



FARMWORKER JUSTICE NEWS

Volume 13, No. 1

Farmworker Justice Fund, Inc.

Fall/Winter 2001

FJF RELOCATES OFFICES

The Farmworker Justice Fund's expansion means that it needs more office space. FJF has been housed since 1996 at the headquarters of the National Council of La Raza (NCLR), which also has been growing. Although we will be sorry to leave the warm, friendly environment at NCLR, FJF will enjoy the extra space and will continue its close relationship with NCLR and its staff. As of November 1, 2001 our new address will be:

1010 Vermont Avenue, N.W.
Suite 915
Washington, D.C. 20005

Our telephone number is: (202) 783-2628 and our fax number (202) 783-2561. E-mails will continue to reach us under our current e-mail addresses. Our website will remain at www.fwjjustice.org.

COMPROMISE AND CONTROVERSY ON FARMWORKERS' IMMIGRATION STATUS

by **Bruce Goldstein**
Co-Executive Director

Congress has been considering "guestworker" legislation during the past six years based on strenuous lobbying by agricultural employers. The growers would like a labor force of exploitable "guestworkers," who have no right to remain in the United States, no bargaining power with their employer, and no political power. The employers have lobbied fiercely to eliminate labor protections in the existing H-2A guestworker program and to lower the wage rates in that program.

Farmworkers and their supporters have successfully opposed these legislative campaigns by agribusiness.

The farm labor force, like other sectors, should comprise U.S. citizens and workers with a real immigration status, not a nonimmigrant temporary visa. According to the Department of Labor's most recent survey, 52% of farmworkers lack authorized immigration status. These workers should be offered the chance to become immigrants who can enjoy the democratic rights on which this nation was founded.

In late 2000 a compromise occurred. The National Council of Agricultural Employers, the United Farm Workers (AFL-CIO), and several members of Congress reached agreement. The compromise would have (1) revised the H-2A program and (2) created a

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EPA'S REVIEW OF ORGANOPHOSPHATES LEAVES FARMWORKERS AND THE ENVIRONMENT AT RISK

By **Shelley Davis**
Co-Executive Director

Over the last three years, the U.S. Environmental Protection Agency (EPA) has been reviewing the health and environmental risks associated with exposure to organophosphate insecticides. This family of products is widely used in agriculture, especially on fruits and vegetables, as well as in non-agricultural settings such as in

home, lawn, garden and pet care products.

The EPA's risk assessment effort is of particular importance to farmworkers because organophosphates are responsible for many worker poisonings. The EPA's recent evaluation of the most toxic of these pesticides reveals that they pose the greatest hazards to children, farmworkers,

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The Farmworker Justice Fund, Inc.



FJF Staff, October 2001

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ROSSANA CARDOSO JOINS FJF

Rossana Cardoso began working this summer as the HIV/AIDS Technical Assistance Coordinator for the Farmworker Justice Fund, Inc. In this position, she assists farmworker organizations around the country in designing and implementing HIV/AIDS programs that serve migrant farmworkers and their families. In addition to this capacity-building work, she provides training to promotoras de salud (lay health educators).

Rossana is a native of Guatemala and grew up in New Orleans, Louisiana. She earned a Bachelor's degree in Psychology at Emory University and received a Master's in Public Health degree from George Washington University. After graduating from Emory, she worked on a Special Project of National Significance in the Adolescent Clinic at the University of Miami School of Medicine. The project was aimed at reducing HIV infection among high-risk adolescents and linking HIV-positive teens to health care. Just prior to joining FJF, she worked with Latino clients in the National Institute of Health Initiative to

Reduce Infant Mortality and the George Washington University Breast Care Center and Mobile Mammography Program.

STEVEN DIEGO DIAZ JOINS FJF

Greetings to all and mucho gusto en conocerlos. My name is Steven Diego Díaz and I hail from the beautiful island of Puerto Rico. I have joined the staff of Farmworker Justice Fund, Inc. as the HIV/AIDS Specialist to work with the HIV Peer Education Program for migrant farmworkers. I am very excited to be here and ready to get down to business.

I started working in the HIV/AIDS arena in 1994. At the time, I was an Outreach Case Manager Supervisor for chronically mentally ill substance users in Chicago at an agency called Thresholds, Inc. I had begun to see some of our clients becoming infected and affected by HIV/AIDS. However, there was not much available for them as far as

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LAWSUIT FORCES SECRETARY OF LABOR ELAINE CHAO TO ISSUE 2001 WAGE RATES FOR GUESTWORKERS

by Bruce Goldstein

A lawsuit filed by the Farmworker Justice Fund forced Secretary of Labor Elaine Chao to stop delaying issuance of the annual wage rates under the H-2A temporary foreign agricultural worker ("guestworker") program for the year 2001.

The case involves the "adverse effect wage rate" (AEWR) under the H-2A

As many as 40,000 U.S. and foreign farmworkers affected by the H-2A program received a pay increase.

program. The purpose of the AEWR is to prevent the hiring of temporary foreign workers from "adversely affecting," or undercutting, U.S. farmworkers' labor standards. The H-2A employers must pay the AEWR or the local prevailing wage for that job, whichever is highest. For many H-2A program employers, the AEWR is the applicable wage.

A longstanding regulation requires the Department of Labor to issue the AEWR annually. An AEWR is issued for each state based on regional wage surveys performed by the U.S. Department of Agriculture during the prior year.

