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Florida's Forgotten People: The Migrant Farmworkers

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FLORIDA'S FORGOTTEN PEOPLE: THE MIGRANT FARMWORKERS

[T]he most economically and socially deprived segment of population in the United States of America consists of those persons generally referred to as migrant farm workers. . . .[1]

This statement by the Florida Legislature is a frank recognition of the plight of the migrant farmworker. Historically, government has been largely indifferent to the problems of agricultural workers. Farm laborers were initially excluded from all major social legislation including the National Labor Relations Act.[2] Lacking a strong united front like that displayed by the industrial labor unions, farmworkers have been unable to move legislatures to enact even basic legislation such as workmen's compensation or unemployment compensation, which protects workers in other major occupations.[3] Partly as a result of these exclusions, farmworkers are the lowest paid of the nation's occupational groups.[4]

Of the 3.1 million farmworkers in the United States, about 276,000 can be classified as migrants.[5] Traveling with their families, the number exceeds one million.[6] While migratory workers compose only nine per cent of the total farm work force, they represent a large proportion of the farmworkers employed to harvest such labor-intensive seasonal crops as vegetables and citrus fruits.[7]

The migrant farmworker shares all the problems of the ordinary farmworker as well as the problems that result from his mobility. The Florida migrant may remain in Florida throughout the lengthy growing and harvesting season or he may "follow the season" traveling the east coast migratory stream up through the Atlantic Coast states to New England.[8] Despite his efforts, the migrant whose sole employment consisted of farmwork was em-

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1. Fla. Laws 1970, ch. 131 (Preamble). The migrant and the nature of his life is variously presented in: S. ALLEN, THE GROUND IS OUR TABLE (1966); L. SHOTWELL, THE HARVESTERS (1961); J. STEINBECK, THE GRAPES OF WRATH (1939); Chase, *The Migrant Farm Worker in Colorado — The Life and the Law*, 40 COLO. L. REV. 45 (1967).

2. 29 U.S.C. §152(3) (1964). *See also* text accompanying notes 26-31 *infra*.

3. *See* text accompanying notes 79-95 *infra*.

4. SUBCOMMITTEE ON MIGRATORY LABOR OF THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE, THE MIGRATORY FARM LABOR PROBLEM IN THE UNITED STATES, S. REP. No. 83, 91st Cong., 1st Sess. 51 (1969) [hereinafter cited as 1969 S. REP.].

5. 1969 S. REP., *supra* note 4, at 3. Migrant farm laborers are defined as persons who do farmwork outside their home counties. *Id.*

6. SUBCOMMITTEE ON MIGRATORY LABOR OF THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE, THE MIGRATORY FARM LABOR PROBLEM IN THE UNITED STATES, S. REP. No. 1006, 90th Cong., 2d Sess. 1 (1968) [hereinafter cited as 1968 S. REP.].

7. 1969 S. REP., *supra* note 4, at 3. Florida produces 80% of the nation's citrus fruits and ranks second only to California in the production of vegetables. WORLD ALMANAC 665 (L. Long ed. 1971).

8. FLORIDA LEGISLATIVE COUNCIL AND LEGISLATIVE REFERENCE BUREAU, MIGRANT FARM LABOR IN FLORIDA 5-6 (1961).

ployed for an average of only eighty-five days during 1967 with an average yearly income of 922 dollars.[9]

Long periods of unemployment and low wage rates coupled with health and sanitation problems and poor housing conditions are only some of the more glaring of the migrants' problems. Insufficient or ineffectual federal aid combined with little or no state aid forces the migrants to search for new solutions to their problems. The most promising solution appears to be unionization. Unionization, however, provides no complete answer to the migrants' myriad problems. It is, rather, a means by which the solutions may be achieved. Unionization provides the united front, a potential aggregation of force and political power that migrants and all farmworkers have lacked in the past.

Any strong unionization effort will have a significant impact upon the state of Florida. Estimates vary widely, but it is probable that there are approximately 100,000 migrant workers in Florida each year.[10] While the precise number of migrants seems to be somewhat in question,[11] the Senate Subcommittee on Migratory Labor ranks Florida as the second largest user of migrant labor in the United States.[12]

In the following analysis, the present major organizational structures that have developed among migrant workers will be examined. The pros and cons of union organization will be discussed. In addition, those problems that are unique to the migrant, as well as those common problems that

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9. 1969 S. REP., *supra* note 4, at 54. The general problem of a low wage scale is combined with the migrants' lengthy period of unemployment. Thus, low annual earnings are due not only to low wage rates, but also to short duration of farmwork. Migrants who combined farmwork with nonfarmwork, about 40%, were employed only 168 days—about 8.5 months of work. *Id.* at 53. While the average annual pay of the migrant who performed only farm labor was less than $1,000, the migrant who also did nonfarm work averaged about $2,100 per year. *Id.* at 154. A recent Florida survey indicates substantial increases in many of these figures. Average annual income of a migrant who performed both farm and nonfarm work was estimated to be $2,800. But, even if valid, this figure is still below the recognized poverty level. *See generally* E. J. KLEINERT, MIGRANT CHILDREN IN FLORIDA, THE PHASE II REPORT OF THE FLORIDA MIGRATORY CHILD SURVEY CENTER, 1968-1969, at 217-32 (1969) [hereinafter cited as KLEINERT REPORT].

10. This figure is supported by estimates of the staff of the Florida Senate Health, Welfare and Institutions Committee who expect 108,700 migrants in Florida during 1971. St. Petersburg (Fla.) Times, Dec. 11, 1970, §B at 4, col. 4.

11. The estimates range from 30,000 as claimed by the Florida Farm Bureau Federation, a grower dominated private organization, to 200,000 as claimed by the National Broadcasting Company in its documentary, *Migrant—NBC White Paper*, aired on July 16, 1970. It is probable that the actual figure is closer to 100,000. *See* note 10 *supra*.

12. The top five users of migratory labor are California, Florida, Michigan, Texas, and Washington respectively. 1969 S. REP., *supra* note 4, at 7. The large Florida migrant labor force differs little, if any, from those that travel either the West Coast or midcontinent stream. The average male migrant is 37 years old (34 for females) and lives with his family of 4.707 persons. KLEINERT REPORT, *supra* note 9, at 151. This figure is significantly larger than the national average of 3.7 persons per family. *Id.* at 146. The average migrant was born in the states of the Deep South or Texas. *Id.* at 143. As a child he probably began working at age 12, *id.* at 188, and has had about 6.2 years of formal education. *Id.* at 164. He typically spends about 7 months per year in Florida. *Id.* at 131.

migrants share with all farmworkers, will be analyzed. Finally, the likelihood of successful organization of Florida's migrant farmworkers will be examined.

PRESENT ORGANIZATIONAL STRUCTURE

There are few actual farmworker unions in the United States today.[13] However, the great majority of migrant farm laborers work together in collective units, ranging in size from 20 to 250 people, under the management of crew leaders.[14] In one recent survey in Florida, eighty-two per cent of the migrants interviewed worked under a crew leader.[15] The crew leader or crew chief serves as the migrant's bargaining agent, finding jobs and negotiating with prospective employers. In many cases he supplies the transportation from one area of employment to another. Generally, the farmer pays all funds to the crew leader who then, ideally, distributes the proper wages to the workers. However, the crew leader often exploits the migrants by withholding portions of their wages, abandoning workers without paying them, or failing to forward social security deductions.[16]

In 1963 Congress reacted to these widespread abuses by passing the Farm Labor Contractor Registration Act (FLCRA),[17] making registration and certification mandatory for all crew leaders who transport ten or more workers in a calendar year in interstate agricultural employment.[18] The Act requires disclosure to the workers of amount of wages,[19] area of employment,[20] and type of crops and operations on which they will be employed.[21] The crew leader is also required to inform his workers of the transportation that will

13. One farmworker union that has achieved a notable degree of success is the United Farm Worker Organizing Committee (UFWOC). *See* text accompanying notes 140-147 *infra*. Hawaiian farmworkers have been unionized for many years. *See Hearings on Migratory Labor Before the Subcommittee on Migratory Labor of the Senate Committee on Labor and Public Welfare*, 91st Cong., 1st Sess., pt. 4, at 931-42 (1968). A number of Wisconsin farmworkers have been organized by Jesus Salas in their union *Obreros Unidos*. *See* Erenburg, *Obreros Unidos in Wisconsin*, 91 MONTHLY LAB. REV., June 1968, at 17, 20-23.

