refuses to acknowledge migrant workers as legitimate stakeholders in the SAW program and has not allowed them an opportunity to provide input and analysis with regard to the effectiveness of the SAW program from an employee's perspective and experience. It should be no surprise then that, while the SAW program meets the needs of the employers and the consulates, it falls far short of meeting the needs of the

workers themselves. This apparently has been neither a mandate nor a priority of the federal government's SAW program.

We believe that migrant workers have a right to worker representation. The Canadian *Charter of Rights and Freedoms* enshrines this right. Jurisprudence was further established by the December 19, 2001 Supreme Court of Canada decision in *Dunmore v. Ontario*. The Supreme Court determined that agricultural workers have the right to freedom of association. No distinction was expressed that would disallow migrant farm workers from this same basic right to freedom of association. Although the federal government has viewed migrant farm workers as simply a labour market commodity, the government must now make fundamental changes in the SAW program and recognize migrant workers as equal partners.

The rationale for the decision includes the following excerpts that are especially direct and clear. We refer the federal government to examine the last quote closely in relation to its SAW program and its systemic inadequacies and failures.

“It cannot be argued that Ontario agriculture has unique characteristics which are incompatible with legislated collective bargaining.”

“The reliance on the family-farm justification ignores an increasing trend in Canada towards corporate farming and complex agri-business and does not justify the unqualified and total exclusion of all agricultural workers from

Ontario's labour relations regime.”

“... there is a positive obligation on the government to provide legislative protection against unfair labour practices. A positive duty to assist excluded groups generally arises when the claimants are in practice unable to exercise a Charter right.”

Currently a migrant worker can be repatriated before the end of his/her work term for virtually any reason. Statistics are not readily available from the government administrators of this program or the participating consulates to determine how many workers are repatriated every year and for what reasons. There is no worker representation, no appeal process and, following a phone call from the farm employer to the applicable consulate, a worker is often on a plane home within 24 hours.

When four workers in Leamington expressed dissatisfaction with their living conditions, they were repatriated within the next two days. There has been no indication that the accommodations over which they expressed concern were ever inspected, and the speed with which these workers were repatriated did not allow an opportunity for investigation or representation – no appeal process was identified or undertaken.

This lack of transparency, appeal, and representation creates an atmosphere of fear among the workers. They are very reluctant to complain or speak against unfair work practices or poor working and/or living conditions because the complaints are seldom if ever addressed – instead, the complainant is just sent home. The SAW program has used this process of immediate repatriation with no appeal or worker representation since the beginning of the program in 1966. Without worker representation, it remains unjust and completely arbitrary. Workers are subject to conditions that they cannot improve through input, compromise, or negotiation.

This summer we worked with five workers from a farm in the Newmarket area. They experienced such poor working and living conditions at this particular farm that they asked to go home. The employer would not release their passports or assist them in any way. Desperate to leave, they devised a plan to go to Detroit and then be deported from the United States for being illegal immigrants. They were not able to get over the border and found themselves in Windsor, Ontario with no money and no passports. They were referred to our centre where we helped them obtain their passports. Has this employer been investigated for abusing workers, inadequate living conditions, and refusing to return their passports? It is difficult

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to ascertain. The workers have no representation, and there is therefore no one to whom to report the resolution, if any, of such a problem.

Our case files also include incidents of physical abuse. One particular case involved a foreman who tried to strangle a worker for pausing while working. The foreman subsequently hit the head of another worker who tried to help into a pole. The worker suffered a concussion and required stitches; the foreman apologized.

Migrant workers are simply told what their wage rate will be, without explanation. For 2001, the wage rate was \$7.10 per hour. For 2002, it has been established as \$7.25.

In another instance a number of workers accused of drinking were routed from their living quarters one night. They were herded to a warehouse and forced to “walk a line” to prove they had been drinking. They were told to sleep in the warehouse that night and were suspended for four days without pay. The centre was contacted, and we managed to reduce the four-day suspension to two days. There was, however, nothing that could be done to restore the dignity to these men who had been treated like chattels for the offence of drinking in their living quarters.

