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AGRICULTURAL EMPLOYMENT LAW AND POLICY

A Study of the Impact of Modern Social and Labor Relations Legislation on Agricultural Employment

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Chapter 10

FARMWORKER EMPLOYMENT AND TRAINING PROGRAMS

During the Great Depression, there was high national unemployment and a severe shortage of agricultural labor in particular areas.1/ Pursuant to the provisions of the Wagner-Peyser Act of 1933,2/ the Farm Labor Service was established in the Bureau of Employment Security of the Department of Labor.3/ The Farm Labor Service was designed to function through state employment offices to bring farm labor placement services to rural America.4/ Thus it was the states, through their employment service offices, which actually implemented the program. The impetus for state action was, and remains, the availability of 100 percent funding by federal grants to qualifying state employment service offices.

Historical Development

The object of the Wagner-Peyser Act was to establish a cooperative federal-state system of employment services to be operated by the states through local employment offices established under state law.5/ Special attention was given to the needs of farm operators from the time the system was first established. Through the years, the objectives have been broadened and agency names have changed. For a time, we had the Rural Manpower Service of the United States Employment Service (USES), which is no longer maintained. USES, in turn, is part of the Employment and Training Administration, formerly the Manpower Administration, of the U.S. Department of Labor (DOL).

USES is responsible for seeing that state plans of operation conform with federal laws, provide uniform methods of operation, and include programs of referring labor from one area to another. USES also gives technical assistance to the states and participates in determining the level of funding necessary for the operation of the various state programs.6/ State employment service offices are totally funded by federal grants-in-aid pursuant to the Wagner-Peyser Act, Title II of the Social Security Act and various appropriation acts.7/

In order for a state to qualify for financial assistance, it must establish an agency authorized to cooperate with USES,8/ must submit plans for carrying out the scheme of the Wagner-Payser Act,9/ must operate within the rules, regulations, and standards of efficiency set by the Secretary of Labor,10/ and must properly expend the funds granted by the federal government.11/

Through the years, the Farm Labor Service and its successor, the Rural Manpower Service, sponsored a number of methods of recruiting hired farm labor. For meeting the short-run needs of farm employers, a "day haul" program was designed using publicity to recruit local workers who would assemble at designated pickup points to be transported to a job location for the day.12/ Programs were also initiated to attract children into seasonal farm labor during school vacation periods.13/ Where the local labor supply was insufficient or available workers inadequately skilled, individual growers or farmers could apply for out-of-state work crews.14/ This involved the interested employer submitting an order pursuant to announced contract terms for a certain number of workers for specified jobs. The order, if cleared, was transmitted to a regional office in an area where a labor surplus existed.15/ A crew or group of families was then routed into the migrant stream to fill the order, often hundreds or thousands of miles away. These methods are still being used by local USES offices.

When the Farm Labor Service emerged in the 1930s, there were serious labor shortages, thus, a more active concern for the needs of farm employers than for those of the farmworkers.16/ In 1969, when the Farm Labor Service was merged into the Rural Manpower Service, the emphasis was shifted to include promoting a decrease in the supply of unskilled farmworkers through counseling, retraining, and job development services.17/ Placement in farm work was no longer the only goal.18/ The same policy of phasing people out of seasonal and migrant work also appeared in certain programs under the Economic Opportunity Act.19/ Office of Economic Opportunity (OEO) programs were designed to phase out migrant farmworkers from agricultural occupations by retraining them for positions in industry. Adult literacy training for heads of households, vocational education, and job placement were emphasized.

The National Migrant Worker Program (NMWP) was developed and operated by the DOL as the first employment and training program specifically for farmworkers. Created administratively by the Secretary of Labor in June 1971, the program was funded with unapportioned monies appropriated under the Manpower Development and Training Act of 1962.20/ Approximately $25.6 million was spent by the NMWP during the four years of its existence. Participation was limited to migrants and their families to provide the training and placement for migrants desiring to relocate. The primary grant recipients were state employment service agencies, OEO farmworker programs, and certain private non-profit agencies.21/

When the NMWP and the OEO programs were phased out in 1974, the migrant programs were scattered among various departments of the federal government. OEO migrant and seasonal farmworker manpower programs were transferred to the DOL with retraining and assimilation into other sectors of the economy remaining as an objective, but receiving less emphasis.22/ What emerged was a three-pronged policy designed to supply employers' needs, improve the lot of those workers electing to remain in seasonal and migrant farm employment, and offering retraining and settling-out services to those desiring the same. New programs emerged in the DOL funded under §303 of the Comprehensive Employment and Training Act of 1973 (CETA).23/

Until regulations were promulgated, effective February 24, 1977, farmers and growers who availed themselves of the assistance offered by Rural Manpower Services by placing inter- or intra-state job orders had to meet certain requirements set forth in the Employment Security Manual. The employer was required to certify in writing the terms and conditions of employment. Orders expressing a preference for a particular worker or crew were to be reviewed to determine that the employer was not engaged in discrimination by race, age, sex, color, or national origin. If a crew leader placed an order, it was required that he be duly certified under the Farm Labor Contractor Registration Act unless an exclusion applied. In the written certification, the dates of employment were to be listed, subject to being adjusted in case of adverse weather conditions. Wages, hours, working, and housing conditions were also to be specified and state agencies were to conduct random field checks to see that the actual conditions and terms of employment complied with federal and state laws. All housing furnished by the employer was to meet standards of federal or state laws, whichever were more stringent. Various other requirements also applied, and special provisions applied to request for foreign workers. The order for foreign workers could not be filed if a sufficient number of domestic laborers were available.24/

On April 22, 1971, an administrative complaint was filed with the DOL charging Rural Manpower Services with violations of petitioners' rights under the Constitution, the Wagner-Peyser Act, Title VI of the Civil Rights Act of 1964, the Immigration and Naturalization Act, the Occupational Safety and Health Act, and the Social Security Act. It was charged that Rural Manpower Services and participating state agencies were allowing discrimination, violations of minimum wage laws, housing laws, sanitation regulations, child labor laws, and foreign worker regulations to go unchecked.25/

The Special Review Staff of the Manpower Administration issued a report in April 1972 identifying various problems and proposing a Thirteen Point Plan designed to correct them. The Thirteen Point Plan provided:

> 1. Steps are to be taken immediately in both the Rural Manpower Service and the employment service to begin a consolidation process which would result in integrated services at the local level. Such consolidation should be aimed at offering a broader spectrum of services to rural workers and employers and at providing sufficient resources to accomplish the objective. Surveys shall be conducted by the States to insure that as many resources as possible are directed to provide services in rural areas.
>
> 2. Immediate action shall be taken to correct any civil rights violation found during the review, whether it be with regard to race, color, sex, age, religion or national origin. Procedures shall be implemented to insure that there is full and continuing compliance with civil rights laws.
>
> 3. Steps shall be taken to insure that all child labor laws are being followed. Job orders will not be accepted which provide incentives for youth to work in violation of Federal, State or local laws.
>
> 4. The Employment Standards Administration shall insure that sufficient resources are allocated to enforce effectively the agricultural minimum wage where complaints are made or violative conditions are suspected. Additionally, Governors should be encouraged to provide staffs outside the State ES agency to assist farm workers in handling their complaints and in improving their working and living conditions.

5. State ES agencies shall establish mechanisms to handle workers' complaints where job working conditions and wage specifications have not been delivered as promised.

6. The Occupational Safety and Health Administration will continue the implementation of its responsibility for the work-related problems of farm employees and will address particular attention to the areas of field sanitation and safety, pesticides, housing and transportation. OSHA will coordinate its efforts with other agencies which also have responsibility in these areas. Care should be taken to insure that present manpower compliance efforts are maintained while OSHA is developing its program to assure these responsibilities.

7. Responsibility for enforcement of the Farm Labor Contractor Registration Act will be transferred to the Employment Standards Administration.