14. LEGISLATIVE COUNCIL AND LEGISLATIVE REFERENCE BUREAU, MIGRANT FARM LABOR IN FLORIDA 7 (1961). Another common means of employment is by "day haul labor." Growers may send trucks to a central point each morning where they indicate to any workers congregated there the wage rate, type of crop, and condition of the crop yield. *Id.*

15. KLEINERT REPORT, *supra* note 9, at 79.

16. *See generally* Chase, *The Migrant Farm Worker in Colorado—The Life and the Law*, 40 COLO. L. REV. 45 (1967).

17. 7 U.S.C. §§2041-53 (1964). In the preamble to the FLCRA Congress expresses recognition of the problems caused by unethical crew leaders: "The Congress hereby finds that the channels and instrumentalities of interstate commerce are being used by certain irresponsible contractors for the services of the migrant agricultural laborers who exploit producers of agricultural products, migrant agricultural laborers, and the public generally, and that, as a result of the use of the channels and instrumentalities of interstate commerce by such irresponsible contractors, the flow of interstate commerce has been impeded, obstructed, and restrained." 7 U.S.C. §2041 (a) (1964).

18. 7 U.S.C. §2042 (b) (1964).

19. 7 U.S.C. §2045 (b) (1964).

20. *Id.*

21. *Id.*

be furnished, housing and insurance to be provided, and the charges to be made for the crew leader's services.[22]

Although this Act is ostensibly an excellent protective device, it has been largely ineffective in practice.[23] The primary reason for the Act's impotence is the failure, or refusal, of many crew leaders to register. In 1968 fewer than 3,000 of an estimated 8,000-12,000 farm labor contractors (crew leaders) registered.[24] Lack of adequate funding to administer and police the program would seem to preclude increased compliance by crew leaders in the future.[25]

Problems of Union Organization

The National Labor Relations Act

With one notable exception, past efforts to unionize farmworkers have proved unsuccessful.[26] Many reasons have been suggested for this failure, but the most formidable obstacle appears to be the exclusion of agricultural workers from the protection afforded by the National Labor Relations Act (Wagner Act).[27] The NLRA was intended to prevent employers from engaging in specified unfair labor practices in retaliation against workers for their efforts to organize and engage in collective bargaining.[28] As a result of

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22. *Id.*

23. It has been suggested that the best way to handle the problem is to eliminate the need for the crew leader. This can be accomplished by expanding the services of state employment agencies to assume most of the functions that crew leaders perform. *See* Note, *The Farm Worker: His Need for Legislation*, 22 MAINE L. REV. 213, 228 (1970). These state employment agencies function in conjunction with the United States Employment Service established in 1933 by the Wagner-Peyser Act. 29 U.S.C. §49 (1964).

One recent case arising in Florida illustrates how the employment service can be used to enforce migrant rights. In Gomez v. Florida State Employment Serv., 417 F.2d 569 (5th Cir. 1969) the court recognized a cause of action for workers who were recruited through the Florida State Employment Service when wages were below that which had been promised and where the housing was substandard. If these migrants had been recruited through a non-registered crew leader rather than through the state employment service, these rights could not have been enforced.

24. 1969 S. REP., *supra* note 4, at 82.

25. In 1968 the field staff of the Labor Department's Farm Labor Contractor Registration Section was limited to five professional employees. *Id.* In addition to the federal enactment, eight states regulate crew leaders within the state under statutes similar to the FLCRA. CAL. LABOR CODE §§1682-99 (West 1955); COLO. REV. STAT. ANN. §§80-8-1 (7), 80-8-2 (3), (4) (1963); 5 NEV. REV. STAT. §§619.010 to .160 (1967); N.J. STAT. ANN. §§34:8A-1 to -6 (1965); 30 N.Y. CONS. L. ANN. §§212-a to 213 (McKinney 1965); 51 ORE. REV. STAT. §§658.405-.455 (1969); 43 PA. STAT. ANN. §§535-64 (1964); WASH. REV. CODE ANN. §§19.30.019 to .900 (1961). In addition, a Texas law designed primarily to regulate out-of-state employment also contains certain requirements for those who recruit for in-state employment. TEX. CIV. STAT. art. 5221a, §7 (1971). Despite the vast number of migrants who work under crew leaders, Florida has no protective regulations in this area, and crew leaders are able to exploit the migrants with no state preventive measures available.

26. *See* text accompanying notes 140-147 *infra*.

27. 29 U.S.C. §152 (3) (1964).

28. Although agricultural workers were denied this protection initially, it does not appear that the intentions were to permanently exclude them from the NLRA provisions: "[T]he

several different factors, particularly the power acquired by labor unions and the abuse of that power, the NLRA was amended by Title I of the Labor Management Relations Act (Taft-Hartley Act).[29] This amendment specifically enumerated unfair labor practices applicable to labor unions or their agents.[30] Since agricultural workers were specifically exempted from the Taft-Hartley Act,[31] agricultural labor unions are not subject to its sanctions.

This exclusion from the NLRA does not mean that farmworkers are barred from forming unions. It means, rather, that the Government will not protect farmworkers in their efforts to form such unions. The farmers are not precluded from engaging in specified unfair labor practices against farmworker organizers although their industrial counterparts are restrained from such action against industrial union organizers. By the same token, since farmworkers are excluded from the restrictions imposed on labor unions by Taft-Hartley, they are free to engage in such prohibited activities as secondary boycotts. However, since farmworkers have had little unity in the past the Taft-Hartley exclusion has not been significantly harmful to the farmers.[32]

Perhaps the overriding objection to inclusion of agricultural laborers in the NLRA is the anticipated deleterious effect upon the farmer. It is argued that the farmer is in an especially weak bargaining position because of "[t]he perishable nature of agricultural commodities, the consequent need for uninterrupted harvesting and preparation for market, in addition to lack of control over weather, production, prices and markets . . . ."[33] It is apparent that a lengthy work stoppage during harvest time could have an economically devastating effect on Florida's vegetable and citrus crops. Growers argue that such a development would place them at the mercy of unions to the extent that they would have to accede to all union demands in order to avoid a complete crop loss.[34]

A similar argument was used in the food processing industry when process workers began to organize more than thirty years ago. It was feared that

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Committee discussed this matter carefully in executive session and decided not to include agricultural workers. We hope that the agricultural workers will be taken care of . . . . I am in favor of giving agricultural workers every protection, but just now I believe in biting off one mouthful at a time. If we can 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." Comment by Rep. Connery, sponsor of the bill and chairman of the House Committee on Labor, *reprinted in* Morris, *Agricultural Labor and National Labor Legislation*, 54 CALIF. L. REV. 1939, 1954 (1966). *See generally* W. SPENCER, THE NATIONAL LABOR RELATIONS ACT: ITS SCOPE, PURPOSES, AND IMPLICATIONS (1935) for background information on the historical aspects of the NLRA.

29. 29 U.S.C. §§141-44 (1964).

30. 29 U.S.C. §141 (1964).

31. 29 U.S.C. §152 (3) (1964).

32. But this situation may be changing. *See* text accompanying notes 140-157 *infra*.

33. Morris, *Agricultural Labor and National Labor Legislation*, 54 CALIF. L. REV. 1939, 1971 (1966).

34. *Hearings on Migratory Labor Legislation Before the Subcommittee on Migratory Labor of the Senate Committee on Labor and Public Welfare*, 90th Cong., 1st Sess., pt. 2, at 519 (1967).

the seasonal nature of the work and the perishability of the raw product would enable the workers to gain control of the industry through threatened or actual strikes during crucial periods. Such fears, however, have failed to materialize.[35] In addition, in the few states that have enacted labor laws protecting farmworkers in their unionizing activities, experience has not justified the grower's argument.[36]

Another compelling argument raised by farmers is that they are unable to absorb the increased labor cost that would certainly occur as a result of unionization.[37] The small farmer is especially fearful of the anticipated costs of unionization.[38] It is unlikely, however, that small farming operations will feel the direct effects of farm labor organization. The current standards of the National Labor Relations Board limit its jurisdiction to operations that have an annual interstate outflow or inflow of 50,000 dollars per year.[39] It is estimated that if this limitation were applied to the agriculture industry only 3.5 per cent of all farms would be included, thereby excluding all small farms and even a portion of the more sizable farming operations.[40] The large farming enterprises that would meet the NLRB standards more closely resemble industrial operations than the traditional American farm,[41] and these

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35. *See generally* Morris, *supra* note 33, at 1975-79.

