Dentists in the program were employed over a period of 105 working days; during this time 1,023 of the State's 16,000 migrant children were examined. State records indicate that these examinations were conducted on 27 separate days, or 1 out of every 4 days the dentists were employed. (See Exhibit IX.)

The dental examinations revealed that 75.5 percent of the migrant children tested were in need of dental care. They were referred to local area dentists. None were treated by the dental unit itself.

The Division of Maternal and Child Care also provided funds for the employment of migrant health nurses in 14 of the State's 43 counties having migrant populations. The nurses had no unified obligations or duties, and their programs varied from simple referral service to direct patient care.[77]

During 1973 the nurses provided direct services to 678 individuals, approximately 12.5 percent of the total migrant population in the 14 counties. In 4 of the 14 counties, no individual direct nursing service was provided, and in one of these counties, no medical or dental health referrals were made by the nurse.

In those counties served, a total of 537 medical and dental care referrals were made by the nurses, and a total of 2,896 family visits were made. (See Exhibit X.)

Sue Hoffman, the county health nurse representing the Johnson County Health Department, testified that migrants had few health problems. "To me, they seemed like they were a pretty healthy bunch of kids," she told the Advisory Committee. "And the adults seem healthy to me." (vol. 3, pp. 111-112)

Asked if she had actually seen most of the adults in the camp for examination or diagnosis, the nurse responded, "No. which is a problem. I see the same adults practically each week when I go. I just see the same adults." Commenting on the actual health services provided to the camp, she responded, "I am sorry to say I really haven't done a lot." (vol. 3, pp. 117-118)

According to Dr. Harvey, the total budget for the migrant dental program and the migrant nurses program is $50,000.[78]

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77. Ibid.

78. Harvey Interview.

EXHIBIT IX

EXAMINATIONS OF MIGRANT CHILDREN - 1973

Indiana Migrant Dental Program

COUNTY	SCHOOL	DATE	CHILDREN SEEN
Shelby	Triton North Elementary	6-13-73	8
Benton	Benton Central High School	6-15-73	21
Jasper	Rensselaer High School	6-20-73	33
Henry	Blue River Valley School	6-27-73	10
St. Joseph	Greene Township School	7-2-73	59
Lake	Warren Elementary School	7-9-73	26
Marshall	West Elementary School	7-12-73	61
Madison	Edgewood Elementary School	7-24-73	54
Clinton	Rossville High School	7-27-73	71
Ripley	Sunman Elementary School	7-30-73	18
Cass	Lewis Cass High School	8-1-73	62
Allen	Monroeville Elementary School	8-9-73	14
Howard	Kokomo Roosevelt Elementary School	8-14-73	104
Randolph	Union City North Side Elementary	8-20-73	28
Delaware	Perry Elementary School	8-22-73	29
Jay	Redkey Elementary School	8-30-73	44
Adams	South Adams Elementary School	9-4-73	52
Grant	Upland Elementary School	9-6-73	11
Wells	Ossian Elementary School	9-10-73	40
Huntington	Warren Elementary School	9-12-73	23
Miami	Bunker Hill Elementary School	9-17-73	47
Madison	Orestes Elementary School	9-23-73	26
Miami	Converse Elementary School	9-25-73	107
Grant	Pt. Isabel Elementary School	9-28-73	20
Howard	Greentown Elementary School	9-28-73	6
LaPorte	Rolling Prairie Elementary School	10-2-73	12
Kosciusko	Milford Elementary School	10-3-73	14
Clinton	Frankfort Woodside Elementary	10-5-73	23
			1,023

Source: Division of Maternal and Child Care, Indiana Board of Health.

EXHIBIT X

SERVICES PROVIDED BY THE 15 STATE-FUNDED MIGRANT HEALTH NURSES - 1973

Nursing Services	Number of Migrants Affected
Family visits	2,896
Direct nursing service	678
Visits to day care centers serving migrants	124
Migrants given health records	79
Health supervision, counseling, teaching, demonstrations	1,104
Referrals for medical and dental care	537
Referrals completed	28
Community Contacts	
Physicians	189
Dentists	75
Hospitals	100
Trustees	24
Welfare Department	35
Council of Churches	50
Associated Migrant Opportunity Services	75
Growers	31
Canners	18
Police	5
Other	230

Source: Division of Maternal and Child Care, Indiana Board of Health, Annual Report-Nursing Services, 1973.