8. A vigorous effort to have frequent payroll audits of foreign worker users will be instituted to insure that the adverse effect rate is being paid to foreign workers who have been certified under the Immigration and Nationality Act. Such payroll audits should convert piece rates into hourly earnings so that comparison may be made to the hourly adverse effect rate. The adverse effect rate should also be set high enough to insure that earnings of domestic workers are not depressed by the presence of foreign workers.

9. Regional office staffs will monitor the States' performance of prevailing wage surveys to insure that the piece rates are converted to hourly rates so that it may be determined that, where applicable, the established piece rates are in accordance with the Federal and State Minimum Wage Laws. Prior to referral, each worker shall be given a written statement, in the language in which he is most fluent, of all wage, payment schedules, field condition and other specifications which might influence his earnings.

10. The Interstate Clearance System shall be improved by requiring that a farm worker be given a copy of the job order and an explanation of the job specifications in his most fluent language, and by other means.

11. The Manpower Administration shall require the State employment service agencies to bring their rural day haul operations into conformity with employment service policies and standards. Where such policies and standards are not being met, the MA shall consider alternative methods to provide service to workers and employers.

12. Employment Service Manual procedures will be published relating to such subjects as conflict of interest, taking applications on farm workers, methods of guaranteeing that no employer is served who is not in compliance with any relevant law, and insuring compliance with Social Security procedures. Once published, performance under these procedures is to be closely monitored. In addition, existing procedures contained in the Manual, such as those on services to workers, statistical reporting, discrimination, and child labor, performed by State Employment Service agencies, shall be closely monitored.

13. The Manpower Administration will work to broaden State Civil Service requirements where necessary to allow individuals with general farm experience, nonagricultural experience and nonagricultural college degrees to become eligible for positions in the Employment Service serving rural and other clientele.26/

Unsatisfied with these developments, disturbed by attitudes in the DOL and concerned about the refunding in place of the entire network of state Rural Manpower Service and Employment Services aimed at farmworkers, a suit was filed in 1972 in the U.S. District Court, District of Columbia. This landmark litigation, National Association for the Advancement of Colored People, Western Region et al. v. Peter J. Brennen, Secretary of Labor, will be referred to herein as NAACP v. Brennen.27/

Initially, the court found that the defendant had constitutional, statutory, and regulatory obligations to require that the federal and state agencies serving migrant and seasonal farmworkers provide a full level of services to all in that class.28/ The court made specific findings of fact that state Rural Manpower Services and Employment Services offices had engaged in the following practices:

a. Denied minority farmworkers the full range of employment services, including testing, counseling, and job training and up-grading services.

b. Subjected minority farmworkers to racial, national origin, sex and age discrimination in recruiting and referring applicants for local, intra- and interstate employment.

c. Provided substandard day-haul placement services and facilities to minority farmworkers.

d. Processed interstate clearance orders that discriminated by allowing employers to predesignate farmworkers by race, national origin, sex and age.

e. Processed misleading, inaccurate and incomplete job orders for agricultural labor.

f. Referred migrant farmworkers to employers who violated minimum wage and child labor laws.

g. Referred farmworkers to employers who failed to make Social Security payments to the workers' accounts.

h. Referred migratory and seasonal farmworkers to jobs where the living and working conditions violated housing, health and sanitation laws.

i. Referred migratory farmworkers to segregated housing.

j. Referred farmworkers to unlicensed crew leaders or to crew leaders who operate illegally.

k. Failed to enforce the Federal Contractor Registration Act.

l. Failed to assist Federal officials, charged with enforcing the Immigration and Naturalization Act and to follow their own regulations and directives that have been enacted to protect job opportunities, wages and working conditions of domestic farmworkers.

m. Been unresponsive to farmworkers' complaints.29/

The court found that refunding the system in July 1972, when all this was known as a result of the Special Review Staff Report, and the failure to implement the Thirteen Point Plan until August 1972, demonstrated that the DOL had knowingly perpetuated discriminatory and otherwise improper practices.

The court, however, did not find the Thirteen Point Plan to be so defective as to warrant its abrogation and the substitution of a new plan. Thus, defendant federal officials, their successors, agents, and employees were ordered to end any present or future participation in acts of discrimination or other unlawful practices against migrant and seasonal farmworkers. The order specifically enumerated the unlawful actions listed above, though it did not limit the scope of the remedy to those items alone. The DOL was obligated to terminate funding to states where local agencies perpetuated discriminatory and unlawful practices. The basic guidelines for the states to follow to avoid loss of funding were the Thirteen Points.

After the initial order of May 3, 1973, three additional orders were issued. The first on June 26, 1973, the second on August 24, 1973, and the third on August 13, 1974.30/ The first two supplemental orders provided for on-site reviews, monitoring systems, complaint processing, and additional follow-up measures. The August 1974 order provided additional remedies and for further action to implement prior orders.

Provisions of the August 1974 order required each state and local employment service office to provide manpower services to migrant and seasonal workers on the same level as services provided to nonfarm workers. Job Bank information was to be extended to cover rural areas and each migrant and seasonal job applicant, with certain exceptions, was to have a full employment history and application filled out at the time the worker utilized an employment service offices. In carrying out this directive the DOL required that the name "Rural Manpower Service" be removed from all offices and that rural

manpower staffs be integrated into the regular staffs to provide a full range of services for rural workers and employers.31/

The court required insurance that all crew leaders, employers, and their agents utilizing day-haul services, comply with federal and state social and safety legislation. The August 1974 order specifically required that employment service personnel refer every suspected violation of state or federal law to appropriate authorities.

The development of affirmative action programs was required in connection with staffing employment service offices. The August 1974 order further required that each state agency have sufficient staff to affirmatively contact migrant and seasonal farmworkers to counsel them on the availability of employment services. Written information in Spanish and English was to be distributed explaining the rights of workers under federal statutes and regulations. Employment Services personnel were directed to assist in filing and processing complaints made by workers.

All interstate job orders were to be subjected to review to determine whether minimum standards set forth in the court's order were being met. Standards which had previously been contained in the massive 4,000-page Employment Security Manual were to be published, and this resulted in the promulgation of new regulations, effective February 24, 1977, replacing parts of the Employment Security Manual, the General Administration Letter 10-75, and certain other directives.32/

The court ordered modification and refinement of existing data gathering systems to bring them into compliance with EEOC standards. The accumulated information, which is designed to reveal discriminatory practices, is to be made available for inspection and review by plaintiffs, and by representatives of all bona-fide migrant and legal services organizations. The subsequently issued regulations widen the availability of that data.33/

The August 1974 order also provided for a federal-state monitoring system which at a minimum was to provide an official in each state to be responsible for monitoring compliance; on-site review of employment service offices, at least 25 percent of which are to be offices providing services primarily to rural residents and migrant and seasonal farmworkers; annual on-site reviews of a sampling of employment service offices by the federal staff; and a free right to inspect and review all monitoring reports.

The order also dealt with complaints. Each state and local employment service office was required to provide migrant and seasonal farmworkers with information about a complaint mechanism designed to review and resolve problems that might arise in the operation of any employment service offices.

The August 1974 order also directed the defendants to promptly initiate decertification proceedings under the Wagner-Peyser Act in instances where it appeared that states were not complying with the law. Such decertification was already provided for under the terms of the Wagner-Peyser Act.34/

Under §303 of the Comprehensive Employment and Training Act of 1973,35/ there is statutorily mandated funding for migrant and seasonal farmworker manpower programs. The Congress found that chronic seasonal unemployment and underemployment in agriculture, substantially aggravated by recent advances in technology and mechanization, is an important aspect of the nation's rural manpower problem and has a substantial effect on the entire national economy.36/ Therefore, it was provided that funds available under Title III, to the extent of not less than 4.625 percent, must be set aside by the Secretary of Labor to finance programs and activities consistent with addressing these problems.37/

National Ass'n of Farmworker Org'ns v. Marshall 38/ is an action that was brought by grantees under §303 of CETA, as a class, charging that the Secretary of Labor had refused to provide the mandated funding. In 1977, the court ruled that the secretary was without discretion in allocating such funds and that he must reserve sufficient monies for fiscal year 1977 to meet the minimum requirement. This funding was made available and used to finance the Migrant and Other Seasonally Employed Farmworkers Program, Youth Community and Conservation Projects, and Youth Employment and Training Programs.