Within the SAW program, HRDC represents the interests of the Canadian federal government, the consulates represent the interests of their respective governments, and FARMS represents the interests of the farm employers. No one represents the interests and rights of the migrant workers, which results in incidents as relayed above where, most often, remedial corrective measures are taken against only the workers – rarely, if ever, against the employer. It is an inexcusable oversight to the rights and human dignity of these workers and can only be properly redressed by allowing worker representation.

Wages and Vacation Pay

Under the SAW program, migrant workers are to be paid the greater of:

- the provincially determined agricultural wage;
- the prevailing provincial agricultural wage rate as determined annually by HRDC; or
- the rate being paid by their employer to Canadian-based seasonal workers performing the same type of work.

Migrant workers are simply told what their wage rate will be for the given year. They are not provided with an explanation or corroborating figures to validate this rate. For the year 2001, the wage rate was \$7.10 per hour. For 2002, it has been established as \$7.25.

We would like to examine the wage rate statistics that HRDC used in establishing this rate for migrant workers in Ontario. We are not confident that the wage rate assigned to migrant workers does in fact comply with the requirements set out in the SAW program. Again, endemic to this program, there is no transparency and no accountability to workers. If they were to question the calculation of this year's wage rate they could be repatriated and/or blacklisted from further participation in the program.

Given the cloak of secrecy that surrounds most aspects of the SAW program and its indifference to the concerns of the workers in the program, the yearly wage rates and how they are established lends itself to suspicion. The government must clarify this issue by establishing an open, transparent process, and make public the method and figures used to calculate yearly wage rates. In 1995, Statistics Canada reported the average hourly rate for fruit and vegetable labour as \$7.32 and general farm labour as \$8.99. Additionally, supervisors received an average hourly rate of \$15.07. We are aware of many instances where migrant workers are placed in the position of supervisor or lead hand, but we know of no instance where they are paid even close to the 1995 average national rate of \$15.07 per hour.

We find it unlikely that Ontario's prevailing average hourly rate in 2002 is less than the Canadian average in 1995. Statistics Canada no longer provides this data, hindering attempts to verify the calculation for the hourly rate of \$7.25 for 2002. This absence of correlating data serves only to underscore the necessity for HRDC to release the data to which it refers when establishing the hourly rate.

Caribbean migrant farm workers, working in Ontario's tobacco industry, also question the established wage rate. They assert that they receive \$70-80 per kiln of tobacco while their Canadian counterparts receive as much as \$100-120 per kiln. This inequity contradicts the provisions of the SAW agreement, yet the workers believe it is a widespread practice. Without transparency and worker representation as an integral part of the SAW program, what remains is fear of reprisal and/or repatriation and the continuation of this discrimination.

Eligibility for vacation pay is also very problematic. Some workers receive 4% of their gross on their weekly pay cheques; some are told they will receive it at the end of their contract; some receive 2% with their weekly pay and are told they will receive the balance at the end of their contract; and some do not receive vacation pay at all.

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Although the workers are required to pay EI premiums, in addition to the benefits they are not entitled to claim, they also do not receive their Record of Employment (ROE) as required under regulations to the *Employment Insurance Act*. These records of employment would help workers to verify if any vacation pay was issued on termination of employment and the amount. The ROE would also indicate the

amount owing for the last pay period. For many workers, this would be very helpful since they leave Canada without receiving their last pay and their efforts to get their last pay cheques forwarded to them would be assisted by this documentation.

The three Mexican Consulate field representatives do not have enough time or resources to adequately represent the workers or monitor the farms that employ these workers.

The Migrant Agricultural Workers Support Centre in Leamington has been asked to assist one migrant farm worker in particular who has been trying, in vain, to obtain his last pay cheques from 1998. He is owed \$1,000 and – although his claim was validated by a Mexican court – he has yet to receive what he is owed.

Again, given the systemic inadequacies of the SAW program, verification of wages, deductions, and vacation pay is next to impossible. We have been assured that the Mexican Consulate receives weekly or biweekly payroll

data from all participating farms in order that it may review them for mistakes or discrepancies. There are more than 9,000 Mexican migrant farm workers in the SAW program this year. This, then, may explain why the three Mexican Consulate field representatives do not have enough time or resources to adequately represent the workers or monitor the farms that employ these workers.