In addition to the 14 counties with State-supported migrant health nurses, 15 counties of the State provide migrant health care through the regularly employed county health nurse who participates in camp visits, school visits, and day school visits. No evaluations or reports of these activities are required, however, and the State Board of Health does not monitor the programs to ascertain their effectiveness.

In the remaining 14 counties of the State which have migrant populations, there are no migrant health care plans or programs in effect.[79] No State or local health programs reach the more than 4,000 migrants living in these counties.

Associated Migrant Opportunity Services, Inc., receives Federal funding from DHEW to provide health care to those migrants who are refused care by the State or local agencies. Funds are currently budgeted for inpatient care, outpatient care, physicians visits and treatment, dental services, and laboratory and x-ray services.

The project also funds "health specialists" who make regular camp visits to give medical advice, make preliminary diagnosis of problems, and make referrals to the appropriate doctors or clinics. AMOS also maintains two health centers in the State which provide preventive care, early detection screening, primary care, followup services, and education.

During 1973 AMOS conducted an experimental program to provide comprehensive health care to a limited number of migrants while providing episodic care to the remaining migrant population. Under the comprehensive program, 299 migrants saw physicians during the year, and 1,283 nonenrollees were provided with physician visits.[80]

Under provisions of the Hill-Burton Act, migrants in Indiana are eligible to receive free or partially free hospital care. This act requires hospitals receiving Federal funds to provide a "reasonable volume" of free health care to patients unable to pay all or a part of their bill.[81] Hospitals can choose one of a variety of methods to comply with the reasonable volume provision, including the institution of an "open door" policy, or by providing free health care equal to 3

79. Ibid.

80. AMOS Health Project, introduction, pp. 1-2.

81. 42 CFR §53.111(a).

percent of their annual operating costs, or equal to 10 percent of the amount of Federal assistance provided.[82]

Of 72 Hill-Burton facilities surveyed in Indiana, 49 chose to provide an "open door" policy in which the hospital guarantees that "it will not deny admission to, and services at, its facility to any person unable to pay therefore...."[83]

While nearly every one of Indiana's hospitals falls under the Hill-Burton regulations, some reportedly refuse to provide care to migrants who are unable to pay. "Many hospitals refuse to admit patients before proof of financial responsibility is presented," said AMOS health project director Goodrun Geible. "Other hospitals refuse to admit patients unless a doctor signs the admitting papers," she continued, "and migrants can't get a physician because the physician already has a patient overload and will not accept new patients."[84]

The current regulations for monitoring Hill-Burton hospitals do not require the reporting of patients by race or occupation. It is therefore impossible to verify the service of Hill-Burton hospitals to Mexican American migrant farmworkers.

One farmworker described his experience in dealing with illness --an experience reflecting the dilemma of other migrants in Indiana: "I couldn't afford the medicine in the first place, much less a doctor, and when I got sicker and couldn't work as good, I couldn't eat right, especially being alone. I was just getting worse and worse until the crew leader took us back at the end of the season, and my relatives looked after me. Lucky this year, I haven't gotten sick--yet."[85]

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82. Ibid., §53.111(d).

83. Review of Hill-Burton records, Indiana Board of Health, Indianapolis,by Commission staff, July 25, 1974.

84. Geibel Interview.

85. AMOS Health Project, sec. 1, p. 4.

HOUSING

> LARGE HOLES IN THE FLOORS, CEILINGS, AND WALLS, ALMOST ALL THE WINDOWS WERE CRACKED OR BROKEN, PLASTER FALLING FROM THE ROOF, LANDING STEPS ABOUT TO COLLAPSE, BAILED HAY IN THE BACK ROOM OF THE HOUSE...WATER SOURCE LOCATED IN THE MIDDLE OF A HOG PEN...
>
> Description of an Indiana migrant housing camp included in a State health inspector's report, June 1974.