For the last ten years, the AEWR's have been published in February. In June 2001, the year's wage rates still had not been issued by DOL even though USDA had published the wage survey results back in November. Several members of Congress had demanded that DOL issue the wage rate findings, to no avail. These included Rep. Major Owens of New York, who spoke about the issue on the floor of the

House of Representatives, and Rep. Howard Berman and Rep. George Miller, both of California.

The Farmworker Justice Fund and the law firm of James & Hoffman then filed a lawsuit in federal court in Washington, D.C. against the Secretary of Labor, Elaine Chao, on behalf of the United Farm Workers, the Farm Labor Organizing Committee, and two individual H-2A guestworkers to compel issuance of the 2001 wage rates. The case is UFW v. Chao.

The Department of Labor told the Court that some members of Congress wrote to the Secretary of Labor regarding the H-2A program and that "These members of Congress requested that the Department refrain from publishing an AEWR for the current calendar

The next step in the lawsuit is to obtain a court ruling that prevents such delay and harm to farmworkers from recurring

year until Congress has had an opportunity to address the issue. . . ." Secretary Chao's aide also contended that the delay was in the "spirit" of a postponement in new regulations announced when the Bush Administration took office, even though the AEWR was not a new regulation and therefore not covered by the Administration's announcement.

This delay was illegal. The AEWR must be issued every year in enough time for it to be paid to workers during that year. Chao obviously was reacting to the demands of agricultural employers, who have been lobbying DOL and Congress to lower the H-2A

wage rates (see separate article on guestworker legislation in this issue).

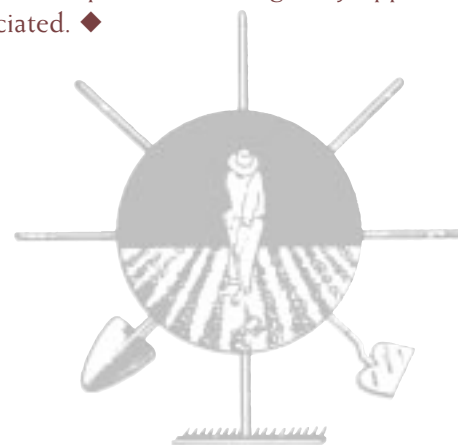
Just before a court hearing set for July 30, in response to the plaintiffs' motion for a preliminary injunction, the Department of Labor agreed to publish the wage rates by August 2, 2001. Regrettably, the new wage rates, which should have been issued by February or March, only begin taking effect on the date of publication. The underpaid workers have no remedy for their past losses.

Some of the wage rates that have increased due to the lawsuit include the following:

New York and New England \$7.68 per hour increased to \$8.17; Florida \$7.25 -- \$7.66; Kentucky \$6.39 -- \$6.60; North Carolina \$6.98 -- \$7.06; Oregon \$7.64 -- \$8.14. As many as 40,000 U.S. and foreign farmworkers affected by the H-2A program received a pay increase.

The next step in the lawsuit is to obtain a court ruling that prevents such delay and harm to farmworkers from recurring. Incredibly, the Department is taking the position that it could have delayed issuing the 2001 wage rate until December 31, 2001, meaning that no worker would have gotten the proper 2001 wage rate during this year.

Attorneys for the plaintiffs are Bruce Goldstein of FJF, and David Dean and Jeff Vogt of James & Hoffman, a D.C.-based labor law firm, whose pro bono representation is greatly appreciated. ♦



COMPROMISE AND CONTROVERSY

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new "legalization" program to allow undocumented agricultural workers in the United States to apply for adjustment to immigration status based on past agricultural experience in the United States, conditioned on performing additional farm work.

It appeared that the compromise would be approved and passed at the end of that year. The principal legislators involved were Rep. Howard Berman (D.-Cal.), and several of the sponsors of grower-supported legislation including Sen. Bob Graham (D.-Fla.), Sen. Gordon Smith (R.-Ore.) and Sen. Larry Craig (R.-Idaho).

However, Sen. Phil Gramm (R.-Tex.) persuaded then-Majority Leader Senator Trent Lott (R.-Miss.) to renege on his promise to facilitate passage of the compromise. Gramm would support a guest worker program but opposes giving immigration status ("green cards"). The 106th Congress ended with disappointment for both the workers and employers.

Then George Bush won the presidency, and the growers walked away from the compromise, believing that they could get a better deal with a Republican in the White House. However, when Senator Jim Jeffords left the Republican Party and the Senate leadership became Democratic, the political dynamics changed again.

Further developments occurred when President Bush indicated willingness to negotiate an agreement with President Vicente Fox of Mexico that, among other things, could provide the opportunity for some undocumented workers to obtain legal immigration status.

At press time, the prospects for a compromise were unclear. Even if an agreement could be reached between

workers and growers again, the passage of any such immigration policy reform was questionable during this period shortly after the terrorist attacks on New York and Washington, D.C. on September 11, 2001.

New Legislation

Five pieces of legislation had been introduced by the beginning of October 2001 regarding guest worker programs and legalization for farmworkers.

Senator Larry Craig, at the request of employers, introduced the guest-

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Sen. Edward Kennedy and Rep. Berman each introduced a comprehensive bill that is supported by farmworker advocates
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worker-oriented bill, S. 1161, similar to previous grower-supported legislation, although he did include some of the language from the proposed compromise.