Apparently they are reviewing approximately 9,000 weekly and biweekly payroll records. We are unaware of any worker being advised by the consulate of errors with their pay. This would suggest any combination of the following:

- that the farmers have an incredible record of accuracy;
- that the process does not involve informing affected workers; or
- that the consulate has simply not found errors that do exist.

Caribbean workers have expressed concern with the 25% withheld from their gross income. Five per cent of their wages is deducted and applied to the consulate's administrative costs; 1% is deducted for premiums to a mandatory health insurance plan; and 19% is withheld for cost recovery for return air tickets.

Caribbean workers state that it takes far too long for them to recover the remaining balance of the 19% that is held to recover the cost of airfare and any other miscellaneous charges incurred while in Canada. A Caribbean worker who earns \$15,000 during his months in Canada has \$2,850 withheld from his pay in order to

recover costs of return airfare and must wait until well after he has returned to his home country before the balance is refunded to him.

Living Conditions

Living conditions for migrant workers in Ontario do not always meet the standards and guidelines issued through the Ontario Ministry of Health. Complaining about inadequate living conditions is very risky for migrant workers. In 2001, about 20 migrant workers were repatriated at the beginning of the summer when concerns over accommodations were raised. This summer another four workers were repatriated when they dared to complain.

We met with workers from a farm operation in the Newmarket area. This farm employed approximately 100 workers. They were accommodated in three separate houses. We visited the workers in two of these houses with up to 25 workers living in each one. The bedrooms we saw were stacked with bunk beds, and there were a number of hotplates in the basement. A large sign in Spanish was posted on the living room wall. Translated, it said: *“If you are sick and cannot work one day, don’t bother to come to work the next day – stay home and clean the house.”*

We believe that when migrant workers are compelled to speak out against their living conditions they only do so with valid reason – the risk of repatriation is well known. When 25 or more workers are required to share the bedrooms, kitchen, and bath facilities of one house, more than an initial inspection by the local public health agency is required – particularly when these inspections are conducted before the workers arrive in Canada. We believe that when 25 workers are sharing the same house and cooking on hotplates set up in the basement, an inspection by the fire department should also be required.

Accountability for adequate housing is delegated from the federal government to the provincial Ministry of Health and then to local public health agencies. Inspections are done once and usually conducted before workers arrive. Perhaps the accommodations for the workers on this Newmarket farm would not have passed the initial inspection had 25 workers been living there at the time of the inspection.

Income Tax

The Mexican Consulate directs all T4 slips for Mexican migrant workers to a local tax preparation business in Leamington. When the workers return the following

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spring they are to contact this business and request their T4 slips. Of course, the workers may also choose to have this business prepare their tax return for them, at a charge of \$30.00, since the business is already in possession of the workers' T4 slips.

In 2000, it was discovered that Mexico's Foreign Ministry had received more than

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1,900 cheques for income tax refunds and final wages. These cheques totalled more than \$600,000 and had not been forwarded to the workers. This debacle may have provided the impetus for the Mexican Consulate's decision to have all T4 slips forwarded to a tax preparation business in Leamington. While transferring the responsibility to a private business operation may have solved the Mexican Foreign Ministry's difficulties, however, it creates a different set of problems for the workers.

Some workers may not return to Canada for the next growing season – how are they to receive their T4 slips? Some workers may not work even remotely close to Leamington – how are they to retrieve their T4 slips? Some workers may assume that they are obligated to have this company prepare their income tax returns for a fee of \$30.00 rather than do it themselves or perhaps take it

to a local free income tax clinic.

Once again, the workers have not been consulted. This new system of forwarding all T4 slips to one individual company appears far more convenient for the Mexican Consulate than the Mexican farm worker. Scant attention seems to have been applied to determine if this would be at all convenient for the workers.