Migrants working in Indiana, as elsewhere in the Nation, live in housing provided by farmers and growers.

"This has been a point of irritation for both growers and migrants over the years," according to Lee Reno, writing in Pieces and Scraps. "Growers complain that they are the only employers in the country who are required to furnish housing for their labor force. This contention is often used to justify why stricter farm labor housing codes should not be enacted or actively enforced.

"Migrants complain that housing provided by growers is used as an unreasonable tool by their employer to gain an unfair bargaining position and control over their private lives," Mr. Reno concluded. "It is well documented that a large number of labor camps run by growers,groups of growers, or labor contractors often become virtual prisons for the employees and families who occupy them."[86]

86. Lee P. Reno, Pieces and Scraps--Farm Labor Housing in the United States (Washington, D.C.: Rural Housing Alliance, 1970), p. 25.

Because of the disparity in "bargaining power" between migrants and employers, housing conditions for migrants have traditionally been poor. "Migrants live in dilapidated, drafty, ramshackled houses that are cold and wet in the winter, and leaky, steaming, and excessively hot in the summer," reported the President's National Advisory Commission on Rural Poverty. "Insufficient ventilation, poor or no mattresses, unsanitary privies and bathing devices, and unsanitary storage and disposal of garbage and refuse are too often the prevailing conditions."[87]

Indiana is reportedly not without its share of poor migrant housing conditions. "Indiana has the worst camp conditions of any State I have been to," testified Aurelia Vasquez, a migrant for 12 years who now travels from State to State with the day care program of the Texas Migrant Council. "The camps here are not in good condition." (vol. 4, pp. 70-71)

Gilbert Cardenas, of the Center for Civil Rights at the University of Notre Dame, reported that, "The problem is so bad that if existing regulatory measures pertaining to farm labor housing were enforced throughout the Midwest, it might be that over 50 percent of the labor camps would be permanently closed down, and perhaps 70 percent to 80 percent would have to undergo major changes to comply with minimum standards."[88] (See Exhibit XI.)

A survey of Indiana's migrant camps by the U.S. Commission on Civil Rights revealed that 82 percent (153 of the total 187 camps) had been cited by health inspectors for violations of the State housing code during FY 74. Sixty-four of those camps had been cited for 10 or more separate violations of the code, including such serious violations as:

> dirt in women's privies allowing insects and rodents
>
> occupants complained of rats (a later report noted, 'fire department burned buildings with rats')

87. President's National Advisory Commission on Rural Poverty, The People Left Behind (September 1967), p. 99.

88. Gilbert Cardenas, The Status of Agricultural Farmworkers in the Mid-West (prepared for the American Society of Planning Officials, January 1974), p. 34.