Rep. Chris Cannon (R.-Utah) introduced H.R. 2457, a bill focused just on lowering the H-2A guestworker program's wage rates, by eliminating the "adverse effect wage rate." Sen. Zell Miller (D.-Ga.) on September 20, 2001, introduced S. 1442, an identical bill. Thus, the growers became focused on the narrow question of reducing the wages paid by H-2A program employers to both their U.S. and foreign workers. A broad coalition of 120 organizations has informed Congress that it opposes these bills.

Sen. Edward Kennedy and Rep. Berman each introduced a comprehensive bill that is supported by farmworker advocates: the H-2A Reform and Agricultural Worker Adjustment Act of 2001. The bill numbers are S. 1313 and H.R. 2736.

The Kennedy-Berman legislation includes provisions from last year's

compromise, but contains improvements that are politically realistic and reasonable.

Eligibility for Legalization

The Kennedy-Berman program would permit undocumented farmworkers to apply for immigrant status. Applicants would need to show that they had worked at least 90 work days in U.S. agriculture during a twelve-month period occurring in the 18 months before the law was passed. By contrast, Sen. Craig's bill would prevent many farmworkers from qualifying because it would require proof of 150 days of farm work in one past year, far more than many farmworkers are able to find or document.

Conditional Immigration Status. The qualified farmworkers would receive "temporary resident alien" status. They would not be non-immigrant guestworkers. They could work in any job and travel abroad.

Conversion to Permanent Status. Temporary residents in the program would be converted to permanent resident alien status — receive "green cards" — upon completion of a future-agricultural-work requirement. To earn a green card, they must work in agriculture at least 90 work days per year in each of three years, and would have four years to do so. By contrast, the Craig bill would require proof of working 150 days per year in each of four years, which is so onerous that it would disqualify many farmworkers and subject them to deportation.

Once the farmworker gains temporary resident status, his or her spouse and minor children may not be deported by the INS for lacking immigration status. However, the INS may not give work permits to family members unless the family members have some other status that allows them to work. Upon the farm-

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worker's completion of the future-work requirement, the spouse and minor child are entitled to permanent resident status at the same time as the farmworker.

Changes to the H-2A Program Proposed by Kennedy-Berman

The Kennedy-Berman bills would streamline the H-2A temporary foreign agricultural worker program to become a "labor attestation" program modeled after the H-1B program, to respond to employers' demands to reduce the paperwork, delay and government intrusion of the H-2A "labor certification" process.

Most basic H-2A requirements to protect U.S. workers from adverse effects and to protect foreign workers from exploitation would continue under Kennedy-Berman, including the 50% rule's obligation to hire qualified U.S. farmworkers during the first half of the season, the ? minimum-work guarantee, workers' compensation coverage, and transportation cost reimbursement. The Craig bill eliminates some of these longstanding H-2A protections.

Wages

The H-2A employers, under Kennedy-Berman, will continue to be obligated to pay the highest of the federal or state minimum wage, the local prevailing wage for the particular job, and the H-2A "adverse effect wage rate" (using the current methodology). In response to growers' complaints that H-2A wages are too high, studies would be prepared by a special commission and by the Congressional General Accounting Office (GAO). The Craig, Cannon

and Miller bills would eliminate the adverse effect wage rate, allow employers to pay workers less under a special definition of "prevailing wage," and authorize piece-rate abuses so that some workers would not even earn the lower "prevailing wage."

Housing

H-2A employers must provide free housing that meets federal and state housing standards to non-local workers. Under the Kennedy-Berman bills, if the governor of the state certified that there is adequate housing

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available for U.S. and H-2A farmworkers in the area of employment, the employer could provide a housing allowance.

Labor unions

The Kennedy-Berman bills recognize the situation where a bona fide labor union has entered into a collective bargaining agreement that was negotiated at arm's length with the H-2A employer. Where such an agreement is in place, most of the H-2A employment terms and recruitment procedures would not apply, and the benefits package could be negotiated by labor and management. This provision appeared in the compromise last year.

New labor protections for guestworkers. Under the Kennedy-Berman bills, H-2A workers would be covered by the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) for the first time. AWPA provides a right to file lawsuits in federal courts to enforce the "working arrangement." AWPA also contains

disclosure requirements, transportation and housing standards, and a licensing system for farm labor contractors. Although some previous grower-supported legislation had this provision, the Craig bill currently lacks this protection.

Employment Tax Equity and Workforce Improvement Fund.

Currently, it is less expensive to hire an H-2A guestworker than a U.S. worker because employers are exempt from paying Social Security (FICA) and Federal unemployment (FUTA)

taxes on H-2A workers' wages. The Kennedy-Berman bills would require employers to pay the equivalent of employment taxes on the H-2A workers'

wages (13.85%). The proceeds would be used for administering the H-2A program more efficiently, and to improve labor relations and productivity by establishing agricultural labor-management committees under the Federal Mediation and Conciliation Service and special demonstration projects.

A federal right to join and organize labor unions. Because farmworkers are excluded from the National Labor Relations Act, agricultural employers, recruiters and labor contractors may discriminate against farmworkers for joining or organizing labor unions. The Kennedy-Berman bills would amend the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) to grant farmworkers the right to join or organize labor unions free from retaliation, which would be enforceable by the workers or the Department of Labor through the usual AWPA remedies.

FJF supports the Kennedy-Berman legislation. ♦

REACHING OTHERS, BUILDING LEADERSHIP

by Myrtelina González
Director of Training

Since the inception of the Promotores de Salud Project to promote HIV/AIDS awareness among migrant and seasonal farmworkers and their families, the Farmworker Justice Fund, Inc. (FJF), has believed that this project could make a difference in these communities beyond its initial goals.