Residency Status

The federal government also administers a *Live-In Caregiver Program*, allowing migrant workers to work in Canada as live-in nannies. Participants in this program are allowed to apply for Canadian residency status after working in the program for two years. Migrant farm workers, many of whom have worked in Canada for years, some up to 20 years, are not allowed this benefit. Their years of contribution to our agricultural industry are not considered meritorious should they consider applying for residency. In fact, young men or women with spouses and children are the preferred participants for the SAW program, helping to ensure that they will return home once we no longer need them to work in our fields and greenhouses.

The federal government endorses and participates in this blatant discrimination

without justification or validation. The SAW program must be amended to reflect our country's principles of equity. The policies for residency that are extended to live-in caregiver migrant workers must also be applied to migrant farm workers.

Conclusion and Recommendations

The Government of Canada refers to its Seasonal Agricultural Worker program as “managed migration”. We would attest to that. The program is managed quite well by the federal government, applicable consulates, and representatives of farm employers to meet all their respective needs and requirements. To date, however, the needs of the workers have not been part of the equation.

We view the SAW program more clearly as exploitation. It is Canada's shameful little secret. Operating since 1966, with virtually no public scrutiny and very little accountability, workers' concerns are finally being expressed and heard, answers are being demanded, and accountability is both expected and required.

Unemployed workers from developing countries, struggling to support their families, come to Canada to perform work that Canadians will not do. Their desperate need to find work is what makes them perfect for the needs of this program and so willing to endure the difficulties and hardships it entails. Surely we can expect more from the Government of Canada than to be the lead participant in a program that takes such obvious advantage of a group of such disadvantaged workers.

Yes, it is Canada's shameful little secret, and all the more so because the federal government appears to exhibit no shame. The report presented to the federal government last year provided a number of recommended actions for the government to initiate in order to address the systemic inequities and indignities their “managed migration” program creates for the migrant workers in this program.

Our work on behalf of migrant farm workers has only just begun. We will continue to expose the unfair and inadequate provisions of the SAW program until they are addressed and corrected. We urge the federal government to show real leadership by immediately amending their “managed migration” program to address its systemic inequities.

This program must reflect the standards of equality for which all Canadians strive. To do anything less shames us all.

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We will reiterate the four-point recommendations received by the government last fall.

- 1) Human Resources Development Canada under the Ministry of Employment and Immigration administers the SAW program. HRDC has only limited knowledge of labour legislation and employer and employee work-related issues, demands, and needs. The federal government should *transfer the administration of the SAW program to the Ministry of Labour*, which has the mandate and expertise for specific employer and employee work-related issues, policies, and legislation. This recommendation is all the more compelling since the Supreme Court of Canada declared in December 2001 that agricultural workers were entitled to the right of freedom of association.
- 2) The federal government should take immediate steps to ensure provincial governments participating in the SAW program *include agricultural workers – including migrant farm workers – under health-and-safety legislation and regulations*.
- 3) The federal government must begin to *provide training and employment services to migrant farm workers* while they work in Canada and are participants of Canada's EI plan. They have been paying premiums into this plan for 37 years and have received no benefit whatsoever. While they are not eligible to receive payment when they are unemployed, there is no reason that their mandatory participation in Canada's EI plan should not provide benefits in the form of desperately needed services and training.
- 4) To address the inadequacies of the current SAW program agreements, to provide a transparent and impartial national program for migrant farm workers, and to provide a forum for worker representation, the Government of Canada should *institute a national bipartite board*. The mandate of this board would be to develop national standards for working and living conditions of migrant workers and the methods of implementation, monitoring, and enforcement required to oversee these national standards. The board should be composed of representatives from the federal government and an affiliate of the Canadian Labour Congress, with advisory representatives from the consulates, farm employers, and community service agencies.

The national bipartite board would ensure that service delivery methods are implemented that would most effectively and efficiently provide services and resources to migrant farm workers. These service delivery methods should include the establishment of Migrant Agricultural Workers Support Centres, similar to the one opened in Leamington, Ontario. The centres would provide ESL training, occupational health and safety training, inspections of accommodations, assistance with workers compensation, assistance in accessing medical care, help with income tax preparation, and opportunities for social and recreational activities.