EXHIBIT XI

MIGRANT CAMP INSPECTIONS BY THE
INDIANA BOARD OF HEALTH

JULY 1, 1973 - JUNE 30, 1974

Camps Inspected - 187

Number of Inspections - 1,189

Camps Cited for Code Violations - 153

Camps Cited for Five or More Code Violations - 118

Camps Cited for 10 or More Code Violations - 64

Total Code Violations Cited (All Camps) - 2,855

Total Permitted Occupancy - Adult Workers - 8,170

Total Permitted Occupancy - Workers and Families - 10,819

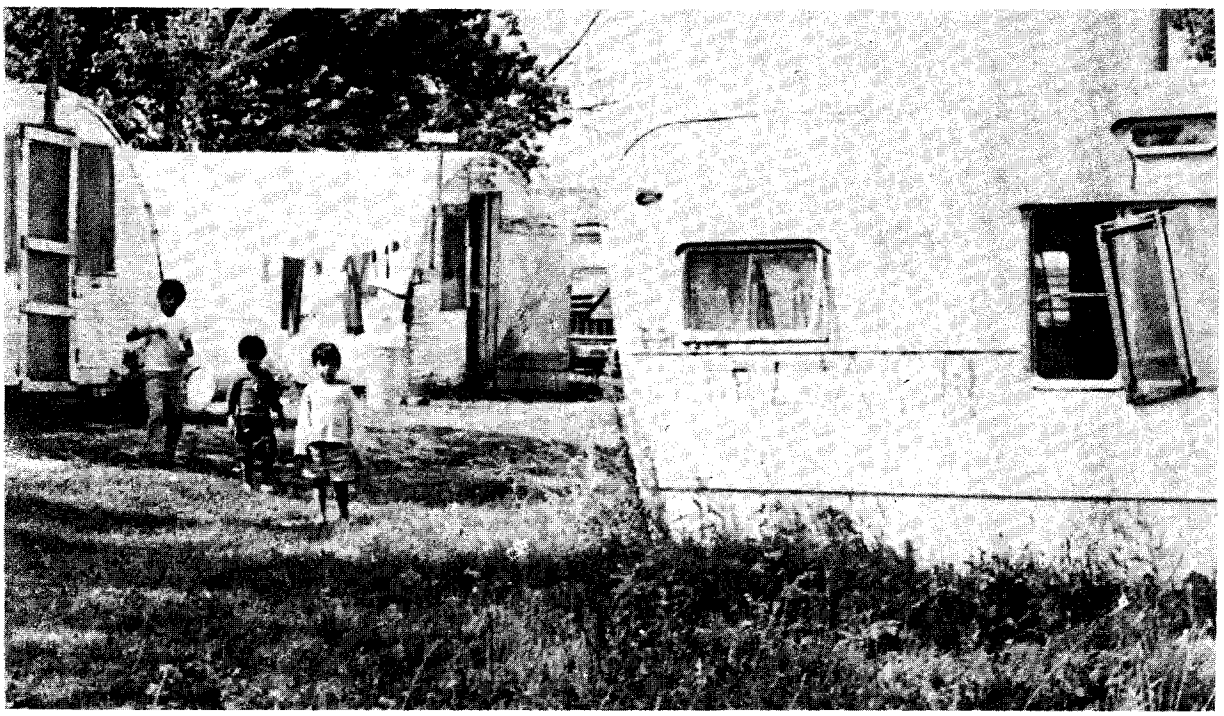
Permit Denials - 46

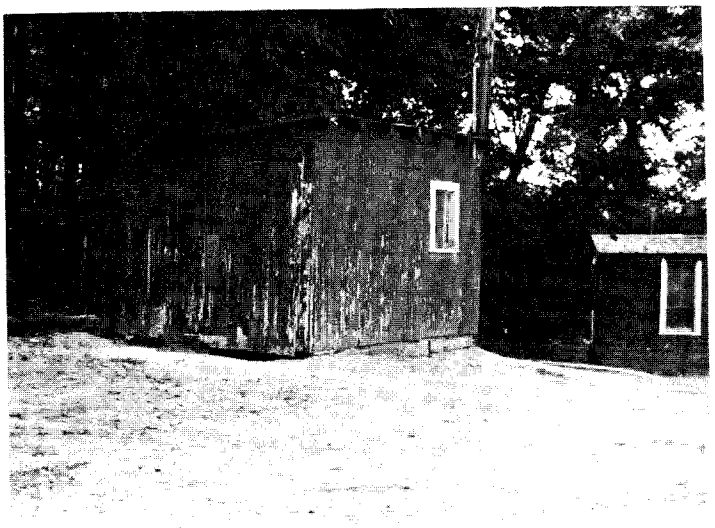
Permit Revocation Hearings - 10

Permit Revocations - 9

Permit Revocations During Migrant Season - None

Source: Migrant camp inspection files, Division of Sanitation, Indiana Board of Health, compiled by Commission staff, July 1974.