Promotores are farmworkers who are trained as HIV/AIDS lay health educators to teach prevention messages to their peers. At the time we believed that promotores could help others become aware of their risks for HIV/AIDS as well as how to protect themselves, and in doing all this, become leaders within their communities. Looking at the project and its achievements, we believe that we have reached the goal of developing community leaders.

FJF initiated this project with 50 promotores at two sites in 2000. By 2001 FJF had 109 promotores and six sites. Each of these sites has a youth component ranging in ages from 14 to 21.

Some promotores have become active members of their local HIV Prevention Community Planning Councils, helping shape policy that affects the disbursement of HIV prevention funding in their communities. Some have been certified as HIV Testing Counselors and are using the oral HIV test in the fields to test their peers. Others have recently published their own fotonovela "Historias del Campo" (a comic-book-style booklet, "Stories from the Fields"), printed with the collaboration of the Rural Women's Health Project, which depicts everyday scenes discussing the issue of HIV prevention. While all promotores are ambassadors of the project, some have had opportunities to make presentations at local, state

and national conferences, being able to relate first-hand accounts of doing HIV prevention with migrant farmworkers. Presenting at conferences has given them an opportunity to hone their speaking abilities. They have also been able to develop acting skills by putting together skits for the "Teatro Campesino."

As we review their achievements, we are able to see that our goal of developing leaders within these communities is being reached every day. We are reaching young people, men, and women with HIV prevention messages. These same individuals are making a difference in their communities and will continue to make this project successful beyond our initial expectations. ♦

INDIGENOUS FARMWORKER POPULATIONS

by Virginia Ruiz, Staff Attorney

Traditionally, the migrant flow from Mexico originated in central Mexican states, like Michoacan, Guanajuato and Durango, and consisted of mostly Spanish-speaking "mestizos." But in the last 20 years, we have seen increasing numbers of migrants coming from the southern Mexican states with predominantly indigenous populations, including Chiapas and Oaxaca, where pre-Columbian languages such as Mixtec, Triqui, and Zapotec are spoken. Similarly, Maya Indians from Guatemala have increasingly joined the migrant streams to the U.S. from that country. Many indigenous Mexicans and Guatemalans speak and understand very little Spanish, and few understand English.

Some estimate that about 40,000 indigenous migrants arrive annually to work on U.S. farms. Although the majority of these migrants find work in California and the Pacific northwest, an increasing number are working crops along the east coast or in the mid-west.

The growing diversity of the farmworker population poses a problem for many agencies and service organizations, who aren't prepared to provide assistance to members of the

indigenous communities. The largest obstacle for service providers is language. Most agencies do not have staff members who speak or even recognize the indigenous languages, and many lack access to translators who can help them in communicating with their clients.

In areas with large concentrations of indigenous migrants, a few organizations exist which are able to provide some assistance. For example, California Rural Legal Assistance and the Oregon Law Center have established outreach programs targeted specifically at indigenous farmworkers. The Oaxacan Indigenous Binational Front, based in Fresno, California, is a civil rights and service organization which strives to promote the economic, social, and cultural development of the Oaxacan indigenous peoples. The Binational Front has trained a number of interpreters in several of the indigenous languages of Mexico and Guatemala. In addition to the language barriers, farmworker service organizations may encounter cultural differences when interacting with indigenous clients. Most indigenous cultures are deeply traditional societies that have withstood centuries of discrimination by mainstream society. As a result, indigenous migrants in the

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EPA'S REVIEW OF ORGANOPHOSPHATES

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birds and other wildlife. Moreover, many of the occupational risks cannot be eliminated with existing prevention technology and work practices.

Organophosphate insecticides were derived from nerve gas during World War II and affect the human brain and nervous system. They cause immediate harmful effects ranging from vomiting, blurred vision, headaches and dizziness to convulsions, coma and even death. Some overexposed individuals will also suffer from long-term effects, such as memory loss, mood swings, decreased intellectual functioning or Parkinson's disease. A few of these products are also suspected of causing cancer.

Under the Food Quality Protection Act of 1996 (FQPA), the EPA has decided to phase out some of the most dangerous home and garden uses of organophosphates.

But under the weaker protections afforded by the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), the Agency will permit most agricultural uses to continue even though they pose unacceptable health risks to pesticide handlers and field workers.

The FQPA regulates the amount of a pesticide residue that may remain on food; this is known as the food tolerance. Under the FQPA, a food tolerance can be issued if the EPA determines that there is a reasonable certainty of no harm from exposure to that product from all non-occupational sources. In making this determination, the EPA must consider the public's aggregate exposure to a pesticide from food, air, water, and all non-occupational uses of the product. In addition, the Agency must take into account the public's cumulative risk from exposure to non-occupational uses of pesticides that have a common mechanism of toxicity (e.g.,

organophosphates). Finally, the Agency must add an adequate margin of safety to protect infants and children, considering their disproportionate susceptibility and exposure to a pesticide product.

By contrast, under FIFRA, the EPA is only permitted to restrict the use of pesticides if it poses an unreasonable risk of adverse effects, considering the costs and benefits of using the product. The EPA's recent decisions concerning the highly toxic organophosphate insecticides, diazinon, chlorpyrifos and azinphos-methyl illustrate the disparate effects of these two statutes.

