

H2A GUESTWORKER LEGISLATION

March 28, 2000

THE ISSUE:

Proposed changes by Congress in the laws governing the importation of foreign workers to work in U.S. production agriculture will adversely impact the wages, hours, and working conditions of the U.S. domestic farm labor workforce. There is no proof that a labor shortage exists within the U.S. agricultural industry. Many studies have confirmed the experience of many ROI staff and board members; many farmworkers are often under-employed, and desperately looking for opportunities for steady, productive employment.

RELATED LEGISLATION:

Current proposed legislative initiatives (bills S 1814 and S 1815) would:

- Create a new temporary foreign agricultural worker program that would give agricultural employers extraordinary control for many years over workers' economic and immigration status.

In addition these ill conceived proposals would:

- Authorize lower wage rates.
- Eliminate housing opportunities.
- Reduce recruitment inside the United States.
- Decrease government oversight.
- Lower labor standards of U.S. workers
- Allow exploitation of vulnerable foreign workers.

There are more effective measures that could be taken to guarantee a productive, skilled workforce. By removing discrimination in labor laws that exclude farmworkers from coverage or subject them to special exemptions, agricultural employers could effectively compete with other businesses and industries for U.S. workers.

ROI'S POSITION ON LEGISLATION:

Rural Opportunities Inc. is opposed to expansion or revision to the H2A program or guest worker program because changes to this program would have an immediate negative impact on US domestic farmworkers. ROI believes that real underlying causes for any perceived shortages of farmworkers could and should be addressed by offering farmworkers living wages and protections equal to those of all other US workers.

ROI encourages the members of the US Congress to carefully analyze the impact of changes proposed on US domestic farmworkers and take a position in support of their rights to earn a living wage, and retain their agricultural jobs if they wish to continue in agriculture.

A. Background:

Proposed changes by Congress in the laws governing the importation of foreign workers to work in U.S. production agriculture will adversely impact the wages, hours, and working conditions of the U.S. domestic farm labor workforce. There is no proof that a labor shortage exists within the U.S. agricultural industry. Many studies have confirmed the experience of many ROI staff and board members; many farmworkers are often under-employed, and desperately looking for opportunities for steady, productive employment.

The agricultural products of the agricultural industry in the US represented 197 billion dollars in 1997. In the same year Americans spent 8.4 percent of their earned income on food and alcohol. In all other developed countries citizens pay roughly twice what Americans pay for these same commodities. ROI contends that America's cheap food policy should not be borne on the backs of US farmworkers and their families. Instead, we urge agriculture to adopt and promote the same labor costs and benefits that all other American workers receive.

The Agriculture industry claims the current program is inadequate, however on review there is no justification for a new temporary foreign agricultural worker program.

1. Studies have been unanimous in finding that there is no farm labor shortage. Seasonal farmworkers have been experiencing high unemployment and underemployment. The General Accounting Office's (GAO) 1997 report documented labor surpluses in most major agricultural production counties in the nation. A Congressional Research Report (CRS) on farm labor issued on December 20, 1999 concurs, finding that a) hired farmworkers from 1994-1998 experienced 11% to 13% unemployment "or at least twice the average unemployment rate in the nation," and b) the number of days of farmworkers' employment each year has consistently fallen.
2. Consistent with an oversupply of labor, farmworkers' wages have decreased in real terms during the past dozen years, said CRS and others. Very few farmworkers receive benefits such as health insurance, vacation pay, pensions, overtime pay, or sick leave. A 1997 Department of Labor survey found that 3 out of 5 farmworkers live below the poverty line. Farmworkers are not protected by the fair labor standards act. In fact they are exempted from many of the rights other US workers take for granted.
3. The current H-2A temporary foreign agricultural worker program already issues temporary visas to employees. The GAO found that the Department of Labor approves 99% of employers' applications under this program. It has doubled in size and spread to new states and crops during this decade. Legislation enacted in 1999 has substantially quickened the H-2A program to answer the employers' demands for streamlining. The harsh treatment of workers under the H-2A program has not been ameliorated, as indicated in the GAO report and in a series of articles in the Charlotte Observer (Desperate Harvest, Oct.31-Nov.2, 1999). H-2A wages and working conditions remain inadequate, as does enforcement.