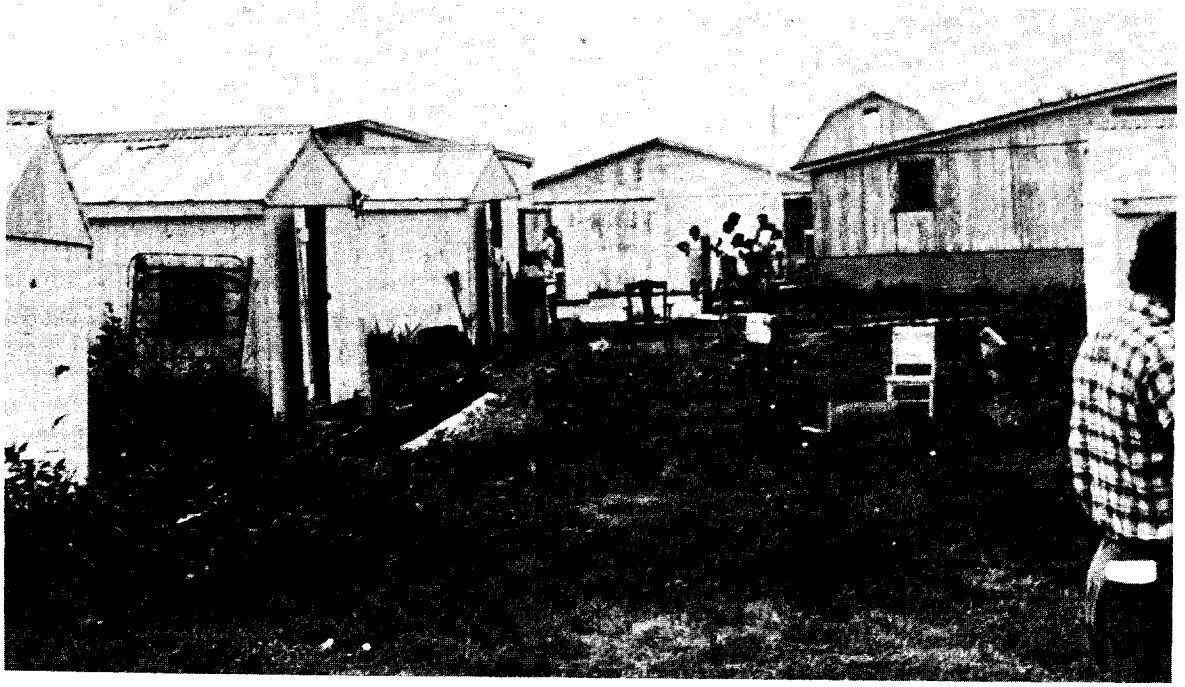



PRIVATE
PROPERTY
UNAUTHORIZED PERSONS
TRESPASSING ON THIS
PROPERTY WILL BE PROSECUTED

EXHIBIT XII

INDIANA MIGRANT CAMPS - 1971-1974

All photographs were reviewed by witnesses during the Indiana Advisory Committee's informal hearings and verified as to their representative nature. (vol. 1, p. 32; vol. 2, p. 61; vol. 2, p. 69; vol. 3, p. 66; and vol. 4, p. 98) Photos by Gilbert Cardenas and Carmelo Melendez.



> the only windows in each unit are those in the doors, occupants are forced to open sliding metal doors to get ventilation
>
> hot water heater not operating in shower building
>
> urinal is not hooked up
>
> eleven units unsafe
>
> trash and debris scattered throughout camp, pits [privies] full.[89] (See Exhibit XII.)

Carlos Flores, a migrant presently working in Indiana, described to the Advisory Committee the camp conditions where he lives:

"The refrigerator is too small [and] we lose our food. The house has no floor covering. It hasn't been painted inside since it was built. There is no storage place to store our clothes...[and no] cabinets to store our food. There is no light switch to turn off the lights. The ceilings have fallen down and the screens are no good and broken. There is no lock whatsoever to lock it from the inside. There is no water facility inside the house. There are no toilets inside the house." (vol. 4, pp. 93-94)

Migrants also reported overcrowded conditions in the camps. Rafaela Alvarez, an ex-migrant presently working as a health specialist for AMOS, told the Advisory Committee that, "Sometimes there are even 10 persons sleeping in a one-room cabin." (vol. 3, p. 45)

Job orders processed by the Rural Manpower Service during 1973 revealed that entire families lived in 14- by 14-foot rooms containing "beds, mattresses, bottled gas, cooking range, electric refrigerator, table and chairs, and [an] electric space heater." Other job orders described "combination sleeping and living quarters," ranging in size from 11 feet by 20 feet to as small as 10 feet by 12 feet.[90]