Diazinon is one of the most highly toxic of the organophosphates. Less than a teaspoon of the active ingredi-

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and nervous system
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ent could be fatal to an adult. It is widely used to kill insects in homes, on lawns and in gardens. In agriculture, it is used on a wide variety of crops including grapes, hops, berries, nuts, cole crops and others. Because of its widespread use, it can be detected in air, fog, rain and drinking water. Over the years, its agricultural uses have caused hundreds of reported worker injuries. In the period 1994-1998, diazinon also caused the greatest number of inadvertent bird kills of any pesticide. Under a recent agreement with the pesticide's manufacturers, the EPA has ordered a phase-out of indoor uses of diazinon by the end of 2002 and a phase-out of lawn and garden products by 2004. It will also eliminate about 30% of the agricultural uses.

But many hazards to agricultural workers will be left untouched. In its assessment of occupational risk, the EPA found that more than 20 typical mixing, loading and application tasks using diazinon pose unacceptable

risks to workers which cannot be mitigated by closed mixing and loading systems, closed tractor or cockpit cabs or personal protective equipment. These data show that it is impossible to apply diazinon safely for almost all agricultural uses. Despite these grave risks, the EPA is proposing to permit these agricultural uses of diazinon to continue.

Chlorpyrifos, which is the most widely used insecticide in the United States, is a moderately toxic product. It has caused thousands of injuries to both home users and agricultural workers. Under a recent agreement with the pesticide manufacturers, the EPA will phase out most indoor and outdoor home, garden and pet uses of this product by 2005. By contrast,

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most agricultural uses will continue to be permitted. Here, the Agency found that six common agricultural handler tasks pose unacceptable risks to mixers, loaders and applicators, even when all feasible protections are in place. Nonetheless, the EPA is proposing to allow all these hazardous uses to continue.

The Agency will soon pass judgment on azinphos-methyl (also known as guthion). Guthion is also one of the most toxic organophosphates in use today. One third of a drop is the maximum amount to which a worker could be safely exposed in a day. Guthion is widely used on crops such as apples, pears, grapes, and dozens of others. In its latest risk assessment of this product, the EPA found that 16 of 18 common handler tasks could not be performed with an acceptable margin of safety. In addition, the EPA found that the reentry interval for workers entering the fields in California would have to be extended from 80 to 100 days to adequately protect the health of workers performing apple harvesting or thinning tasks.

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FJF's "HOT GOODS" PROJECT YIELDS COLD CASH FOR WORKERS

by James B. Leonard
FJF Volunteer Attorney

The Farmworker Justice Fund, working with Kathy Tierney of the Northwest Justice Project in Yakima, Washington, persuaded the U.S. Department of Labor to seek an emergency order in federal district court under the "hot goods" provisions of the Fair Labor Standards Act (FLSA) to stop the shipment of cherries that were harvested by workers who were not paid proper wages.

Under the FLSA hot goods provisions, DOL (but not private plaintiffs) can bring a lawsuit seeking a temporary restraining order and permanent injunction forbidding anyone (not just the employer of the workers) who possesses goods produced by underpaid workers from shipping the goods in interstate commerce. The court may bar shipment until the underpaid workers have been properly paid.

To our knowledge, the Yakima case, which occurred in July 2001, was the first FLSA hot goods case in agriculture ever brought by DOL in the Pacific Northwest. DOL sued not only the cherry orchard operator (Jerrie VanderHouwen), but also a produce storage corporation and its president, a produce packing and storage corporation and its president, and a produce broker. All had received, or were likely to receive, the cherries picked by VanderHouwen's underpaid workers.

Eleven days after the suit was filed, \$183,000 was deposited in the court's registry for distribution to the cherry pickers as back wages. An additional \$135,000 is also being made available for other underpaid employees who pruned, sprayed, and irrigated the

cherry trees before the harvest began, for a total recovery of \$318,000.

The court, in resolving the case, was faced with two conflicting considerations. On the one hand, the court had to ensure that the workers were properly paid. On the other hand, the cherries were perishable, so if they were not picked and shipped immediately, they might lose their value. The

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Legal assistance programs and farmworker groups
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should feel free to notify FJF
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court decided to authorize another party that had intervened to ship and sell the cherries, but required that for every pound of cherries picked, 20 cents had to be deposited in the court's registry to cover back wages owed. The roughly 458 tons of cherries that were picked yielded an initial payment of \$183,000 in back wages.

STEVEN DIEGO DIAZ JOINS FJF

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treatment or services. I went to seminars about HIV to learn how the disease progresses. The first trainer I saw said that there was no hope for those who became infected since a cure was not available and it would take many years to develop one. This stayed with me for a long time and I started to ask what could I do to help.

One cold autumn morning a friend called me and informed me of a position for a case manager at an AIDS service organization called Better Existence with HIV (BEHIV) in Evanston, Illinois. They were looking for a case manager to better serve monolingual Spanish speakers seeking assistance. At the time, Latinos were beginning to be affected in sig-

The additional \$135,000 in back wages came from two sources. First, the intervenor was ordered to deposit net proceeds of the sale, after deducting its expenses, into the court's registry. Second, all other defendants were ordered to deposit all revenues received from the sale of the cherries into the court's registry.

FJF, for nearly a year and a half, has been bringing to DOL's attention situations in which a hot goods case under the FLSA appears warranted. The Yakima case resulted in the largest recovery of back wages of any of the hot goods cases FJF has been involved in. Legal assistance programs and farmworker groups that become aware of potential hot goods cases should feel free to notify FJF, which will work with them and DOL to try to ensure that underpaid workers recover the back wages that they are due. ♦

nificant numbers by the disease, but there were few Latinos who would work directly with AIDS for fear of stigmatization.