Current Status of the Law

Programs of the United States Employment Service

The objectives of the USES and the affiliated state agencies include placing persons in employment by providing a variety of placement-related services to workers seeking employment and to employers who have job openings.39/ Services to job seekers include outreach programs designed to contact those who

may need, but are not using, USES services.40/ Other services include interviewing, testing, counseling, and referral to employment opportunities.41/ The Wagner-Peyser Act requires the USES "to maintain a farm placement service"42/ and, while separate rural manpower offices are no longer maintained, the legislative mandate is being carried out by serving farm operators by including their order information in the same Job Bank that serves other employers. Farmworkers, however, are no longer referred only to farm work and are specifically entitled to receive employment services on the same basis as non-farm workers.43/ For a state to qualify for federal funding, it must be in compliance with provisions of the Wagner-Peyser Act, related employment services legislation, and a host of regulations.44/ As a result of the litigation in NAACP v. Brennen, new regulations were promulgated, effective February 24, 1977, to replace existing directives:

> These regulations replace Sections 1765-1769, 2000-2008, and 2056-2059 of the Employment Security Manual. The regulations also replace General Administrative Letter (GAL) 10-75, Field Memorandum (FM) 360-75 and other current directives governing the provisions and administration of services to migrant and seasonal farm workers including the Secretary's "13 Points" of April 1972 to the extent that the "13 Points" relate to Employment Service activities under the Wagner-Peyser Act. These regulations supersede the regulations at 20 CFR Parts 601-604 to the (sic) extent that the regulations at parts 601-604 conflict with these regulations. The regulations also supersede all Department of Labor and State agency directives which conflict with the regulations.45/

Effective July 10, 1980, the 1977 regulations were modified and supplemented by substantial amendments.46/ The current regulations deal with the general areas of administrative procedure,47/ state program budget plans under Wagner-Peyser,48/ basic structure of the federal-state employment services system,49/ the over-all policies of USES,50/ a general listing of laws, executive orders, and regulations affecting the system,51/ and many additional matters. Of particular significance to this study are the regulations governing services to migrant and seasonal farmworkers,52/ those related to employment of aliens temporarily in farm employment,53/ and those setting up the Employment Service (ES) complaint system together with review and assessment procedures for state agencies.54/ The regulations governing discontinuance of services to employers are also pertinent.55/

Under the regulations, the services to be offered to migrant and seasonal farmworkers (MSFWs) are to be as extensive as those offered to workers in other fields.56/ Separate offices which offer only farm employment are prohibited.57/ Unless the MSFW applicant signs a waiver and in effect requests only job referral services, he is to be afforded the full range of available services. Even if the waiver is signed, the MSFW shall be offered training and supportive services.58/

Job orders may be placed not only by farmers, growers, and ranchers, but by farm labor contractors. The regulations provide that such a contractor must, however, be registered if federal or state law requires, before services can be made available.59/

The regulations set forth a number of rules governing ES-operated day-haul operations, including a requirement that local offices monitor compliance by employers, their agents, and crew leaders with a variety of federal and state laws such as those dealing with vehicle registration, wages, hours, working conditions, nondiscrimination, and the like.60/ Suspected violations are to be referred to appropriate enforcement agencies.61/

Requirements for intra-state and inter-state job orders are set forth in detail in the regulations.62/ The party requesting workers must sign a statement setting forth in detail terms and conditions of the job offer including many specific items listed in the regulations. Declarations must be made about the crop, nature of the work, period and hours of employment, projected starting date and length of the job,63/ wage or piece rate,64/ proposed deductions from wages,65/ perquisites (if any),66/ any guarantee of number of days or weeks of work,67/ existence of bonuses or work incentive payments,68/ and other matters. Further, an assurance must be made that applicable employment laws will be followed.69/ Wages and working conditions must be at the prevailing levels in the area or meet the minimum as required by law, whichever might be higher.70/ The employer must agree to pay transportation costs at prevailing levels.71/ Local workers must be in short supply before interstate orders can be filled.72/ Housing meeting federal standards must be available at no cost or in a public housing project when workers who cannot return to their residence each day are recruited.73/

The most recent version of the standards provides that if an employer, after placing an order, fails to notify the order-holding office at least 10 working days prior to the original date of need of a change in that date, the employer shall pay the first week's wages whether the workers are used or not.74/ Alternate work may be assigned if the job order so stated.75/ Workers do have an obligation to check in periodically in order to qualify for the week's pay.76/

In areas where the system serves Spanish-speaking individuals, all literature, job orders, and other documents must be available in English and Spanish.77/ There are also provisions for Spanish-speaking staff.

Other regulations deal with matters that may come up after the job order stage. For example, information must be conveyed to crews and families scheduled through ES if there is any change in crop or recruitment needs that will affect them.78/ Field checks are required to determine if the conditions stated in job orders exist. If violations of employment laws are suspected or detected, the matters are to be referred by ES officials to the appropriate federal or state agencies for enforcement.79/

Compliance data are to be collected by ES officers as part of a required monitoring program.80/ The objective of self-monitoring is to provide some assurance that state agencies are complying with the regulations that govern their operations. Data that are generated are proving to be voluminous on the local level, but are being combined to produce state, regional and national reports. Such data are to be disclosed to the public under specified conditons.81/

Migrant and seasonal farmworkers include migrant farmworkers, migrant food processing workers, and seasonal farmworkers.82/ A "migrant farmworker" is defined as "a seasonal farmworker who had to travel to do the farmwork so that he/she was unable to return to his/her permanent residence within the same day."83/ A "migrant food processing worker" is defined as "a person who, during the preceding 12 months, has worked at least an aggregate of 25 or more days or parts of days in which some work was performed in food processing..., earned at least half of his/her earned income from processing work and was not employed in food processing year round by the same employer, provided that the food processing required travel such that the worker was unable to return to his/her permanent residence in the same day."84/ Full-time students traveling in organized groups are not included in either of these definitions.85/ A "seasonal farmworker" is defined as "a person who, during the preceding 12 months, worked at least an aggregate of 25 or more days or parts of days in which some work was performed in farmwork, earned at least half of his/her earned income from farmwork, and was not employed in farmwork year round by the same employer."86/ A farm labor contractor is not an employer for the purposes of this definition.87/ Full-time students are not included as seasonal farmworkers.88/

The current regulations reflect the impact of NAACP v. Brennen and their very existence can be attributed in large measure to the efforts of the DOL to comply with the various orders that were issued in that case.

If a state agency fails to abide by the regulations, remedial action may be ordered if the problems are not corrected. This can involve imposition of special reporting requirements, restrictions on certain expenditures, implementation of special operating procedures for a set time, special training for personnel, removal of certain decision-making powers from the state, funding of the state on a short-term or quarterly basis, holding public hearings, disallowance of funds for a specific geographic area, and other measures.89/ If there are serious or continual violations, proceedings may be instituted to decertify the state. Decertification would result in the termination of the federal-state cooperative venture and the total cutoff of federal funding.90/ There have been no instances of decertification so far.