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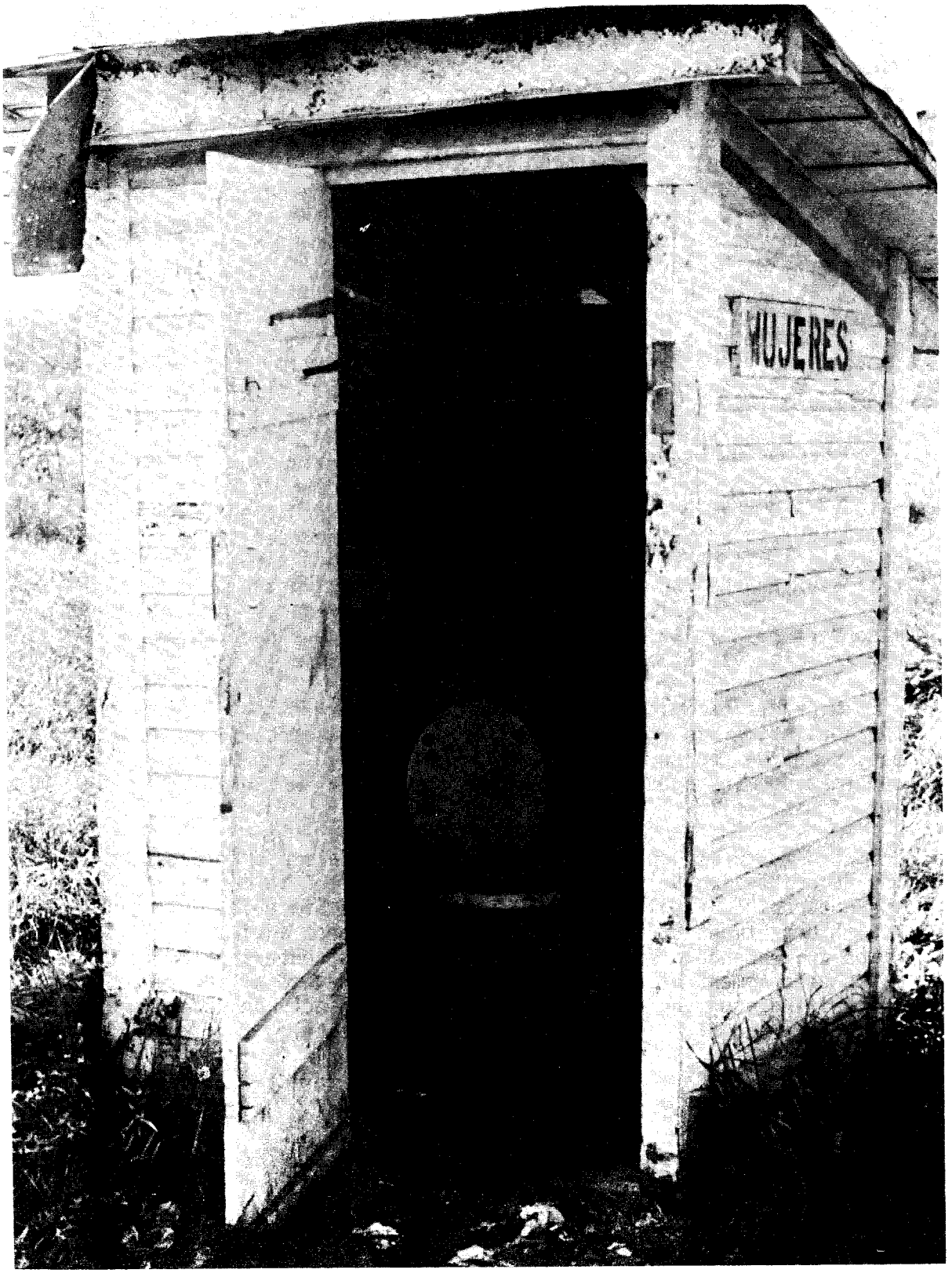
89. Review of migrant camp inspection records, Indiana Board of Health, Indianapolis, by Commission staff, July 22-24, 1974 (hereafter cited as Camp Inspection Review).