The current H-2A program continues to grow at a rapid rate. Although many state that the program is flawed and not effective as is, it has grown from 15,000 participants in 1996 to 34,898 in 1998. The program does have its flaws, but some protections for farmworkers exist such as travel, quartered housing and an adverse effect wage significantly above the minimum wage. With this program in place and already expanding at a marked rate, ROI does not see the need for additional legislation with less worker protection.

B. Pending or proposed legislation related to issue:

Bills currently being considered would subject farmworkers to poor wages, working conditions and inequitable economic and political status for many years to come.

1. Specifically S.1814 and S.1815 would create a new temporary foreign agricultural worker program. The bills' proponents contend that this new "adjustment" guestworker program would benefit currently undocumented farmworkers because a) those who are qualified could work legally on temporary non-immigrant visas as seasonal agricultural workers and b) upon satisfying a 5-year agricultural work requirement, later they would be permitted to apply for immigration status. These workers (upon showing 150 days of agricultural work in 1998-1999) would be obligated to find and prove 180 days of agricultural work each year for five more years. They could perform only agricultural work, and would be required to leave the country for at least 65 days per year.
2. The lack of available work means that many "adjustment" guestworkers would never acquire enough work in each of 5 years to qualify to apply for immigration status.
3. The proposal would give employers extraordinary control over workers' economic and immigration status. Workers would be desperate to comply with the difficult tasks of securing and proving 180 days of farmwork each year to remain in the program. Consequently, many will be too afraid of being fired and other employer reprisals to demand higher wages, better working conditions, or seek to enforce the law.
4. The "adjustment" guestworker proposal contains none of the wage, housing or other minimum labor standards that have been part of the H2-A and the old "bracero" programs in the last 55 years. There are no protections against undercutting current wage rates or against exploitation of the vulnerable guestworkers. As "non-immigrants," guestworkers will be ineligible for federally-funded legal services and for public benefits.
5. Due to certain immigration-law restrictions, many guestworkers who complete the 5-year requirement may still not qualify for immigration status.
6. Because the bills would create a waiting list of up to 5 years for receiving immigration status, some eligible workers would not receive a green card for 10 to 12 years. During that time, spouses and children would not be entitled to enter the US or gain immigration status.
7. In addition to creating a new guestworker program, S.1815 would revise the H-2A program to lower wage rates, eliminate housing opportunities, reduce recruitment inside the United States, decrease government oversight, and in other ways lower labor standards of U.S. farmworkers and allow exploitation of vulnerable foreign workers. No valid reason justifies it. The Board and staff of ROI see this as a way that current US workers will be forced out of agriculture. The proposed legislation would authorize wage systems ("group piece rates") and other practices that have previously been used to circumvent the law and prevent farmworkers from improving their conditions.

The legislation does nothing to improve wages and working conditions of farmworkers.

1. Agricultural employers who fear a shortage of authorized farmworkers should attract and retain workers by improving wages and working conditions. The value of labor-intensive agricultural products and the value of exports of these products have dramatically increased during the last decade, but farmworkers have not shared in the benefits of global trade. Numerous governmental commissions have recommended that agricultural employers “stabilize” its workforce by modernizing its labor practices. Fruit and vegetable growers, however, have not begun to compete to attract and retain their workers.
2. If Government is concerned about the potential for a shortage of authorized workers, then it should remove discrimination in laws that makes farmwork less desirable than other occupations. Many federal and state laws exclude farmworkers from coverage or subject them to special exceptions. Examples include: overtime pay, occupational safety and health protections, unemployment compensation, collective bargaining rights, child labor protections.
3. Many workers are suffering violations of labor laws, such as minimum wage, because the laws are not being enforced. Farmworkers often lack adequate access to the justice system or fear that they will be fired for exercising their rights. We must enforce the law to protect workers as well as to protect law-abiding employers from unfair competition.
4. Employers who rely on undocumented workers and do not wish to use the H-2A program should ask their legislators to grant real immigration status to experienced farmworkers. Employers have benefitted economically from their ever-increasing hiring of undocumented workers, who are so vulnerable. Such farmworkers should not be forced to accept the guestworker status that would be imposed by this legislation, which has been rightly described as a form of indentured servitude.

C. ROI Position on legislation:

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