An important part of the existing law is the state agency ES complaint system and the federal ES complaint system. Both systems emerged as a result of the requirements imposed in NAACP v. Brennen. The types of complaints that will be heard fall into two categories. First, there are those alleging an employer's failure to comply with ES regulations. The other category takes in those complaints by an individual, organization, or employer about ES actions or omissions under the regulations.91/ The regulations establish procedures for processing complaints at the state level.92/ Federal ES complaint procedures are also prescribed and include a requirement that state agency administrative remedies be exhausted before a complaint can be handled by an ETA regional office.93/ There is no published source of decisions of state hearing officers in ES complaint cases. Copies are sporadically sent to the Office of the Solicitor, Department of Labor. As of April 1979, only one case was appealed to the federal level and that case was settled.94/

Remedies that may be used in the case of an offending state ES office have already been enumerated. The regulations also contemplate that an employer may be deprived of the use of the ES system under certain circumstances. The suspension of services will continue at least until the employer provides conclusive, documented evidence that the violation(s) has been corrected or does not exist.95/

Employees who are the victims of failures on the part of ES or employers to comply with employment regulations have other remedies. In the case of a wage violation or a violation under the Farm Labor Contractor Registration Act, the remedies provided by the Fair Labor Standards Act of FLCRA can be pursued without resorting to the Wagner-Peyser Act or the regulations promulgated pursuant thereto. However, there may be cases where the violations are directly an outgrowth of a violation of Wagner-Peyser

or related regulations, as would be the case where an ES office has put through a job order with false or misleading information or where the employer refuses to live up to the declarations made in the job order. In such instances, remedies may be sought in the courts and it appears that there is no duty to first exhaust administrative remedies.96/

In a class action where ES has been engaged in practices that are discriminatory, in violation of statute, or in violation of regulations, NAACP v. Brennen establishes firmly that the federal courts have jurisdiction to entertain such cases and where appropriate to use injunctive remedies to compel changes in ES practices.

In the case of an individual proceeding against a state ES office, staff members of such an office, or against employer users of ES services, there is ample authority to indicate that causes of action may indeed be stated to support injunctive and monetary relief.

Three cases of great importance in this connection are: (1) the Fifth Circuit decision in Gomez v. Florida State Employment Service,97/ (2) the U.S. Supreme Court decision in Cort v. Ash,98/ and (3) the recent decision of the U.S. District Court, District of Connecticut, in Jenkins v. S & A Chaissin & Sons, Inc.99/

Gomez was the decision that established for the first time an implied federal cause of action for money damages under the Wagner-Peyser Act. The suit grew out of events occurring in 1967 when plaintiff farmworkers went to a farm in Florida pursuant to an order placed through the Florida State employment Service and USES. When the workers arrived, they found the wages lower than those called for in existing regulations and the housing woefully below required standards. It was charged that the Florida State Employment Service had failed to check to see whether the farmer was in compliance and, further, that the farmer had intentionally misled state officials. Plaintiffs asserted that they had suffered money damages and brought an action claiming a federally created remedy under Wagner-Peyser and also a cause of action under certain civil rights acts. The court found that a cause of action was stated under Wagner-Peyser because plaintiffs were the group protected under the statute, because the purpose of the act and legislative history pointed to an intent on the part of Congress to allow relief beyond the secretary's cutting off funds for the state or terminating employment services to the farmer and because civil suits under local law provided no meaningful remedy. The court noted that federal jurisdiction did not have to be based on diversity plus a claim for the requisite jurisdictional amount inasmuch as there is original jurisdiction in the federal courts with respect to any cause of action arising under a statute regulating interstate commerce. The court also found that a cause of action was stated under the enumerated civil rights acts and that jurisdiction existed on that basis as well.

The U.S. Supreme Court in Cort v. Ash (1975) set forth the following test to determine whether an implied federal cause of action has been stated:

> First, is the plaintiff 'one of the class for whose especial benefit the statute was enacted,' -- that is, does the statute create a federal right in favor of the plantiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plantiff? And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the states, so that it would be inappropriate to infer a cause of action based solely on federal law?100/

The question that immediately arises is whether anything in Cort requires a different result in Gomez. The decision in Chaissin, while only at the district court level, spoke directly and with great clarity to this concern.

First, the Chaissin court noted that there is an express provision for a "farm placement service" in Wagner-Peyser and that it is thus certain that the Congress intended to provide special benefits, particularly to migrants for whom the statute is designed. Secondly, Cort did not say that the legislative intent to create a cause of action has to be expressed, thus, the analysis in Gomez which examines the legislative history, the purpose of the statute, and the statute itself, which nowhere denies such a right, is still a valid analysis. The third part of the Cort test raised the question of whether the private remedy would be consistent with the underlying purposes of the legislative scheme. The Chaissin court saw no inconsistency and was unimpressed with the argument that the private cause of action, if permitted, would conflict with the administrative complaint procedure now in the regulations. The complaint procedure, as the court noted, does not provide for the recovery of money damages, but only requires the employer to correct violations or risk loss of use of employment ser-

vices. Finally, Cort raised the question of remedies available in state courts, and the Chaissin court felt that nothing has changed since Gomez and that civil suits under local law cannot afford migrant workers adequate protection.

The Chaissin analysis is compelling. There is no reason to anticipate that there will be any substantial departure from it. Of course, there have been a number of other cases since Gomez, following its lead, and -- in some instances -- refining its application. For example, in Vasquez v. Ferre,101/ the court held that the state that receives the order for recruitment is solely responsible for inspection and enforcement of the standards of the act and regulations so that an action against the supplying state will not stand simply because the receiving state fails in its obligation. Gomez was interpreted in 27 Puerto Rican Migrant Farmworkers v. Shade Tobacco Growers Agricultural Ass'n 102/ as applying only to a violation of a specific federal regulation which deprives a worker of the fundamentals of human dignity. Thus, an employer's failure to provide workers with hot lunches was found to be beyond the subject matter jurisdiction of the federal courts. However, in Galindo v. DelMonte Corp.,103/ where the available work was inconsistent with the description in the work order which induced the migrant workers to travel to the area, the workers were deemed to have a cause of action. Examples of such inconsistencies are severe wage reductions and failure to pay the minimum wage.

In Abraham v. Beatrice Foods Co,104/ a class action brought against both private and state defendants growing out of alleged violations of the Wagner-Peyser Act and regulations promulgated thereunder, damages were not sought, just injunctive relief. The case grew out of a situation where the state employment office approved a clearance order and workers were recruited in Louisiana to come to Wisconsin. The recruited workers found the housing inadequate, the work insufficient, and not available on the terms stated in the job order, The question of sovereign immunity was raised in connection with the suit against the state and its officers, but the court found under the facts alleged that the State of Wisconsin had consented to have the defendant agency sued in federal court. Further, the court found sovereign immunity to be no bar to a suit against state officials where the prayer was for declaratory or injunctive relief.

The state ES offices have been allowed some discretion in implementing the system for recruitment of agricultural workers. For example, in DeGiorgio Fruit Co v. Department of Employment,105/ a state's refusal to supply workers to an employer whose present employees were on strike was found to be a reasonable referral standard. In Elton Orchards v. Brennan,106/ simplification of administrative efforts was found to provide a rational basis for allowing some employers to employ alien workers though orders by other employers for such workers were not filled. The complainant had applied for alien workers but was required to accept all domestic workers since there was an adequate supply at the time to fill its needs. Accordingly, where several employers have requested skilled and experienced aliens from the British West Indies, as an example, and some less desirable domestic workers are available, it is not an abuse of administrative discretion to require one grower to take the domestic workers while assigning aliens to other growers.

Programs of the Office of National Programs

The Office of National Programs is part of the Employment and Training Administration of the U.S. Department of Labor. It administers a number of employment and training programs including Migrant and Other Seasonally Employed Farm Worker Programs, Youth Community and Conservation Projects (YCCIP), and Youth Employment and Training Programs (YETP). The last two programs are for youths who are members of migrant and other seasonally employed farmworker families. All three programs are funded under §303 of the Comprehensive Employment and Training Act (CETA).