36. *See* note 13 *supra*. Hawaii's field labor has been unionized for more than 20 years. HAWAII REV. STAT. §377-1 (3) (1968). Both Wisconsin and Kansas have enacted protective or non-exclusionary statutes. WIS. STAT. ANN. §111.02 (3) (1957); KAN. STAT. ANN. §44-801 (1964).

37. *See, e.g.*, Kovarsky, *Increased Labor Costs and the American Farmer—A Need for Remedial Legislation*, 12 ST. LOUIS U.L.J. 564 (1968).

38. The elimination of the small farmer is favored by some: "Many economists take the view that the less efficient and smaller farm units must disappear before the farmer can expect financial improvement. By permitting the payment of low wages, the inefficient farmer continues to operate by depressing prices and seeking costly government support. The continuance of the agricultural exclusion from social legislation is even more irrational because the larger, probably more efficient farmer hires most of the migrants. If an increase in the migrants' income forces the less efficient farmers out of business, society will benefit in the long run." Kovarsky, *Congress and Migrant Labor*, 9 ST. LOUIS U.L.J. 293, 348 (1965).

39. This jurisdictional standard was adopted on Oct. 2, 1958. *See* CCH L. REP. EXPEDITER §§1, 2, at 306-08 (1963). For a discussion of the reasons for and background of this standard *see* Siemons Mailing Serv., 122 N.L.R.B. 81 (1958).

40. 1969 S. REP., *supra* note 4, at 22. Only 108,400 of 3,157,900 farms in the United States would be covered. In fact, only 11% of all commercial farms hire any full-time workers. *Id.*

41. These corporations employ hundreds of workers and make extensive use of machinery and advanced agricultural technology. They have the benefit of relatively easy credit and are getting the bulk of government subsidies. In addition, many of them are vertically integrated, combining their growing operation with processing. *See* P. H. Georgi, The Delano Grape Strike and Boycott: Inroads to Collective Bargaining in Agriculture 33, Aug. 15, 1969 (unpublished thesis prepared at the Massachusetts Institute of Technology) [hereinafter cited as Georgi Thesis], *reprinted in Hearings on Migrant and Seasonal Farmworker Powerlessness Before the Subcommittee on Migratory Labor of the Senate Committee on Labor and Public Welfare*, 91st Cong., 1st Sess., pt. 3-A at 731 (1969) [hereinafter cited as *1969 Hearings on Powerlessness*].

so-called "agribusinesses" employ the vast number of migrant farmworkers. A majority of American farms, 87.1 per cent, employ fewer than one hired laborer per farm and account for only 29.3 per cent of the entire national farm wage expense.[42] It is clear that the agricultural wealth of this nation is concentrated in the hands of a relatively few large operations. It is these agribusinesses that employ the great bulk of the migrant labor force,[43] and that would be subject to NLRA requirements when bargaining with farm labor unions.

Whether large or small, many farmers fear that increased labor costs would put the American farmer at a distinct disadvantage in competing with Mexican agricultural products.[44] The impact of this competition is greatest in those crops employing many field and packing workers — particularly the fruit and vegetable industry.[45] There are, however, several factors that serve to diminish the advantage afforded the Mexican farmer by inexpensive labor costs. Primarily, the Mexican farm is generally inefficient, and technological developments should eventually offset any rise in American labor costs that could occur as a result of unionization.[46] In addition, tariffs are imposed on imported foodstuffs, which also serve to counter the low cost of Mexican labor.[47] Other unique costs, such as the high price of packing materials,[48] transportation costs,[49] and losses absorbed by failure to meet United States' sanitation and health standards,[50] also tend to reduce the Mexican farmer's competitive advantage.

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42. This means that the remaining 12.9% of the farms pay a huge 70.7% of the entire farm wage bill. Morris, *supra* note 33, at 1983 n.162 (1966). Throughout the last few decades the total number of individual farms has dropped drastically, but the total acreage in farmland has not decreased in proportion. U.S. DEP'T OF AGRICULTURE, AGRICULTURAL STATISTICS 1970, at 426 (1970). From 1935 to 1964 the total number of farms dropped from 6.8 million to 3.1 million. *Id.* Large farms correspondingly accounted for more acreage. In 1959 farms with more than 500 acres (9% of all farms) accounted for 61% of all farmland; farms with more than 200 acres (22% of all farms) accounted for 76% of all farmland, leaving the remaining 78% of all farms controlling only 24% of total American farmland. *Hearings on S. 1864, S. 1865, S. 1866, S. 1867, and S. 1868 Before the Subcommittee on Migratory Labor of the Senate Committee on Labor and Public Welfare*, 89th Cong., 1st Sess. 6 (1965) [hereinafter cited as *Hearings on S. 1866*].

The work force in agriculture has similarly declined. As a result of the change in the scale of operation because of technological advancements, capital is substituted for labor. Consequently, the need for permanent farm employees has decreased while the need for seasonal or temporary farm workers has increased. However, since 1967 even this need has been decreasing from the average 400,000 domestic migratory workers needed each year since World War II. 1969 S. REP., *supra* note 4, at 4.

43. Kovarsky, *supra* note 37, at 570.

44. *See, e.g.*, St. Petersburg (Fla.) Times, Nov. 1, 1970, §B at 7, col. 4. Agricultural products account for more than one-half of total Mexican exports. *See* R. SHAFER, MEXICO: MUTUAL ADJUSTMENT PLANNING 35 (1966).

45. *See generally* Kovarsky, *supra* note 37, at 573-85.

46. *Id.* at 584.

47. *Id.*

48. *Id.*

49. *Id.* at 585.

50. *Id.* at 584.

Farmers opposed to unionization argue that the vicissitudes of weather may adversely affect productivity and reduce the farm operator's ability to pay higher wages or fringe benefits.[51] One authority points out:[52]

> [J]ustifying low wages paid migrants on this basis shifts unfairly a large portion of the risk involved in operating a farm from the shoulders of the farm operator, who should be in a better position to assume the economic risk, to the migrant worker who is already at the bottom of the economic pack.

Mobility

Assuming that the farmers' fears could be assuaged and that agricultural workers were included in the NLRA, union organization of migrant farmworkers is still a difficult task, largely because of worker mobility.[53] The transient character of the migrant labor force also serves to prevent the migrant from complying with various state residency requirements.[54] Unable to meet voter eligibility requisites, the migrant worker is precluded from exercising any significant degree of political power.[55] The Voting Rights

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51. Kovarsky, *Congress and Migrant Labor*, 9 ST. LOUIS U.L.J. 293, 344 (1965). Additional reasons proffered by farmers for continuing the agricultural exclusions include: "1. The farmer would be burdened with record keeping. 2. The administration of a minimum wage law is difficult because piece rates vary. 3. Legislation pertaining to the larger farmer could ultimately be extended to all farmers. 4. During harvest, the farmer cannot afford to bargain over wages, hours, and working conditions. 5. Minimum wage guarantees eliminate employee incentive. 6. Agriculture is a seasonal industry which cannot be regulated in the same manner as manufacturing. 7. If wages are increased, the cost of harvest may exceed the value of the crop. As a result, many crops would not be harvested. 8. Living costs are less in rural areas than in urban communities; farm wages are kept sufficiently high to prevent labor from moving to the city. 9. Farmers in Texas face stiff competition from growers in Mexico where lower wages are paid. 10. The migrant labor force is composed of transients and many of the young workers remain only a short period of time." *Id.* at 349.

52. *Id.* at 345.

53. *See generally* Daniel, *Problems of Union Organization for Migratory Workers*, 12 LAB. L.J. 636 (1961).

54. This has injured the migrant in two crucial areas—public welfare assistance and voting eligibility. *See* text accompanying notes 133-139 *infra*.

55. "The migrant worker . . . is politically impotent and unorganized. Small in number as compared to other groups and frequently illiterate and disenfranchised, the interests of the migrant have been ignored on a federal level. The farmer, well-organized and frequently numerically over-represented on a state and federal level, can often prevent the passage of legislation designed to benefit the migrant." Kovarsky, *supra* note 51, at 323.