That was the first of several jobs in AIDS work that I have performed. I truly enjoyed doing presentations and trainings, all the while helping people understand the issues related to the disease and begin to show concern for others who were struggling with the infection.

At first, I felt I was working in a battle zone. Every month the number of people who were dying due to complications from the disease was growing. We sought to ease their suffering. More than once I was called to go to a neighboring county or city to help in the provision of medical services to

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FJF SEEKS SUPREME COURT REVIEW IN CROSS-BORDER AGE DISCRIMINATION CASE

by Bruce Goldstein

The North Carolina Growers Association (NCGA) each year hires about 10,000 Mexican citizens on temporary visas under the H-2A guest-worker program. In May 1998, Luis Reyes-Gaona, a citizen of Mexico, applied for a job with Del-Al & Associates, a U.S.-based company that was in Mexico recruiting for NCGA.

Under the appellate court's theory, when U.S. companies hire workers from foreign countries for work inside the United States, the companies may discriminate in hiring on the basis age, race, sex, disability and other inappropriate factors

NCGA's recruiter rejected Reyes-Gaona because he was over 40 years old. The only way a worker over 40 could be hired was if he had worked for an NCGA member-grower in the past and that member requested his return for the next season..

Mr. Reyes-Gaona, still living at home in Mexico, filed a complaint with the U.S. Equal Employment Opportunity Commission for discrimination in hiring on the basis of age. He then filed a lawsuit under the federal Age Discrimination in Employment Act (ADEA) in federal court in North Carolina against the NCGA and the recruiter.

The defendants asked the district court to dismiss the case, and the court agreed, saying that because the plaintiff was not authorized to work in the United States at the time he applied for the job, he was not "qualified" for the job and therefore was not covered by the law.

Mr. Reyes-Gaona brought his case to a the U.S. Court of Appeals for the Fourth Circuit, which is based in Richmond, Virginia. The Equal Employment Opportunity Commission (EEOC) and the Farm Labor Organizing

Committee, AFL-CIO filed "friend of the court" briefs in support of Mr. Reyes-Gaona. The appellate court seemed to recognize that the district court decision was wrong. But the court of appeals found a different reason to dismiss the case.

In May, 2001, the Fourth Circuit said that the Age Discrimination in Employment Act, generally does not apply "extraterritorially," meaning to conduct occurring in foreign countries, although there are exceptions. The court said that because the job application occurred in a foreign country and Mr. Reyes-Gaona is a foreign national, the ADEA does not apply.

This appellate court decision, however, conflicts with virtually every other court decision on a critical point: other courts have said that employment discrimination laws apply to an employer's conduct when the "workplace" is located inside the United States. In other words, this case does not involve extraterritoriality. The defendants' conduct affected the work force located in the U.S. and the defendants are both U.S. corporations.

This decision has terrible implications for the increasingly global nature of hiring. Under the appellate court's theory, when U.S. companies hire workers from foreign countries for work inside the United States, the companies may discriminate in hiring on the basis age, race, sex, disability and other inappropriate factors. And employers that want to discriminate on such bases, will have a strong incentive to avoid hiring United States citizens and immigrants, who are covered by such laws.

Mr. Reyes-Gaona has asked the Supreme Court to review this case.

The Farmworker Justice Fund's Bruce Goldstein and Shelley Davis, and the AARP Foundation Litigation's Laurie McCann and Daniel Kohrman are representing him. The case is Reyes-Gaona v. North Carolina Growers Association, 250 F.3d 861 (4th Cir. 2001). FJF very much appreciates the participation of the AARP Foundation Litigation, a leading authority on age discrimination and a prominent advocate for older workers. ♦

EPA'S REVIEW OF ORGANOPHOSPHATES

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The EPA is now collecting data on the "benefits" of using guthion. This inquiry focuses on whether other products or methods are available as substitutes for this pesticide. Based on such a cost-benefit analysis, the fate of this chemical will be determined. The EPA is also accepting public comments on whether and under what conditions guthion should continue to be used.

As the cases of diazinon and chlorpyrifos make clear, the EPA's efforts to safeguard children and consumers from pesticides have afforded farmworkers little protection. This disparate treatment is due in part to the statutory standards that govern these exposures. But the statutory differences alone cannot justify the EPA's actions. Given the strong evidence of harm from these and other highly toxic organophosphates, the EPA should prohibit the use of these products in agriculture now, even under the existing FIFRA standard.

Update: FJF's Shelley Davis and several representatives of environmental groups met with EPA Administrator Christine Todd Whitman in late October to discuss these and other issues. FJF is hoping for progress and that there is no need for litigation. ♦

UNITED NATIONS BODY ADOPTS STANDARDS TO IMPROVE AGRICULTURAL HEALTH AND SAFETY

by Bruce Goldstein

In June 2001, the International Labor Organization (ILO) approved the Convention on Safety and Health in Agriculture to promote improvements for agricultural workers and their family members. FJF's Bruce Goldstein served on the ILO's Committee on Safety and Health, which negotiated the terms of the Convention.

The ILO recognized that agricultural employment ranks among the three most dangerous occupations in the world and that many governments fail to take effective action to prevent injuries and illness among farmworkers. Indeed, national laws, including in the United States, routinely exclude agricultural workers from minimum occupational safety and health protections applicable to other workers.