The migrant and other seasonally employed farmworkers programs are designed to improve agricultural employment conditions for those who remain in the agricultural labor market and to equip those who seek alternative job opportunities to compete in other labor markets and to secure stable year-round employment with an income above the poverty level.107/ Prime sponsors, certain public agencies, and appropriate non-profit organizations are eligible to receive funding if their grant applications receive favorable treatment.108/ Examples of grantees for Program Year 1979 include the California Human Development Corporation, Widnor, California; Proteus Adult Training, Visalia, California; the Florida State Department of Education, Tallahassee, Florida; Migrant and Seasonal Farmworkers, Raleigh, North Carolina; the Minnesota Migrant Council, St. Cloud, Minnesota; and Motivation Education and Training, Inc., Cleveland, Texas. There were 59 grant recipients located in 48 states and Puerto Rico in 1979.109/

Each program is designed to meet the special needs of those in its particular area, but may include classroom and occupational training, on-the-job training, work experience, job development, job

placement and communication assistance, health services, child care, nutritional services, legal aid, and other supportive services.110/

The 1975 program of one grantee, Migrant and Seasonal Farmworkers Association, Inc., provides an example of the kinds of services that may be provided. The association paid the cost of books, tuition, necessary transportation, and other related fees for certain individuals attending vocational classroom training at state technical institutes, a private non-profit cooperative offering training in eel fishing, an auto mechanics training center, and the National School of Heavy Equipment.111/ The students were also paid the minimum hourly wage for the number of hours spent in training. In addition, a work experience program was offered which was designed to train participants through actual performance in staff positions within the association or in other non-profit organizations. The association paid the participants' wages and reimbursed them for traveling expenses.112/ Further, on-the-job training was provided for some participants pursuant to employment training agreements negotiated with public and private employers. The association paid the trainee's employer an amount not to exceed half the starting wage rate for the position multiplied by the number of training hours for the occupation. The employer was in turn required to pay the usual entrance wage rate provided it was at least equivalent to the federal minimum wage. In 1975, the program offered on-the-job training in meat cutting, auto mechanics, and bulldozer operation.113/ Other employment and supportive services were offered including testing, counseling, placement, health care, nutrition assistance, child day care, family counseling, adult basic education, emergency assistance, and referrals to other agencies.114/

Agencies that receive grants may qualify for funding from other federal sources where joint funding is authorized. For example, a §303 CETA grantee may also qualify for funding under the Community Food and Nutrition Program administered by the Community Services Administration pursuant to the Economic Opportunity Act of 1964.115/ Another situation where joint funding may be available is through HEW, which has funding for Migrant Health Grants.116/

The current regulations applicable to the Migrant and Other Seasonally Employed Farmworkers Program became effective May 25, 1979.117/ The regulations set standards of eligibility so as to limit assistance to migrant and seasonal farmworkers and then only if the individual has been identified as a member of a family which receives public assistance or whose annual family income does not exceed the higher of either the poverty level or 70 percent of the lower living standard income level.118/ The objective, then, is to assist families in either settling out or improving their situation if they remain in migrant and seasonal farm work.

One important change resulting from the new regulations appears in the basic definition of seasonal farmworker. This is critical because it affects who can qualify as a participant in one of the funded programs. Previously, a farmworker was eligible as "seasonal" only if he did not work more than 150 consecutive days at any one establishment. This limit has been removed, but the applicant must still meet the new definition, which reads:

> "Seasonal farmworker" shall mean a person who during the 24 months preceding application was employed at least 25 days in farm work or earned at least $400 in farm work; and who has been primarily employed in farm work on a seasonal basis, that is, without a constant year-round salary.119/

Or, a participant may meet the definition of "migrant farmworker," which remains unchanged in the new regulations:

> "Migrant farmworker" shall mean a seasonal farmworker who performs or has performed farm work during the preceding 24 months which requires travel such that the worker is unable to return to his/her domicile (permanent place of residence) during the same day.120/

The Employment and Training Administration of the DOL, through its Office of National Programs, has two programs aimed specifically at young people who are members of migrant and other seasonally employed farmworker families.

The first is the Youth Community and Conservation Projects (YCCIP), which is designed to fund programs offering employment to young people, ages 16 through 19, in well-supervised work with a tangible output which will be of benefit to the community. Two percent of the funding for the entire YCCIP program is to be made available for projects designed to reach migrant and seasonal farmworker youth.121/ For program year 1979, a total of $2.1 million will be available. A notice appeared on March 2, 1979 announcing the competition for grants.122/ Regulations have been promulgated to supplement the general YCCIP regulations and to deal specifically with the program discussed herein.123/

The second program aimed at young people who are members of migrant and seasonal farmworker

families is a special version of the Youth Employment and Training Programs (YETP). The overall objective is to establish programs designed to make a significant long-term impact on the unemployment problems of youth. A variety of training and employment programs are possible so long as they are designed to enable participants to secure suitable and appropriate unsubsidized employment in the public and private sectors.124/ While the programs are to be designed to reach those in the 16-21 age group, the program aimed at children of migrant and seasonal farmworkers may in some instances serve youths ages 14 and 15 who are still in school.125/ Two percent of the funding for the general YETP program must be made available for eligible youth who are members of migrant and seasonal farmworker families.126/ For program year 1979, this translates into $12.1 million.127/ The notice mentioned above in connection with the YCCIP program also announced the current competition for grants for this special aspect of the YETP program.128/ Regulations have been promulgated to supplement the general YETP regulations and to deal specifically with the aspect of that program discussed herein.129/

Evaluation

ES Laws and Their Impact

The vigorous initiative of plaintiffs in NAACP v. Brennen has resulted in major changes in the administration of employment services programs for farmworkers. While problems continue to arise occasionally in certain offices, the overall impact of the effort to implement the "13 Points," first by administrative directive and then by regulations, has had a salutary effect and has resulted in a broader range of services being made available to migrant and seasonal farmworkers on a level close to that for non-MSFWs.

However, the question remains as to whether the effectiveness of the reforms has been blunted by a reduced use of ES offices by farm employers. This decline has been noticeable in many states, although current indications are that it may not be continuing at the pace observable three or four years ago and that there may even be some employers coming back and again placing job orders. It is extremely difficult to account fully for this decline, but without question certain factors have been important. In Ohio, for example, it has been to the economic advantage of some farmers to move to less labor-intensive crops such as corn and soybeans. Other farmers who have elected to stay with crops that have been traditionally labor intensive have been moving more and more to mechanization. In 1978 in Ohio, roughly 25 percent of the tomato harvest was mechanized, but just one year later, in 1979, the figure was close to 80 percent.130/ In addition, some farmers, unhappy with the "looking over the shoulder" phenomenon that occurs when ES services are sought, recruit their crews directly. While a good deal of the effort is aimed at obtaining local workers, some farmers are engaging in out-of-state recruiting.131/

If the number of orders is down, this is likely to have an effect on the number of seasonal and migrant farmworkers using ES offices. Potential users may tend to look elsewhere to make the contacts that will net needed jobs. There is no question that whatever the cause, the number of migrant and seasonal farmworkers using employment services has been dropping. National figures from the files of the DOL illustrate this.132/ In fiscal year (FY) 1976, total available applicants in the migrant farmworker category totaled 119,749 and 118,584 in the seasonal farmworker category. If FY 1977, while the number of total applicants in the seasonal farmworker category climbed slightly to 126,632, the number of applicants available in the migrant farmworker category dropped to 112,584. If FY 1978, total migrant farmworker applicants were down to 88,251 and seasonal farmworker applicants to 107,891. While the general decline in the number of jobs available and employers bypassing the system may account for these figures in part, there are other factors at work. To the extent that those in migrant streams have been settling out, the number of persons seeking services is bound to drop. Thus, rather than drawing negative associations from the decline in the number of MSFWs using the system, it might be argued that the trend attests to the success of the system in bringing stability to certain individuals and families, thus obviating the necessity for use of the employment services year after year.