One example of this political impotence was the inability of American farmworkers to stop the long continued program of importing cheap foreign labor to perform seasonal farm work. Prior to 1964 several hundred thousand Mexican workers, *braceros*, were imported into this country each year under the authority of Public Law 78, 65 Stat. 119 (1951). This practice was severely restricted under the Immigration and Nationality Act, 8 U.S.C. §§1101-1503 (1964), which requires that before foreign labor can be imported there must be a certification by the Secretary of Labor that such importation "will not adversely affect . . . workers in the United States similarly employed." 8 U.S.C. §1182(a)(14)(B) (1964). *See*

Act Amendments of 1970 alleviated this situation somewhat by eliminating residency requirements on voting for presidential and vice presidential candidates.[56] However, since the Act extends neither to senatorial or congressional candidates nor to state or local elections, the migrant's political voice is given only limited extension.[57] Any further reduction of residency requirements must come through individual state action or constitutional amendment.[58]

Unions and Farmworker Problems

The agricultural labor union is regarded by many to be the only means through which the migrant can effectively solve his problems.[59] These problems can be separated into two general categories: those affecting all farmworkers generally and those that are unique to the migrant. In the former category there is legislation on both state and federal levels that either omits farmworkers altogether or provides only for limited inclusion. In the latter category is legislation of a remedial or regulatory nature that is either especially directed toward helping the migrant or has particular emphasis upon him.

A farmworker union is clearly not a panacea, nor can it provide any direct solutions to the migrant's problems. Formation of effective unions will not improve housing conditions or raise health standards. Such unions will, however, provide a power base from which such changes may begin — whether it be achieved through private negotiations with individual farmers or groups of farmers or through the use of a powerful lobby to achieve beneficial state or federal legislation.

Problems Affecting All Farmworkers Generally

Wages. In 1938 Congress enacted the Fair Labor Standards Act (FLSA) providing for a minimum wage and overtime payment for those workers who fall within the statute's coverage.[60] Farmworkers were specifically excluded.[61] Congress may have had valid economic reasons for excluding agricultural workers in 1938. However, it is difficult to justify the fact that Congress took more than a quarter of a century before any extension was granted to farmworkers,[62] an extension that is grossly inadequate.

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also 8 C.F.R. §214.2(h)(2)(11) (1969) *and* 20 C.F.R. §602.10 (1969). In Florida this law chiefly affected the sugar cane industry, which imports much of its labor from the British West Indies. 1969 S. Rep., *supra* note 4, at 11.

56. Voting Rights Act Amendments, Pub. L. No. 91-285, 84 Stat. 314. Title II of this Act completely abolishes the residency requirement as a precondition to voting for presidential and vice presidential candidates.

57. It is doubtful that the amendments could have been extended to affect state requirements. *See* Oregon v. Mitchell, 400 U.S. 112 (1970).

58. Florida's current residence requirements for voting eligibility are one year in the state and six months in the county. Fla. Const. art. VI, §2.

59. *See* note 154 *infra.*

60. 29 U.S.C. §§201-19 (1964), *as amended,* (Supp. V, 1969).

61. Act of June 25, 1938, ch. 676, §13(a)(6), 52 Stat. 1067.

62. Fair Labor Standards Amendments of 1966, 29 U.S.C. §203(e) (Supp. V, 1969).

The 1966 agricultural worker amendment to the FLSA limits the Act's coverage to those farms employing more than 500 man-days of agricultural labor during any calendar quarter of the preceding year.[63] This encompasses those farms employing about seven or more full-time workers in a calendar quarter. In addition, coverage is not extended to those who are hand-harvest laborers and who are paid at a piece rate, commute daily from their permanent residence to the farm, or who were employed in farm work for less than thirteen weeks during the prior calendar year.[64] Therefore, inclusion of agricultural workers has proved hardly adequate since these limitations result in coverage of only thirty-five per cent of all farmworkers.[65] Moreover, those workers who are within the Act are not only guaranteed a substantially lower wage rate than their industrial counterparts,[66] but are also excluded from the FLSA's overtime provision.[67]

Because of the limited application of the present Act the Senate Subcommittee on Migratory Labor has proposed an increase in agricultural minimum wages and an expansion of coverage through elimination of exceptions and lowering of required man-days.[68] The subcommittee proposed 100-man-day requirement would still include only sixty per cent of all farmworkers,[69] however, and at least one commentator has suggested that the requirement be dropped altogether.[70] It has also been suggested that "[t]he problem facing . . . migrants is not insufficient hourly wages, but too few hours of work."[71] What is needed, then, is a minimum hours-of-pay guarantee rather than a guaranteed minimum hourly wage.[72]

Several states have at least some limited form of minimum wage and maximum hour legislation.[73] Florida has not provided for minimum wages and has legislated only to the extent of prescribing that anyone working in excess of ten hours per day must be paid "more";[74] more than what or the extent of such additional payment is not specified.

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63. 29 U.S.C. §213 (a) (6) (Supp. V, 1969).

64. 29 U.S.C. §203 (e) (3) (Supp. V, 1969).

65. 1969 S. REP., *supra* note 4, at 56. Thus, the FLSA coverage includes only 2% of all farms. *Id.* at 55.

66. The farmworker's minimum wage is set at $1.30 an hour in contrast to $1.60 an hour for other workers. 29 U.S.C. §§206 (a) (1), (5) (Supp. V, 1969).

67. 29 U.S.C. §213 (b) (12) (Supp. V, 1969).

68. 1969 S. REP., *supra* note 4, at 57-59.

69. *Id.* at 58.

70. Note, *The Farm Worker: His Need for Legislation*, 22 MAINE L. REV. 213, 224-25 (1970).

71. Note, *Migrant Farm Labor in Upstate New York*, 4 COLUM. J.L. & SOCIAL PROBLEMS 1, 19 (1968).

72. *Id.*

73. Eight jurisdictions provide for minimum wage for farm workers by statute: ARK. STAT. ANN. §81-101 (1947); HAWAII REV. STAT. §387-1 (2) (1968); MASS. ANN. LAWS, ch. 151, §2A (Supp. 1970); MICH. COMP. LAWS ANN. §408.381 (West 1967); N.J. STAT. ANN. §34:11-4.1 (b) (Supp. 1971); N.M. STAT. ANN. §§59-3-21 (D), -22 (C) (Supp. 1969); ORE. REV. STAT. §653.020 (1) (1969); TEX. CIV. STAT. art. 5159d, §6 (1971). Two other states afford a minimum rate by wage order: CAL. LABOR CODE §§1171-1204 (West 1955); WIS. STAT. ANN. §104.01 (2) (Supp. 1970).

74. FLA. STAT. §448.01 (1969).

The complete inclusion of agricultural workers by both state and federal minimum wage laws is essential. However, extension of the coverage afforded by the FLSA has met in the past with extreme controversy.[75] The argument most often raised by opponents to extension is that the cost of higher wages cannot be absorbed by most farmers. Proponents of extension point out that the ratio of the field labor cost to retail price is relatively minute, most of the cost to the consumer arising from packaging, shipping, and handling costs in addition to the profits exacted at each level by the grower, distributor, and retailer.[76] Proponents argue that since the demand for food is inelastic, at least in the short-run, the increase in production costs can be passed on to the consumer.[77] Even if the total field labor costs were completely doubled, it would increase the individual food price paid by the consumer by no more than seven per cent.[78]

Workmen's Compensation. Another area in which farmworkers feel that union pressure could exact needed change is that of workmen's compensation programs. These programs generally provide for compensation to workers who are accidentally injured while on the job, regardless of fault or negligence. While such laws have long protected workers in other industries, only thirteen states have made workmen's compensation mandatory for farmworkers;[79] but only four of these jurisdictions have extended coverage to farmworkers that is equivalent to coverage given to workers in other occupations.[80] Florida's workmen's compensation law specifically excludes agricultural workers.[81]

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75. "At the present time, the problems surrounding wage and hour law are political and practical rather than constitutional. Each attempt to amend the Fair Labor Standards Act has produced a fierce struggle and the details have come to reflect, more than anything else, the relative political strengths of the interested pressure groups." S. COHEN, LABOR LAW 77-78 (1964).

76. In 1965 a head of lettuce selling for 21¢ had a field labor cost of only 1 to 1.3¢ per head (approximately 6%); lemons, 24¢ a dozen had a labor cost of .6 to 1¢ a dozen (approximately 3%); oranges selling for 50-72¢ a dozen had a cost of 1.2¢ a dozen (approximately 2%); grapefruit selling at 8-10¢ each had a field labor cost of .2 to .4 each (approximately 2.5%). 1969 S. REP., *supra* note 4, at 55.