The new ILO Convention's standards are modest but, if they were followed in the United States, could lead to important improvements in employer practices and government policies, which would save lives and reduce injury and disease. The ILO's tripartite system of representation from governments, employers and employees also promotes societal recognition of the value of labor unions.

The U.S. government, which sought to weaken the Convention in committee, ultimately voted in its favor at the plenary session. The U.S. worker representative voted for it at the ILO plenary session. The U.S. employer representative "abstained" from the final vote and voiced opposition to the

Convention on behalf of the National Council of Agricultural Employers. Nonetheless, most nations' employer organizations supported passage.

Now, the ILO will begin encouraging all nations to ratify and comply with the Convention. A non-ratifying nation need not comply with the Convention. As nations adopt global rules on trade and other transnational economic activities, such international labor standards are expected to become increasingly important.

Under this Convention, a ratifying nation must adopt and implement "a coherent national policy on safety and health in agriculture." The objective shall be "preventing accidents and injury to health . . . in the agricultural working environment."

The national policy must specify the rights and responsibilities of employers and workers, provide for inspections of workplaces, and must include "corrective measures and appropriate penalties," including the shutting down of dangerous work sites.

The Obligations of Employers and Labor Contractors

The national policy must state that "the employer has a duty to ensure the safety and health of workers in every aspect related to the work." The Convention contains a helpful section on joint responsibility for safety and health when growers use farm labor contractors or other intermediaries.

Employers must be required to comply with applicable standards. They also must provide to workers "appropriate training and comprehensible instructions on safety and health," including regarding specific hazards at the workplace, "taking into account their level of education and differences in language."

Workers' Rights and Duties

Workers will be entitled to several types of government programs that ensure safe work environments as well as certain standards of treatment by employers. In addition to the right to information and consultation on safety and health matters, workers must possess the right to remove themselves from imminent, serious risk of harm without suffering retaliation.

Workers will be obligated to comply with prescribed safety and health measures and to cooperate with employers in carrying out their own responsibilities.

The Convention's Special Concerns

The Convention identifies several specific areas that must be addressed.

Health Care and Disability Benefits for Occupational Injuries and Illnesses: An insurance or social security scheme must protect workers who suffer occupational injuries and diseases. Farmworkers should receive coverage at least equivalent to that enjoyed by workers in other sectors.

Machinery Safety and Ergonomics: The government must establish and enforce safety standards and must require appropriate installation, main-

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UNITED NATIONS

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tenance, safeguarding, training, and use of equipment. Equipment may be used to transport people only if it is designed or properly adapted so as to carry them safely.

Sound Management of Chemicals: The Convention seeks to “eliminate or minimize the risks to safety and health and to the environment” presented by pesticides and other chemicals. Governments must establish standards on the importation, classification, packaging, labeling, application, and disposal of such chemicals.

Sanitary Facilities and Housing: The law must require “the provision of adequate welfare facilities at no cost to the worker” and establish minimum standards for accommodations for workers who are required by the nature of the work to live in company housing. The formal Recommendation which accompanies the Convention suggests that nations define “welfare facilities” to include safe drinking water, facilities for washing protective clothing, facilities for eating meals, sanitary (toilets) and washing facilities, and work-related transportation.

Women Workers: “Measures shall be taken to ensure that the special needs of women agricultural workers are taken into account in relation to pregnancy, breastfeeding and reproductive health.” This provision was motivated in part by the risks of pesticide poisoning to women who are or could become pregnant and those who are breastfeeding.

Young Workers: Generally, “hazardous” agricultural work should not be performed by persons under age 18. The government may permit minors from age 16 years and older to perform hazardous work if (a) the government first consults with representative organizations of employers and workers, (b) prior training is given to the young worker, and (c)

the health of the young worker is “fully protected.”

Weaknesses in the Convention

An ILO convention sets forth basic standards, not highly-detailed contents of national laws. This Convention allows governments substantial flexibility, which can lead to varying degrees of effectiveness among national laws. For example, some obligations are modified by the phrase “in accordance with national legislation,” which could result in a weakening of standards in some nations. Labor delegates were unsuccessful in efforts to strengthen a number of the provisions. But the Convention is not nearly as “flexible” (i.e., weak) as the employers had demanded during negotiations.

The Convention's Value

The Convention could help draw attention to the dangerous conditions of farmworkers around the world. In many ways, the U.S. laws already sat-

isfy the Convention's standards. However, some significant changes should be made to U.S. law to achieve compliance with the Convention and improve workers' safety and health.

The U.S. policies most in need of change to reach compliance with the ILO Convention concern farmworkers' coverage under workers' compensation for job-related injuries and illness, access to specific information (“right to know”) regarding toxic pesticides used at the workplace, and the provision of sanitary facilities in the fields. More effective enforcement is also necessary. The U.S. should improve its record on farmworker safety and health, demonstrate leadership on these issues, and ratify the new Convention.

Note: FJF thanks the AFL-CIO and its member unions for the opportunity to participate in the ILO Conference, and the International Union of Food Workers for its guidance and assistance at the Conference. The ILO Convention and related information are available online at www.ilo.gov. ♦

STEVEN DIEGO DIAZ JOINS FJF

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Latinos who could not speak English and were treated in medical centers where none of the medical staff spoke Spanish. I worked part-time as a case manager for a Latino agency called CALOR in Chicago, and helped with their support groups since they were understaffed.