The same data from the DOL 133/ reveal increasing effectiveness of employment services offices to migrant and seasonal farmworkers. The percentage of total applicants in the migrant farmworker category for whom job development contacts were made increased from 6.38 percent in FY 1976 to 9.69 percent in FY 1977 to 14.17 percent in FY 1978. The same pattern appears for seasonal farmworkers with such contacts being made for 5.02 percent in FY 1976, 6.58 percent in FY 1977, and 9.21 percent in FY 1978. The percentage of total migrant applicants counseled rose from 2.89 percent in FY 1976 to 3.5 percent in FY 1977 to 5.5 percent in FY 1978. Increases are also noted in counseling of seasonal farmworkers starting at 3.96 percent of of total applicants in FY 1976, increasing to 4.81 percent in FY 1977, and

reaching 6.54 percent in FY 1978. Referrals to support services have substantially increased through the years with the percentage of migrant farmworker applicants so assisted at 9.03 percent in FY 1976, 19.12 percent in FY 1977, and 25.7 percent in FY 1978. Referrals to support services for available applicant seasonal farmworkers stood at 4.66 percent in FY 1976, rose to 7.98 percent in FY 1977, and stood at 10.44 percent in FY 1978. As of FY 1978, all of these figures stand substantially above national figures for all non-MSFW applicants. Of the 20,313,986 in this category, 7.14 percent benefited from job development contacts, 5.10 percent were counseled, and only 4.36 percent were referred to support services. In the areas of testing and enrollment in training, the figures for migrant and seasonal farmworkers are not as impressive. However, the overall picture is most encouraging.

The institution of the Monitor Advocate System 134/ has had positive effects. In each state, one individual is designated to head this system and is responsible for receiving, investigating, and referring complaints about violations of state and federal employment laws. Another function of the Monitor Advocate is to conduct annual on-site reviews of local ES offices that have a substantial involvement with MSFW . The purpose of the on-site reviews is to ascertain whether local offices are complying with federal regulations and other directives that apply to their activities.

One of the services that ES offices are required to supply is referral to educational, retraining, and other support programs.135/ In this connection, many ES offices have steered workers to the programs such as those created under §303 of CETA. In some instances, a large percentage of the initial referrals to §303 CETA programs come from the ES offices.136/ Thus, while ES may not be directly involved in sponsoring and operating such programs, it has had an important role in the success of many of the educational and retraining efforts.

While crop changes and increased mechanization have reduced the number of positions, the need for a substantial hired farm labor force remains. Thus, the role of rural manpower services in ES is certain to be a continuing one. While there are no longer separate Rural Manpower Offices within the Employment and Training Administration at the regional and national level, there are still people in all of the state offices who are specifically assigned in this area and have appropriate titles. There is a chief of rural manpower or equivalent position in every state system.137/ The emphasis is no longer strictly on farm placement but includes a wide range of opportunities including those in rural industrial and commercial enterprises. For example, in FY 1978, 43.93 percent of migrant farmworker applicants were referred to agricultural jobs whereas 17.41 percent were referred to nonagricultural industries. During the same period, 27.26 percent of the seasonal farmworker applicants were referred to agricultural jobs whereas 27.86 percent were referred to jobs in nonagricultural industries.138/

The efforts of Rural Manpower Services within state ES offices deserve to be encouraged with careful monitoring to insure compliance with current regulations and to prevent "backsliding" to the situation that existed in many offices at the time of the inception of litigation in the NAACP v. Brennen.

MSFW Programs and Their Administration

The programs of the Office of National Programs are important from a humanitarian standpoint and from the perspective of the best interests of the economy as a whole. The Migrant and Other Seasonally Employed Farm Worker Programs have reached substantial numbers of individuals. In FY 1977, for example, approximately 245,000 eligible persons were served. Approximately 16,000 entered jobs ranging from skilled trades to technical positions in the medical field. Some 4,000 participated in work experience projects, approximately 5,000 in on-the-job training, some 17,600 in classroom training, and about 218,000 received supportive services such as health, medical, nutritional, legal assistance, and child care.139/

These programs have not operated without problems, however. A review of the 1975 program of the Migrant and Seasonal Farmworkers Association Inc., Raleigh, North Carolina, revealed certain deficiencies.140/ The resulting Report of the Comptroller General of the United States, released September 8, 1977, outlined certain administrative problems.141/ However, these were subject to being corrected with imposition of stronger controls and closer monitoring. One of the more disturbing aspects of the report was the indication that job placement had not been working out in a number of instances.142/ While the placement rate was at 108 percent of the anticipated level, and all of the placements were in "long-term" jobs (more than 150 days), 49 percent of the participants terminated in fewer than 90 days.143/ This was far below the DOL's performance standard which set 75 percent as the level of those placed who should stay on the job more than 90 days.144/ While it is not known whether this problem persists in the North Carolina program or whether it exists currently in other programs, it is the kind of thing that needs careful attention to avoid damaging the future of the entire program.

Again, in connection with the North Carolina program for the period studied, the emphasis of the association was on providing alternatives to agricultural labor. This emphasis is reported to have been in response to the needs and desires of involved farmworkers.145/ While the stated objectives of MSFW programs are to provide employment and supportive services directed toward either providing alternatives to agricultural labor or improving the lifestyle of farmworkers who wish to remain in agriculture, it is reasonable to expect pressure for the kind of emphasis present in the North Carolina program.

Where farm employers are cutting back on hired labor by switching crops or mechanizing, the remaining jobs often go to local workers. Thus, migrant workers are faced with the problem of settling-out and require a great deal of assistance including education and retraining. For example, in 1979 it is estimated that as many as 14,000 jobs in Ohio agriculture were displaced by a dramatic turn to mechanization by tomato farmers.146/ For those who enter the migrant stream in Texas in early spring, after having been involved in the local onion harvest, the next stop has often been Michigan for the cherry season. After that, it has been the Ohio tomato harvest and then back to Texas for the peanut or soybean harvest.147/ When the Ohio employment opportunity is eliminated from the cycle, affected workers must either find several weeks of work elsewhere or face up to the reality that following the migrant stream may no longer be feasible. This leads to settling out in Texas, Ohio, and elsewhere. At this point, the services offered by MSFW programs become vital. Whatever the inadequancies of these programs, their survival is essential since pressures to settle out are likely to increase rather than decrease in coming years. Whether contemplated funding levels will remain sufficient remains to be seen, but it is likely that careful consideration will need to be given to the possibility of pouring more resources into MSFW programs.

General Policy Considerations

There are fundamental policy choices that need to be constantly reexamined in this area of the law, given the fast-moving pace of events. Clearly, there will be a continuing need to provide a viable support services system to serve the needs of farm employers. This system ought not to be allowed to become so encrusted with regulations and technicalities that its use is actually discouraged. On the other hand, the system must be designed to regulate employment in agriculture sufficiently to protect those who are in the hired farmworker force, particularly those who do not have the benefit of a strong union. The balance is a delicate one and needs fine-tuning from time to time. It is apparent, as one views employment services law, that other regulatory schemes become involved in the overall administration of the ES system. This discussion has demonstrated where child labor laws, hour laws, OSHA regulations, and other employment-related laws fit in. To the extent that the whole system of employment law as it relates to agriculture has become exceedingly complex and technical, there is little doubt that the employment services area is burdened by tremendous detail, inconsistencies, and technicalities. It seems apparent that a comprehensive review of the law affecting the agricultural employment sector is badly needed.

In addition, there is the matter of the future of migrant farmworkers. Should an aggressive policy be established to phase out this phenomenon in our society? There are sharply differing views, even among migrant farmworkers. If careful studies based on the best available data indicate that farm operators are likely by some point in the future to be able to function effectively without the migrant farmworker force or with a very small force, it may well be that a stronger policy of encouraging settling out should be reflected in the law.