77. Kovarsky, *Congress and Migrant Labor*, 9 ST. LOUIS U.L.J. 293, 349 (1965).

78. *See* HOUSE COMMITTEE ON EDUCATION AND LABOR, COVERAGE OF AGRICULTURAL EMPLOYEES UNDER THE NATIONAL LABOR RELATIONS ACT, H.R. REP. No. 1274, 90th Cong., 2d Sess. 31 (1968). Even if true, the consumer will find this solution highly undesirable. Perhaps the answer to the problem of extending benefits to farmworkers in this and other programs is to seek federal subsidization. In order to avoid raising taxes to provide such a program, funds would have to be diverted from other areas.

79. The 13 state statutes providing mandatory workmen's compensation for farmworkers are: ALASKA STAT. §23.30.230 (1962); ARIZ. REV. STAT. ANN. §23-902 (1956); CAL. LABOR CODE §3352 (West 1955); CONN. GEN. STAT. ANN. §31-275 (Supp. 1969); HAWAII REV. STAT. §§386-1 to -174 (1968); MASS. ANN. LAWS ch. 152, §1 (47) (Supp. 1969); MICH. COMP. LAWS ANN. §411.2a (1) (d) (West Supp. 1969); MINN. STAT. ANN. §176.011 (12) (1966); N.H. REV. STAT. ANN. §281:2 (Supp. 1970); N.Y. WORKMEN'S COMP. LAW §§2, 3 (McKinney 1965); OHIO REV. CODE ANN. §4123.01 (Page 1965); ORE. REV. STAT. §656.027 (5) (1969); WIS. STAT. ANN. §102.04 (1) (c) (Supp. 1970).

80. These states are: California, Connecticut, Hawaii, and Massachusetts.

81. FLA. STAT. §440.02 (c) (3) (1969).

It does provide, however, for a waiver of exemption so that any employer may voluntarily include his employees under the provisions of the Act.[82]

It is apparent that some form of disability compensation is needed for farmworkers. Farming ranks as the third most hazardous occupation, exceeded only by mining and construction.[83] The migrant's low wages make the economic impact of a disabling injury significantly greater than that suffered by workers in other occupational groups. Low wages prohibit the migrant from saving for such misfortunes and do not allow him to provide for hospital and surgical insurance. One public health survey indicated that only forty-two per cent of all farmworkers had hospitalization insurance and only thirty-seven per cent had surgical insurance.[84] The corresponding percentages for other workers were seventy-six percent and seventy-one per cent respectively.[85]

Unemployment Insurance. Unemployment insurance, like workmen's compensation, has long been a matter of state concern. To date, Hawaii is the only state that includes farm laborers in its unemployment compensation laws.[86] The Senate Subcommittee on Migratory Labor has asserted that the reasons for the exclusion of agricultural labor from unemployment insurance are no longer valid.[87] The subcommittee has suggested acceptance of a proposal that would extend unemployment compensation coverage to all farm labor employers who used 300 man-days of employee labor (about four or five full-time workers) during any quarter of the preceding calendar year.[88] This would result in extending benefits to 67,000 farms employing 572,000 workers.[89] For example, small farms utilizing the labor of family members and fewer than four full-time hired workers would be unaffected by the provisions of such an act. The subcommittee estimates that its plan would result in only two-tenths of a per cent increase in total farm production expenses for those farms that are within its coverage.[90]

Unemployment insurance is crucial in an occupation where the most

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82. FLA. STAT. §440.04 (1969). It is questionable, however, that such is a common practice among employers of migrant farmworkers.

83. "In 1964, when farmwork accounted for only 7 per cent of total employment, 13.2 per cent of all disabling injuries and 22.5 per cent of all fatalities from work accidents occurred in agriculture." SUBCOMMITTEE ON MIGRATORY LABOR OF THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE, THE MIGRATORY FARM LABOR PROBLEM IN THE UNITED STATES, S. REP. NO. 71, 90th Cong., 1st Sess. 38 (1967) [hereinafter cited as 1967 S. REP.].

84. 1967 S. REP., *supra* note 83, at 38.

85. *Id.*

86. HAWAII REV. STAT. §§383-1 (8), -2 (1968).

87. "The traditional reason for the exclusion of agricultural workers was a belief that agriculture presented administrative and financial problems for a program of unemployment insurance, which was basically designed to meet the needs of a worker with continued attachment to an industrial labor force. With the consolidation and mechanization of American farms, however, agriculture resembles industry and is often characterized as agribusiness." 1968 S. REP., *supra* note 6, at 62.

88. 1969 S. REP., *supra* note 4, at 87.

89. *Id.*

90. *Id.*

apparent characteristic is that of long terms of unemployment.[91] Even those migratory workers who engage in nonfarm work average three and one-half months of unemployment each year.[92] Florida has explicitly excluded agricultural labor from coverage,[93] although seasonal workers, per se, are not otherwise disqualified from receiving unemployment benefits. However, they must meet the same eligibility requirements as nonseasonal workers[94] and, as a practical matter, these requirements have barred migrants from qualifying for benefits.[95]

Problems Unique to Migrant Farmworkers

Housing. Florida has extensive laws regulating housing in migrant labor camps. A license must first be acquired from the Division of Health of the Department of Health and Rehabilitative Services in order to operate a migrant labor camp.[96] To qualify for the license the camp must conform to minimum standards prescribed by the Florida Sanitary Code.[97] Failure to meet these standards may result in revocation of the license,[98] and willful violation can result in imprisonment for up to six months or a 1,000 dollar fine.[99] This Code is stringent and has been recognized by the Department of Labor as among the best in the nation.[100]

Despite the attempt by Florida and other states to regulate labor camp conditions, the migrant remains the most poorly housed of all rural and urban populations.[101] The problem is not in the law, but rather its enforcement:[102]

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91. *See* note 9 *supra* and accompanying text.

92. *Id.*

93. FLA. STAT. §443.03 (5) (g) (1) (1969).

94. Among other requirements, a worker must have been paid wages for insured work equal to twenty times his average weekly wage (which must be in excess of $20) during his base period. FLA. STAT. §443.05 (5) (1969). Base period is defined as the first 4 of the last 5 calendar quarters immediately preceding the first day of his benefit year. FLA. STAT. §443.03 (1) (1969). The migrant's problem is that agricultural labor does not qualify as insured work. FLA. STAT. §443.03 (5) (g) (1) (1969).

95. *See, e.g.,* Florida Industrial Comm'n v. Ciarlante, 84 So. 2d 1 (Fla. 1955), *and* Teague v. Florida Industrial Comm'n, 104 So. 2d 612 (2d D.C.A. Fla. 1958).

96. FLA. STAT. §381.432 (1969).

97. FLA. STAT. §§381.422-.482 (1969). *See also* Sanitary Code of Florida, 2 FLA. ADMIN. CODE ch. 10D-25 (1970).

98. FLA. STAT. §381.462 (1969).

99. FLA. STAT. §381.411 (1969).

100. U.S. Dep't of Labor, Bull. No. 235, (revised), Housing for Migrant Agricultural Workers, Labor Camp Standards at 4 (Nov. 1962).

101. Malotky, *Better Housing in the Country, A Place to Live,* in U.S. DEP'T OF AGRICULTURE, YEARBOOK 185 (1963). Forty-two per cent of all farm housing is substandard compared with only 14% of nonfarm housing. 1969 S. REP., *supra* note 4, at 34. *See generally* Brann, *Housing of Migrant Agricultural Workers,* 46 TEXAS L. REV. 933 (1968); Chase, *The Migrant Farm Worker in Colorado — The Life and the Law,* 40 COLO. L. REV. 45 (1967); Note, *Migrant Farm Labor in Upstate New York,* 4 COLUM. J. L. & SOCIAL PROBLEMS 1, 23-38 (1968) for descriptions of various facilities and conditions throughout the country.

102. Note, *Laws and Legislation Providing for the Housing of Migrant Agricultural Workers,* 6 WILLAMETTE L.J. 111, 122 (1970).

> The key to the failure of most state codes providing rules and regulations seems to be a lack of adequate enforcement and inspection procedures. These codes merely exist as written laws without any adherence or enforcement which might bring significant improvement to migrant housing.