Many things changed in 1996 with the advent of more effective treatments for the disease. People were not dying as often. This, however, did not have much of an effect on the number of people becoming infected with HIV. Treatment for HIV had improved, which allowed more people to live with HIV, but it was no cure for the disease. Education was and is the only

effective means of prevention that we have against this disease.

At this time I went to work with Home Access Health Corporation, makers of a home-based HIV test. I worked with them as a pre/post HIV testing counselor providing services to clients over the phone.

I returned to BEHIV as Director of Case Management Services in 1997. I worked hard to provide the staff the needed support while at the same time procuring more services for our clients. This was a rewarding experience, but those infected with HIV were changing. In addition to medical services, our clients needed housing, substance abuse treatment, food, clothing, etc.

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PESTICIDE EDUCATION FOR HEALTH PROFESSIONALS

by Virginia Ruiz

FJF's Project Clean Environment for Healthy Kids is a health promotion program that aims to bring environmental health education to both health professionals and community residents on both sides of the US-Mexico border. The goals of the Project are to alert the community to practical ways in which they can reduce or eliminate their exposures to environmental health hazards and to help health professionals improve their diagnosis and treatment of health problems related to pesticide exposure. Many health professionals working with farmworkers have told us that they receive scant formal education on environmental and occupa-

tional health and that they would like to receive specialized training on the health effects of pesticide exposure.

FJF partnered with internationally known pesticide experts, Dr. Marion Moses and Dr. J. Routt Reigart, to facilitate workshops on the health effects of acute and chronic exposure to pesticides. During this, the second year of the Project, workshops were offered at each of the three Farmworker Stream Forums for migrant health care providers and at the National Farmworker Health Conference in Puerto Rico. FJF also sponsored seminars for health professionals in the border cities of Brawley, California, Las Cruces, New Mexico, Hatch, New Mexico, and El Paso, Texas.



Promotores in Coachella, CA practicing a skit about pesticide safety at work

With the assistance of Dr. Marion Moses, FJF has compiled resources for health professionals on the health effects related to pesticide exposure. For more information on the Project and materials available for health professionals, please contact Shelley Davis or Virginia Ruiz.. ♦

INDIGENOUS FARMWORKER

Continued from Page 6

U.S. may be distrustful of their own countrymen and others who are not members of their community. They may maintain the custom of deferring to elders or community leaders rather than making important individual decisions. Thus, any outreach or education efforts should begin with and include local indigenous leaders in order to successfully reach the entire community. As the farmworker population continues to diversify, the need for service organizations to learn about and reach out to different communities becomes increasingly important. Culturally and linguistically appropriate outreach measures will have important implications in the areas of labor and employment rights, occupational health and safety, health care, and education, to name a few.

Before joining FJF in October 2000, Virginia Ruiz worked for California Rural Legal

Assistance as staff attorney of the Indigenous Project, where she represented indigenous migrants from southern Mexico and Guatemala. ♦

STEVEN DIEGO DIAZ JOINS FJF

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With these needs in mind I enrolled in the University of Illinois at Chicago and worked as a research project director with the Epidemiology and Biostatistics division of the School of Public Health,

while working on a Master's degree in Public Health. At the university I acquired skills in project management while learning about the relationship of AIDS to other infectious diseases and social problems. My project studied the relationship between HIV, Hepatitis C, and sexually transmitted diseases among young injection drug

users. I worked with the university until coming to FJF in September 2001.

I am looking forward to once again working closer with community members in addressing the needs that they have for HIV prevention in the context of their life situation. ♦

PHOTO GALLERY



FJF CO-Executive Director Shelley Davis speaking to promotores in Coachella, CA about pesticide safety



Promotora conducting outreach to farmworkers during a lunch break, near Somerton, AZ



Promotores group, McAllen, Texas

Help FJF Expand In Its 20th Year

Please support the work of the Farmworker Justice Fund by making a generous, tax-deductible donation. (FJF is a 501(c)(3) nonprofit corporation.) Help us make 2001, our twentieth anniversary — our most effective year of advocacy ever.

FJF plays a leadership role in advocacy for migrant farmworkers in the nation's capital. We have creatively used all available tools to further the cause of farmworkers. Litigation. Administrative and Legislative Advocacy. Training and technical assistance for lawyers, paralegals, government personnel, health care providers, and farmworkers. Media work and other public education. Building coalitions of farmworker organizations, Latino organizations, civil rights groups, immigrants rights advocates, labor unions, religious institutions, environmentalists, and many others. These activities and more have made a difference in the lives of thousands of farmworkers. Labor law. Immigration policy. Occupational Safety and Health. Access to the Justice System. Women's Issues. All of these have been advanced by FJF's work. In each of these areas, FJF has helped to defend farmworkers' interests against attacks and rollbacks.

Despite our important work and the efforts of many others, the wages, working conditions and living conditions of most of America's migrant farmworkers remain unacceptable. Please help the Farmworker Justice Fund, Inc. continue and expand its work by making a financial contribution to our work. Thank you very much.

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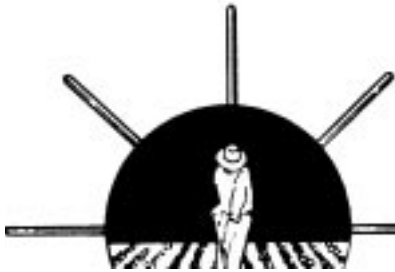
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