Recommendations

The recommendations in this area fall into five major areas: (1) future level of governmental support for ES and MSFW programs; (2) nature of training provided in various programs; (3) the attractiveness of ES services to farm operators; (4) goals for the foreseeable future; and (5) continuing study of the legal and economic aspects of systems now in place.

Future Government Support

It seems important that there be continued funding at adequate levels of ES programs and MSFW programs. The needs for the services offered by these programs, particularly the MSFW programs, may intensify in spite of present trends to the contrary. It is essential that close attention be given to employment trends in agriculture to anticipate upsurges in displacement and to assure that adequately funded programs are available in the right localities. To insure that the drop in usage of these programs is not the result of a failure to adequately communicate with those who are eligible, more

emphasis should be placed without delay on outreach efforts.

Nature of Training

Attention should be given to the developing need in agriculture for persons with special skills, with training programs being geared to offering instruction in machine operation, chemical application, farm equipment mechanics, agronomy, dairying, and whatever else appears to be appropriate. This will insure not only the betterment of hired workers, but an adequate hired labor force for farm operators.

Attractiveness of ES Services

With respect to the ES system, efforts should be made to make the use of available services by farm employers as attractive as possible. How the present situation can be improved is a puzzling question, but certain ideas merit study and consideration. For example, put greater emphasis on providing counseling and referral services to employers as they attempt to meet regulations, establish satisfactory bookkeeping systems, construct employee housing, establish employee insurance programs, and deal with similar concerns. In addition, review the entire regulatory scheme with which ES offices must contend, with a view to eliminating unnecessary, ambiguous, overly technical, and otherwise ineffective regulations. No farmer escapes the requirements of employment-related regulations by bypassing ES, but the employer does avoid an immediate confrontation with the regulators. Many will do this as long as regulations are viewed with suspicion and dismay. Regulatory schemes will never become popular with farm employers, but they ought to be subject to being made more palatable.

Goals of ES and MSFW Programs

ES programs and MSFW programs are goal-oriented. Thus, it is necessary to have objectives well in mind and clearly stated. Currently, the goals seem reasonably well defined: supply employers' needs, improve the lot of those workers electing to remain in seasonal and migrant farm employment, and offer retraining and settling-out services to those desiring them. If a heavy emphasis is to be placed on the last goal, with a view to phasing out the migrant phenomenon, more radical steps need to be studied. One possibility is to explore the possibility of more itensive rural development programs designed to bring to appropriate geographical regions seasonal work in industrial plants that can compliment the seasonal demands of agriculture, thus providing year-round employment opportunities for a hired work force. Business studies, economic studies, labor supply studies, and market studies would be required to test the feasibility of such an idea. For example, would it be feasible for farmers in some particular area to form a cooperative and, with the assistance of the regional Bank for Cooperatives, establish an enterprise manufacturing and installing irrigation equipment, which could curtail operations to release a large part of the employees during the farming season for on-farm production work? If the on-farm work is skilled or semi-skilled such an arrangement might attract year-round employees to rural areas.

Continued Study of the MSFW Problem

It is apparent that in order to give consideration to the recommendations set forth above, there will be a need for ongoing study of the trends in demand for hired farm labor and of the economic implications of what has been suggested. Such a study could conveniently be a part of the comprehensive review of current farm labor policy that is proposed in the chapter section that concludes this monograph.

Notes to Chapter 10

1. NAACP, Western Region v. Brennen, 360 F. Supp. 1006, 1009 (D.D.C. 1973).

2. 29 U.S.C. §§49-49k (1976).

3. See History following 29 U.S.C. §49 (1975).

4. Farm Labor Fact Book (1969) at 102.

5. 29 U.S.C. §49 et seq. (1976).

6. NAACP, Western Region v. Brennen, 360 F. Supp. 1006, 1009 (D.D.C. 1973).

7. Ib.
8. 29 U.S.C. §49c (1976).
9. 29 U.S.C. §49g (1976).
10. 20 C.F.R. §§601.5, 601.6, 604, 605 (1980).
11. 29 U.S.C. §49h (1976).
12. Farm Labor Fact Book (1969) at 102.
13. Id. at 103.
14. Id. at 103-104.
15. Clearance Order: Rural Manpower Job Offer, Form #MA 7-90 (1-74).
16. NAACP, Western Region v. Brennen, 360 F. Supp. 1006, 1009 (D.D.C. 1973).
17. Ib.
18. 20 C.F.R. §603.3 (1979).
19. Morris, "The Impact of Federal Legislation on Migrant Farmworkers," 12 Suff.U.L.R. 845 (1978).
20. Green, Migrant and Seasonal Farmworker Programs, U.S. Department of Labor E.T.A. at 18.
21. Ib.
22. Morris, supra note 21, fn. 132, at 846.
23. 29 U.S.C. §§801-992 (1976).
24. General Administration Letter No. 10-75 at 18-20.
25. NAACP, Western Region v. Brennen, 360 F. Supp. 1006, 1010 (D.D.C. 1973).
26. NAACP, Western Region v. Brennen, 360 F. Supp. 1006, 1020-21 (D.D.C. 1973).
27. Supra note 5.
28. See Declaratory Judgement and Injunction Order, 5 EPD ¶8637 (p. 7915-17) (1973).
29. Ib., also at 360 F. Supp, 1006, 1014 (D.D.C. 1973).
30. Supra note 5.
31. G.A.L., supra note 26 at 21.
32. 42 Fed. Reg. 4722 (1977).
33. 20 C.F.R. §653.110 (1979), as amended 45 Fed. Reg. 39464 (1980).
34. 29 U.S.C. §49h (1976).
35. P.L. 93-203, Title III, Part A, §303, 87 Stat. 859, codified at 29 U.S.C., §873 (1976).
36. 29 U.S.C. §873(a)(1) (1976).
37. 29 U.S.C. §873(d) (1976), as amended.
38. No. 77-44 D.D.C. Oct. 7, 1977.

39. 20 C.F.R. §653.101 (1979), as amended 45 Fed. Reg. 39459 (1980).

40. 20 C.F.R. §653.107 (1979), as amended 45 Fed. Reg. 39460-39463 (1980).

41. 20 C.F.R. §653.101(a) (1979), as amended 45 Fed. Reg. 39459 (1980).

42. 29 U.S.C. §49b(a) (1976).

43. 5 EPD ¶8637 (p. 7916) (1973).

44. 1979 Cat. Fed. Dom. Assist. Programs at Item 17.207.

45. 42 Fed. Reg. 4722 (1977).

46. 45 Fed. Reg. 39457 et seq. (1980).

47. 20 C.F.R., pt. 601 (1979).

48. 20 C.F.R., pt. 603 (1979).

49. 20 C.F.R., pt. 602 (1979).

50. 20 C.F.R., pt. 604 (1979).

51. 20 C.F.R., pt. 651 (1979).

52. 20 C.F.R., pt. 653, subpt. B (1979), as amended 45 Fed. Reg. 39459-39466 (1980).

53. 20 C.F.R., pt. 655 (1979).

54. 20 C.F.R., pt. 658, subpts. E, G and H (1979), as amended 45 Fed. Reg. 39469-39674; 39476-39484 (1980).

55. 20 C.F.R., pt. 658, subpt. F, (1979), as amended 45 Fed. Reg. 39674-39476 (1980).

56. 20 C.F.R. §653.101(a) (1979), as amended 45 Fed. Reg. 39459 (1980).

57. 20 C.F.R. §653.101(b) (1979), as amended 45 Fed. Reg. 39459 (1980).

58. 20 C.F.R. §653.103(d) (1979), as amended 45 Fed. Reg. 39459-39460 (1980).

59. 20 C.F.R. §653.104(b) (1979), as amended 45 Fed. Reg. 39460 (1980).

60. 20 C.F.R. §653.106 (1979), as amended 45 Fed. Reg. 39460 (1980).