The federal government has made some effort to improve migrant housing conditions by providing federal assistance through the Farmer's Home Administration.[103] This program has been relatively ineffective, however, because of inadequate appropriations. From 1965 to 1968 only $3 million was appropriated each year for housing grants although $50 million was authorized for the program.[104]

Health Problems. Partly as a result of poor and unsanitary housing conditions, migrant farmworkers have serious health problems.[105] The average life expectancy of the migrant is 49 years — strikingly shorter than the national average of 70.29 years.[106] The morbidity and mortality rates are also much higher than the national rates. Infant and maternal mortality rates among migrants are 125 per cent of the national rates;[107] influenza and pneumonia, 200 per cent;[108] and the relative figure for tuberculosis and other infectious diseases is 260 per cent.[109]

Congress has reacted to the health problems of the nation's seasonal farmworkers by passing the Migrant Health Act.[110] This Act provides funds for medical diagnosis, treatment, immunization, family planning, prenatal care, and other services. Since its inception in 1962 the program has met with a great deal of success, although lack of adequate funds has limited the coverage to about one-third of the total migrant population.[111] The inadequacy of appropriations is reflected in the low per capita expenditures. In 1967 the average per capita health expenditure for migrants was 7.20 dollars.[112] In

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103. With the amendment of title V of the Housing Act of 1949 some form of federal assistance through FHA for migrant housing has existed since 1961. Housing Act of 1961, 42 U.S.C. §1471 (1964).

104. 1969 S. REP., *supra* note 4, at 36. The Rural Housing Alliance, a private, nonprofit organization, has stated that such government efforts have been almost a total failure: "In the nine years that have elapsed since the FHA was authorized to make loans for the construction of farm labor housing, only 4,146 housing units for migrant families and 3,307 units for individuals have been financed." St. Petersburg (Fla.) Times, Nov. 1, 1970, §A at 16, cols. 4-5.

105. For an analysis and report on the health problems of the Florida migrant, *see* R. BROWNING & J. NORTHCUTT, ON THE SEASON (1961); E. L. KOOS, THEY FOLLOW THE SUN (1957); KLEINERT REPORT, *supra* note 9.

106. TIME, July 4, 1969, at 20.

107. 114 CONG. REC. 12,652 (daily ed. Oct. 11, 1968).

108. *Id.*

109. *Id.*

110. 42 U.S.C. §242h (1964), *as amended*, (Supp. V, 1969).

111. 1969 S. REP., *supra* note 4, at 27.

112. *Id.* at 28.

comparison, the appropriation for Indians was 170.15 dollars; for the nation as a whole the per capita health expenditure averaged 200 dollars.[113]

Child Labor and Education. A low level of annual income induces many migrant families to have their children work the fields.[114] All states have some form of protective child labor laws.[115] Florida's child labor law[116] prohibits anyone under twelve years from working any time;[117] those under age sixteen can work only during nonschool hours;[118] and certain enumerated hazardous occupations are prohibited to minors under age 16.[119] The Act's primary shortcoming is that it does not apply to minors engaged in farmwork during hours when school is not in session.[120] While this law provides a measure of protection, it suffers a common deficiency with the housing standards — lack of compliance and ineffective enforcement.[121] Paradoxically, it is the migrants themselves who would probably be most opposed to enforcement of the child labor laws. It is simply a matter of economics — the more family members at work in the field, the greater the family income.

The extensive use of child labor and the mobility of their parents result in frequent disruption of the education of migrant children.[122] These factors also have a debilitating effect upon the educational system itself since weather conditions, farm prices, and crop yields all serve to put varying strains upon affected school districts.[123] The deficiencies in educational opportunity for the migrant child have been considerably ameliorated by implementation of the Elementary and Secondary Education Act (ESEA)[124] and the Economic Opportunity Act of 1964.[125] These programs have resulted not only in greatly

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113. The average per capita health care expenditure in the six states of California, Florida, Michigan, New York, Oregon, and Texas for 125,000 migrants actually receiving service was $36. This may be compared with the average per capita expenditures of $340.30 for Indians actually served in 1967. *Id.*

114. The average age at which children begin work is 12.041 years for males and 11.858 years for females. KLEINERT REPORT, *supra* note 9, at 197.

115. *See* 1969 S. REP., *supra* note 4, at 80-81.

116. FLA. STAT. ch. 450 (1969).

117. FLA. STAT. §450.021 (1969).

118. *Id.*

119. FLA. STAT. §450.061 (1969).

120. FLA. STAT. §450.011 (1969).

121. *See* note 102 *supra* and accompanying text.

122. The effect upon the child is apparent. The educational attainment of the average male migrant has been found to be 6.2 years in school. KLEINERT REPORT, *supra* note 9, at 164. In contrast, the average national levels are much higher. The most recent Bureau of the Census survey (March 1969) indicates that the white male, age 14 and over, has completed 12.1 years in school, while the figure for his nonwhite counterpart is 10.0 years. WORLD ALMANAC 172 (L. Long ed. 1971).

123. *See generally* KLEINERT REPORT, *supra* note 9 for an excellent study and analysis of the conditions and problems facing the educational system in Florida.

124. 20 U.S.C. §§236-44 (1964), *as amended,* (Supp. V, 1969). For a general discussion of the effects of the Act, *see* 1969 S. REP., *supra* note 4, at 66-67.

125. 42 U.S.C. §§2701-2994 (1964), *as amended,* (Supp. V, 1969). For a general discussion of the effect of this Act, *see* 1969 S. REP., *supra* note 4, at 67.

extending educational opportunities to migrant children, but have also served to emphasize those areas of the federal programs that are insufficient.[126]

Social Security Benefits. The Social Security Act came into effect in 1935,[127] but it was not until 1956 that agricultural employment was included.[128] Despite the inclusion of agricultural workers, the Act's limitations are such that most migrant farmworkers (in contrast to non-migrant farmworkers) are functionally excluded. In order to qualify for receipt of Social Security benefits the farmworker must satisfy one of two criteria: He must either receive 150 dollars from one employer in a calendar year or must work on an hourly cash wage basis for twenty days or more for one employer.[129] Since most migrants are paid on a piece-rate basis, it is the former criterion — 150 dollars in wages — that is usually controlling.

In order to help the migrant meet these qualifications he is considered by the Act to be the employee of the crew leader rather than of the farmer.[130] The crew leader is given the responsibility of withholding the proper amount from the migrant's pay. He must then forward these sums and all required information to the Social Security Administration. Because of the illegal appropriation of the migrant's withholdings by some crew leaders, this provision of the Social Security Act has often worked to the migrant's detriment rather than to his benefit.[131] The problem has been alleviated somewhat by the registration requirements of the Farm Labor Contractor Registration Act (FLCRA), but since that Act is rather ineffective itself, only minor relief has been afforded.[132]

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126. "It is obvious that we need massive educational opportunities tailored to meet the needs of the migrant. Orientation centers, bilingual teaching, effective and comprehensive dissemination plans, portable classrooms, migrant education teaching teams, workable administrative procedures for records, migrant-oriented learning aides, accurate testing tools, interstate planning and implementation are needed." SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE, ELEMENTARY AND SECONDARY EDUCATION AMENDMENTS OF 1967, S. REP. No. 726, 90th Cong., 1st Sess. 36-37 (1968).

127. Act of Aug. 14, 1935, ch. 531, 49 Stat. 620.

128. Although imponderable administrative difficulties were cited as the basis for this initial exclusion, the indications are that political considerations were more important than possible administrative problems. *See* E. WITTE, THE DEVELOPMENT OF THE SOCIAL SECURITY ACT 153 (1962).

129. 42 U.S.C. §409 (h) (2) (1964).

130. 42 U.S.C. §410 (n) (1964).

131. 1969 S. REP., *supra* note 4, at 93.

132. *See* text accompanying notes 13-25 *supra*. It appears that the most effective method of utilizing the Social Security Act to benefit the migrant is to eliminate restrictive qualifications and put the responsibility for withholdings on the farmer. The importance of some change in the present Social Security Act is well stated by the Senate Subcommittee on Migratory Labor: "The financial cost of making some minimum provision for our farm-working citizens when they become too old to follow farm work or other gainful employment, has been unfairly thrust upon the general public. In other words, the limitations on coverage of these workers during their periods of gainful employment at farmwork, although amounting to a minor benefit or convenience to the employer will in the long run constitute a substantial detriment to the general taxpaying public as well as the farmworker himself. Every dollar that these citizens are allowed to pay for their own social

Public Welfare Benefits. Much of public welfare assistance is provided by federal grants-in-aid under the Social Security Act[133] and through state financed programs of general assistance to needy families.[134] In order to qualify for these programs, indigent applicants have had to comply with various state residency requirements ranging in required residency periods from six months to six years.[135] The effect of such requirements has been to erect a residency barrier against the newly arrived indigent who may be greatly in need of aid. Relief from this situation recently came in the landmark case of *Shapiro v. Thompson.*[136] In that case the Supreme Court held unconstitutional a one-year residence requirement established as a prerequisite to the granting of welfare assistance.[137] The effect of the *Shapiro* decision has been reflected in Florida in *Crapps v. Duval County Hospital Authority.*[138] Relying on *Shapiro* the court held unconstitutional a special act that required a one-year residency in the county as a prerequisite for indigents to receive free medical care.[139]

Likelihood of Success

Unionization may provide the means to begin solving the serious and compelling problems of migrants, but union organization has proved to be a difficult task. Failure to unionize farmworkers in the past[140] has stemmed not only from their exclusion from the protections of the NLRA and their transient nature, but also from inability to educate workers as to the advantages

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security entitlement will lessen the financial burden on the taxpaying public during the workers' non-productive years." 1969 S. Rep., *supra* note 4, at 94.