61. 45 Fed. Reg. 39464 (1980), to be codified as 20 C.F.R. §653.108(p).

62. 20 C.F.R. §653.108 (1979), replaced by 45 Fed. Reg. 39466-39468 (1980) to be codified as 20 C.F.R. §§653.500-653.503.

63. 45 Fed. Reg. 39466 (1980), to be codified as 20 C.F.R. §653.501(d)(2)(i),(ii),(iii),(iv).

64. 45 Fed. Reg. 39466 (1980), to be codified as 20 C.F.R. §653.501(d)(2)(vi).

65. 45 Fed. Reg. 39466 (1980), to be codified as 20 C.F.R. §653.501(d)(2)(vii).

66. 45 Fed. Reg. 39466 (1980), to be codified as 20 C.F.R. §653.501(d)(2)(viii).

67. 45 Fed. Reg. 39466 (1980), to be codified as 20 C.F.R. §653.501(d)(2)(ix).

68. 45 Fed. Reg. 39466 (1980), to be codified as 20 C.F.R. §653.501(d)(2)(x).

69. 45 Fed. Reg. 39467 (1980), to be codified as 20 C.F.R. §653.501(d)(2)(xii).

70. 45 Fed. Reg. 39467 (1980), to be codified as 20 C.F.R. §653.501(d)(4).

71. 45 Fed. Reg. 39467 (1980), to be codified as 20 C.F.R. §653.501(d)(5).

72. 45 Fed. Reg. 39467 (1980), to be codified as 20 C.F.R. §653.501(d)(7).

73. 45 Fed. Reg. 39467 (1980), to be codified as 20 C.F.R. §§653.501(d)(2)(xv); §653.501(d)(6).

74. 45 Fed. Reg. 39466 (1980), to be codified as 20 C.F.R. §653.501(d)(2)(v).

75. 45 Fed. Reg. 39466 (1980), to be codified as 20 C.F.R. §653.501(d)(2)(v)(E).

76. 45 Fed. Reg. 39466 (1980), to be codified as 20 C.F.R. §653.501(d)(2)(v)(B).

77. 45 Fed. Reg. 39459 et. seq., to be codified as 20 C.F.R. §§653.102; §653.103(b),(c); §653.501(f),(h);

78. 45 Fed. Reg. 39468 (1980), to be codified at 20 C.F.R. §653.502.

79. 45 Fed. Reg. 39468 (1980), to be codified at 20 C.F.R. §653.503.

80. 45 Fed. Reg. 39694 (1980), to be codified at 20 C.F.R. §653.709.

81. 45 Fed. Reg. 39464 (1980), to be codified at 20 C.F.R. §653.110.

82. 20 C.F.R. §651.7 (1979), as amended by 45 Fed. Reg. 39458 (1980).

83. Ib.

84. Ib.

85. Ib.

86. Ib.

87. Ib.

88. Ib.

89. 20 C.F.R. §658.704 (1979), as amended by 45 Fed. Reg. 39482-83 (1980).

90. 20 C.F.R. §658.705 (1979), as amended by 45 Fed. Reg. 39483-84 (1980).

91. 20 C.F.R. §658.401(a) (1979), as amended by 45 Fed. Reg. 39469 (1980).

92. 20 C.F.R. §658.410-416 (1979), as amended by 45 Fed. Reg. 39469-49472 (1980).

93. 20 C.F.R. §658.421(a) (1979), as amended by 45 Fed. Reg. 39472-39473 (1980).

94. Correspondence, Office of Solicitor, U.S. Department of Labor, April 15, 1979.

95. 20 C.F.R. §658.502 (1979), as amended by 45 Fed. Reg. 39474-39476 (1980).

96. Jenkins v. S. & A. Chaissin & Sons, Inc., 449 F. Supp. 216, 224 (S.D.N.Y. 1978).

97. 417 F.2d 569 (5th Cir. 1969).

98. 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed.2d 26 (1975).

99. 449 F. Supp. 216 (S.D.N.Y. 1978).

100. 422 U.S. 66 at 78, 95 S.Ct. 2080, 2088, 45 L.Ed.2d 26, 36 (1975).

101. 404 F. Supp. 815 (D.N.J. 1975).

102. 352 F. Supp. 986 (D.C. Conn. 1973), affirmed 486 F.2d 1052 (2d Cir. 1973).

103. 382 F. Supp. 464 (N.D.Ill. 1974).

104. 418 F. Supp. 1384 (E.D. Wis. 1976).

105. 56 Cal. 2d 54, 13 Cal. Rptr. 663, 362 P.2d 487 (1961).

106. 508 F.2d 493 (1st Cir. 1974).

107. 20 C.F.R. §689.101(b) (1978), as amended.

108. 20 C.F.R. §689.105(a) (1978), as amended.

109. 44 Fed. Reg. 11856 (1979).

110. 1979 CAT., supra note 46 at 648.

111. Report of the Comptroller General, Stronger Controls Needed Over the Migrant and Seasonal Farmworkers Association Program in North Carolina, Sept. 8, 1977, at 2-3.

112. Ib.

113. Ib.

114. Id. at 506.

115. Pub. L. No. 95-568, Title II, §222(a)(1), 92 Stat. 2426, codified at 42 U.S.C. §2809 (1978).

116. Public Health Service Act, Pub. L. No. 95-626, Title III, §329, originally codified at 42 U.S.C. §329, originally codified at 42 U.S.C. §247d (Supp. I, 1977), now codified as amended by Pub. L. 94-278, Title VIII, §801(a), 90 Stat. 414 at 42 U.S.C. §254b (Supp. II 1978).

117. 44 Fed. Reg. 30594 (1979), to be codified as 20 C.F.R., pt. 689.

118. 44 Fed. Reg. 30597 (1979), to be codified as 20 C.F.R. §689.107(a)(3).

119. 44 Fed. Reg. 30596 (1979), to be codified as 20 C.F.R. §689.103.

120. Ib.

121. 29 C.F.R. §97.903 (1979).

122. 44 Fed. Reg. 11857 (1979).

123. 29 C.F.R. §§97.900-.922 (1979) supplementing 29 C.F.R.,pts. 94-99 (1979); §97.900(f) added at 44 Fed. Reg. 37911 (1979).

124. 1979 CAT., supra note 46 at 655.

125. 29 C.F.R. §97.1019 (1979).

126. 29 C.F.R. §97.1003 (1979).

127. 44 Fed. Reg. 11857 (1979).

128. Ib.

129. 29 C.F.R. §§97.1000-97.1024 (1979), supplementing 29 C.F.R., pts. 94-99 (1979); §97.000(e) added by 44 Fed. Reg. 37911 (1979).

130. Conferences with John Stark, Chief Rural Manpower, Ohio Bureau of Employment Services, May 26, 1976, July 27, 1979.

131. Ib.; compare Brown, "Displaced Migrants Threaten New Strike," Col. Citz. J. (July 12, 1979) at 3.

132. Data supplied by Office of Solicitor, U.S. Department of Labor.

133. Ib.

134. 20 C.F.R. §653.108, as amended by 45 Fed. Reg. 39462-39464 (1980).

135. 20 C.F.R. §653.101(a), as amended by 45 Fed. Reg. 39459 (1980).

136. See the outreach scheme of 20 C.F.R. §653.107(c) (1978), as amended by 45 Fed. Reg. 39460-39462 (1980).

137. Note 132, supra.

138. Ib.

139. 1979 CAT., supra note 46 at 648.

140. Rep't of the Compt. Gen., supra note 113.

141. Ib.

142. Id. at 17-18.

143. Id. at 17-18.

144. Id. at 18.

145. Id. at iii.

146. Note 132, supra.

147. Perez, "Migrant Farm Laborers Goal: Union Rights," Col. Dispatch (Dec. 17, 1978) at F-9.