133. 42 U.S.C. §301 (1964).

134. The state of Florida has no provision for state-financed general assistance benefits to needy families, as do many other states. *See, e.g.,* Ark. Stat. Ann. §83-128(3) (Supp. 1969); La. Rev. Stat. Ann. §46.154 (Supp. 1971); Mass. Ann. Laws ch. 117, §1 (Supp. 1970). Federal grants provide funds for several major programs implemented by the following statutes: Old Age Assistance, Fla. Stat. §409.16 (1969); Aid to the Blind, Fla. Stat. §409.17 (1969); Aid to Families with Dependent Children, Fla. Stat. §409.18 (1969); and Aid to the Permanently and Totally Disabled, Fla. Stat. §409.40 (1969).

135. For a list of these various state requirements, *see* Note, *Residence Requirements in State Public Welfare Statutes,* 51 Iowa L. Rev. 1080, 1090 (1966).

136. 394 U.S. 618 (1969). For an analysis of the ramifications of this case, *see* Note, *Welfare Residence Requirements: A Study in Due Process and Equal Protection,* 31 Ohio St. L.J. 371 (1970).

137. "[T]he effect of the waiting period requirement is to create two classes of needy resident families indistinguishable from each other except that one is composed of residents who have resided a year or more, and the second of residents who have resided less than a year, in the jurisdiction. On the basis of this sole difference the first class is granted and the second class is denied welfare aid upon which may depend the ability of the families to obtain the very means to subsist—food, shelter, and other necessities of life." 394 U.S. 618, 627 (1969).

138. 314 F. Supp. 181 (M.D. Fla. 1970).

139. *See* Comment, *Constitutional Law: Residence Requirements—An Unconstitutional Barrier to Public Assistance,* 23 U. Fla. L. Rev. 598 (1971).

140. *See generally* Kovarsky, *Congress and Migrant Labor,* 9 St. Louis U.L.J. 293, 349-56 (1965).

of unionizing, fear of employer retaliation, and lack of effective leadership.[141] Many of these obstacles have apparently been overcome by the United Farm Workers Organizing Committee (UFWOC) led by Cesar Chavez.[142] Opposition by the California table grape growers against unionization of its employees by UFWOC met with worker opposition in the form of massive strikes, picketing, and a secondary boycott including a national consumer boycott.[143] After suffering significant economic losses, the growers agreed to negotiate.[144] It is noteworthy that all UFWOC contracts negotiated with the growers included no-strike clauses in addition to prohibitions against secondary boycotts:[145]

> Indeed it is the success of grower efforts to deny the farmworker collective bargaining rights which has led to the tactic of harvest time strikes in order to win those rights. Once they are won, the tactic should become an uncommon last resort.

The success enjoyed by Chavez and UFWOC has broadened their objectives. In addition to an inclusion in the NLRA protections, the union favors exclusion from the Taft-Hartley amendments, which prohibit the use of enumerated union unfair labor practices.[146] This dual objective favored by the UFWOC is premised upon a desire to receive treatment commensurate with that afforded to other union organizations prior to the enactment of the Taft-Hartley restrictions.[147] It is doubtful, however, that Congress would approve of exclusion because of the crippling effect unbridled unionism could have on the economy.[148]

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141. *See generally id.* at 355-56. *See also* Daniel, *Problems of Union Organization for Migratory Workers*, 12 LAB. L.J. 636 (1961).

142. *See generally* Georgi Thesis, *supra* note 41, *reprinted in 1969 Hearings on Powerlessness*, *supra* note 41.

143. *Id.*

144. *Id.* at 63-68, *1969 Hearings on Powerlessness* at 800-05.

145. *Id.* at 93, *1969 Hearings on Powerlessness* at 830.

146. *See* text accompanying notes 26-31 *supra*. For example, utilization of an effective secondary boycott by the UFWOC to coerce the California table grape industry into a settlement is a specified unfair labor practice under Taft-Hartley. 29 U.S.C. §131 (8) (b) (4) (1964).

147. The Taft-Hartley Act has been referred to as the "twelve years of sunshine amendment" because the NLRA was passed in 1935 and the Taft-Hartley amendments in 1947. Dolores Huerta, vice president of UFWOC, commented on exclusion from Taft-Hartley when addressing the Senate Subcommittee on Migratory Labor: "Where would the large industrial unions of today be if Congress had 'protected' them from the beginning, not with the NLRA, but with the Taft-Hartley Act? We too need our decent period of time to develop and grow strong under the life-giving sun of a public policy which affirmatively favors the growth of farm unionism. History will record that Taft-Hartley, together with continuing business community determination to oppose unions at nearly every turn, succeeded in checking the progress of labor organization in America before it had accomplished half its job." *Printed in* Georgi Thesis, *supra* note 41, at 104; *1969 S. Hearings on Powerlessness*, *supra* note 41, at 840.

148. Cesar Chavez, appearing before the Senate Subcommittee on Migratory Labor, expressed an additional concern of UFWOC. His fear is that Congress will pass a law

Even if the success of the California based UFWOC could be duplicated in other regions, there is at least one commentator who contends that the effect of unionization could be detrimental to the migrant:[149]

> Unionization, or even the threat of unionization, however, probably could lead growers to mechanize at an accelerated pace, thus eliminating the need for migrants and leaving them unemployed and even worse off than they are under present conditions.

Another authority counters this contention by pointing out that mechanization is increasing and that the total demand for all farmworkers is decreasing. By providing a united front, farmworkers would be more capable of dealing with the problems posed by mechanization.[150]

Regardless of whether the primary problem facing the migrant is deemed to be mechanization or poor housing or one of the other deleterious conditins shared by migrants, it appears that the only means to a solution is through some form of united front or self-help device.[151] Aid from Washington is slow in

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exempting all small farming operations from legislation protecting the farmworkers: "This is a prospect which the leadership of our union does not relish at all. Our natural sympathy is to favor the small grower and to help him in every way we can to remain in business and to prosper. We urge small growers to give the matter a great deal of thought before pressing for an exemption from NLRA coverage." Prepared statement of Cesar Chavez delivered to the Subcommittee on Migratory Labor of the Senate Committee on Labor and Public Welfare, *printed in* Georgi Thesis, *supra* note 41, at 106, *1969 Hearings on Powerlessness, supra* note 41, at 842. It is probable that small farmers will be exempt from unionization simply by virtue of the $50,000 NLRB jurisdictional standard. *See* text accompanying notes 38-41 *supra*. Such a situation may, indeed, work to the benefit of the small farmer because: "A significant competitive advantage enjoyed by the large farmer is his ability to profitably utilize machinery. One means of minimizing [this] competitive advantage . . . is to increase his cost of labor, a cost that is not borne by the small farmer." Kovarsky, *Increased Labor Costs and the American Farmer—A Need for Remedial Legislation?*, 12 ST. LOUIS U.L.J. 564, 571 (1965).

149. Note, *Migrant Farm Labor in Upstate New York*, 4 COLUM. J. L. & SOCIAL PROBLEMS 1, 21 (1968).

150. *See* Note, *The Migrant Farm Worker: His Need for Legislation*, 22 MAINE L. REV. 213, 222 (1970). Mechanized harvesters and production techniques have displaced many migrant workers. While used extensively for certain crops (cotton, potatoes, peas, corn, snap beans), most vegetables and soft fruits are picked by hand labor rather than by machinery. *See generally* Kovarsky, *Congress and Migrant Labor*, 9 ST. LOUIS U.L.J. 293, 318-20 (1965) for a discussion on mechanization's effect on farm labor.

151. Unilateral agribusiness response to the migrant's problems is unlikely although there is one notable exception—the Coca Cola Company. Coca Cola's interest in migrant conditions came about as a result of its acquisition of Minute Maid in 1960. Through this subsidiary, the Coca Cola Company grows about 3% of the entire Florida citrus crop. Over the eight-month orange harvesting period, the company employs 300 full-time workers plus a daily average of approximately 1,000 migrants. *See generally* statement of Mr. J. Paul Austin, President of the Coca Cola Company, before the Subcommittee on Migratory Labor, *reprinted in* 116 Cong. Rec. 13,626-628 (daily ed. Aug. 18, 1970).

Coca Cola has committed itself to an ambitious program designed to aid its migrant workers. The program is aimed at putting the agricultural workers on a parity with other Coca Cola employees. The program includes plans for increased compensation with guaranteed hourly pay plus a piece-rate bonus, improved housing, modern buses, adequate

coming and insufficient when it arrives,[152] state aid is virtually nonexistent.[153]

sanitation facilities in the field, medical care units, health and life insurance coverage, and adult education. *Id.* Assisting Coca Cola in planning this new program is Scientific Resources, Inc., a human resources research firm. *Id.* Portions of Coca Cola's plans have already been put into operation, including a 23% salary increase to a substantial portion of its agricultural work force. St. Petersburg (Fla.) Times, Oct. 18, 1970, §B at 1, col. 3.

Coca Cola's attempt to solve the complex problems of migratory farm labor is probably the most dynamic and far-reaching of any undertaken by a private corporation. The endeavor, however, is not entirely altruistic. Coca Cola has stated that the program is not philanthropic and cannot survive unless it ultimately produces more that it costs. (Address by Mr. J. Lucian Smith, President of Coca Cola Company Foods Division, introducing new program to aid migrant employees, June 24, 1970). If the venture proves successful, then it will probably reduce the appeal of a labor union—at least among Coca Cola's employees.

152. One noted authority has asserted that neither protected unionization under the NLRA nor increased wages under the FLSA can benefit the migrant. That is, even if Congress did enact legislation for farmworkers as it has for other workers, this would still not provide any long-term solutions to the migrant's problems. He suggests, instead, that a more basic approach is needed—take the migrants out of the "migrant business." Kovarsky, *Congress and Migrant Labor*, 9 St. Louis U.L.J. 293, 366 (1965). Acknowledging the political power of American farmers and their opposition to legislation that will affect their economic interests, it is quite likely that farmers would support a proposal to increase the importation of foreign workers such as the *braceros* under the now discontinued Public Law 78. *See* note 55 *supra*. Florida farmers would probably favor such a program. *See* Florida Legislative Council and Legislative Reference Bureau, Migrant Farm Labor in Florida 11 (1961). In conjunction with this, the federal government would have to institute massive direct economic aid and a retraining program in order that the migrant could be transplanted into urban industry.

This type of program should have appeal to the farmer and, as such, not engender strong opposition: "Farmers may support a program increasing the importation of *braceros* for the following reasons: 1. Mexican workmen sent to the United States travel alone. This reduces the cost of shelter to the farmer. 2. The Mexican Government selects only those who are physically fit and accustomed to 'stoop' and other forms of arduous labor. Thus, the American farmer can count on hiring only the most efficient workmen. 3. The farmer is assured of a ready supply of labor when needed and no 'headaches' after they are gone. 4. The farmer, concerned with union organization of the American migrant, would not face this problem if he employed the *bracero*. 5. The social stigma of taking advantage of the underprivileged would be removed from the farmer." Kovarsky, *Congress and Migrant Labor*, 9 St. Louis U.L.J. 293, 369-70 (1965). With respect to the last item, it would seem that exploitation of foreign nationals would be just as socially unacceptable as exploitation of American underprivileged. Moreover, it seems evident that this program does not really provide any solutions to the problem. Training a large unskilled labor force so it can be assimilated into American industry seems an almost impossible task. Even if such a training program could be successfully accomplished, it is doubtful that industry could employ more than a small portion of these workers. The initial result would probably be a large addition to the ranks of the unemployed. In addition, an increasing deficit in the balance-of-payments would occur due to the extensive employment of foreign nationals in seasonal farmwork.

153. Direct aid by the State of Florida seems to have been limited to the creation of various commissions. On July 1, 1970, the Legislative Commission on Migrant Labor was created. Fla. Stat. §450.201 (Supp. 1970). The duties of the Commission are to examine the migrant labor programs and report their findings, recommendations, and suggested legislation. Fla. Stat. §§450.221, .231 (Supp. 1970). Authority has also been given to enter into an interstate migrant labor compact. The purpose of such a compact is to provide a forum for discussion of public policy alternatives to facilitate state and local programs in providing for migrant labor problems. In addition, the compact is expected to provide

The question remains, however, whether Cesar Chavez or any other leader can successfully organize migrant farm labor in Florida.[154] There is one glaring difference between the situation in California and that in Florida. Cesar Chavez provided charismatic appeal to a group composed largely of Spanish-American workers. Florida migrants, on the other hand, are composed of fifty-six per cent Negro, thirty-two per cent Mexican-Americans, eleven per cent Causasian, and one per cent other.[155] This lack of any ethnic homogeneity will make it more difficult to organize effectively.[156]

Even if the problems of internal organization can be solved by the Florida migrants, the migrants must still contend with Florida growers who appear no less adamant in their opposition to unionization than did their California counterparts.[157] It is likely that these extreme positions will result in a situation of disastrous proportions comparable to that experienced in California.

Conclusion

The devastating effects of grower-worker confrontation can and should be averted by concerted federal and state action. The problems of the migrant farmworkers are not conducive to simple solution, and unionization only provides a foundation from which the impetus of change may be begun.

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an avenue for establishing cooperative arrangements among the states so that migrant labor programs will have a degree of continuity from state to state. Fla. Stat. §450.251 (Supp. 1970).

In 1969 the Department of Community Affairs was established as an arm of the executive department. Fla. Stat. §20.18 (1969). One division of this newly created department is the Division of Migrant Labor, which has much of the same powers and duties as its legislative counterpart, the Legislative Commission on Migrant Labor. Fla. Stat. §450.191 (1969).

154. Florida's migrant farm workers have recognized the many benefits to be gained by unionizing. A state-wide conference involving five organizations was held in November 1970 to consider unionizing South Florida's vegetable growers. In charge of the session was Ramon Rodriguez, leader of Los Chicanos. Other groups represented were Cry of Black Youth (COBY), Organized Migrants in Community Action (OMICA) led by Rudy Juarez, Rural Organizations Coalition (ROC), and Black Rights Fighters (BRF). No final decision on attempting to unionize was reached. *See generally* St. Petersburg (Fla.) Times, Nov. 1, 1970, §B at 1, cols. 1-3 and §B at 7, cols. 1-5.

155. Kleinert Report, *supra* note 9, at 76.

156. One recent display of Florida migrant farmworker unity has come about as a result of the designation of parts of southern Florida as a disaster area because of a recent crop freeze. (This is the first time there has been a disaster declaration as a result of crop freezes.) *See generally* St. Petersburg (Fla.) Times, March 16, 1971, §B at 1, cols. 5-8. But all has not been harmonious between black and Mexican-American migrants. *See* St. Petersburg (Fla.) Times, March 20, 1971, §B at 1, cols. 5-6. For a summary of previous unionization efforts in Florida, *see* Cohen, *La Huelga! Delano and After*, 91 Monthly Lab. Rev., June 1958, at 13, 15.

157. *See generally* St. Petersburg (Fla.) Times, Nov. 1, 1970, §B at 1, cols 1-3 and §B at 7, cols. 1-5. An additional problem that the migrants in California have had to overcome has been the jurisdictional disputes between UFWOC, now part of the AFL-CIO, and the Teamster's Union. The dispute, extending back several years, has apparently been ended by a settlement between the two unions calling for binding arbitration of disputes. St. Petersburg (Fla.) Times, March 27, 1971, §A at 1, col. 1.

The discriminatory exclusion of agricultural workers from present federal acts such as the NLRA can no longer be justified. Other federal legislation such as the Social Security Act and the Fair Labor Standards Act must be extended to a greater number of individuals by reduction or limitation of their requirements. On the state level, farmworker exclusion from workmen's compensation and unemployment compensation must be discontinued. Present regulatory legislation such as the FLCRA, housing code standards, and child labor laws must be effectively enforced. Finally, remedial programs in the areas of housing, education, health, and job training must be adequately staffed and funded.

Some of the foregoing proposals entail a drastic reversal of current legislative direction — at least on the state level. Nearly all of the proposals will be costly; but the cost in human suffering can no longer be tolerated by our society. Too long have our nation's agricultural workers been denied the rights afforded other American laborers.

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