90. State of Indiana, Employment Security Division, clearance orders for agricultural labor: James R. Deniston, Morgan Packing Co., Vic Bernacchi & Sons, 1973.


MUJERES

Although the State housing code requires that there be no less than 60 square feet of floor space for each occupant in a combined sleeping, cooking, and eating unit, and no less than 50 square feet in units used exclusively for sleeping, the State has no record of these regulations being either investigated or enforced.

Of the 1,189 camp inspections made during FY 74 and on record with the health department, not one contained the results of a head-count, a survey of overcrowding conditions, an inquiry into the camp population, or a discussion with a camp owner or crew leader concerning compliance with overcrowding regulations.[91]

"I don't have any direct knowledge of overcrowding conditions," Durland Patterson, State sanitary officer in charge of migrant camp inspections, told the Advisory Committee. "Usually, during the year, we will conduct a head count as close as we can." (vol. 3, p. 70)

Mr. Patterson went on to tell the Advisory Committee that such head counts are not included in the camp inspection reports, that all information concerning head counts or overcrowding is "relayed verbally," and that no written records of overcrowded conditions are maintained by the State. He said that such head counts are difficult to complete and have inaccurate results because "generally, when our fellows [inspectors] are in the camp, it is during the working hours when most of the folks are out in the field working." As a result, according to Mr. Patterson, not one camp owner has been cited for an overcrowding violation in the past 5 years. (vol. 3, pp. 70, 75, 76)

Migrants and migrant representatives reported that health inspectors often did not bother to inspect the insides of buildings, that they sometimes conducted their inspection by "walking by the buildings" and that one inspector conducted his inspection "without ever getting out of his car."[92]

Mr. Patterson conceded that health officials did not inspect the inside of housing units unless they were "invited in" or if the camp was unoccupied. (vol. 3, p. 71) Although the State law authorizes health department officials to "enter and inspect agricultural labor camps at reasonable hours," their policy of not entering living units makes enforcement of the State's regulations regarding shelter, heating, wiring and lighting, beds and bedding, insect and rodent control, and safety and fire prevention virtually impossible.

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91. Camp Inspection Review.

92. Rafaela Alvarez, health specialist, AMOS, staff interview at Plymouth, Ind., July 18, 1974.

Indiana law requires that labor camp owners apply for a permit "not later than 60 days prior to the start of the operation of the camp."[93] This provision guarantees a sufficient time for inspections to be made and for violations to be remedied without subjecting the migrants to unsafe or hazardous living conditions or the possibility of being homeless because an owner could not make necessary improvements by the time of the migrants' arrival.

The law is ignored by camp owners and the State health department alike. In order for a camp to open by the height of the crop season (September 1), an application would have to be filed with the Board of Health by the Fourth of July to comply with the "60 days prior to opening" requirement. According to the Board's 1973 records, 67 of the State's 187 camps had not applied for permits by the July 4 deadline. Seventeen of those camps had still not applied by August 15, and 10 of the camps did not file applications until the first of September or later. No penalties were assessed against the offending camps.

Some of Indiana's migrant camps housed migrants even before a permit was applied for. According to health department records, at least 15 labor camps had migrants in residence at the time the permit application was made with the State.[94]

When asked if he knew of instances where the State allowed camps to violate this law, and if the State in fact participated in the legal violations by granting such permit applications, Mr. Patterson answered, "I would say I don't know the exact number but, yes, there are some." (vol. 3, p. 74)

According to Gilbert Cardenas, "The most universal approach toward regulating farmworker housing...has been to set minimum standards and attempt to enforce them through the issuance of licenses or operating permits." Mr. Cardenas pointed out, however, that, "without the establishment of proper instrumentalities and without rigorous administration, such regulatory measures remain ineffective and do not help alleviate the housing situation for migrant farmworkers and their families."[95]

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93. Indiana Board of Health, Regulation HSE29-R, §2(b)(1).

94. Camp Inspection Review.

95. Gilbert Cardenas, Center for Civil Rights, University of Notre Dame, staff interview at South Bend, July 1974.

While Indiana has provided a regulatory code for migrant housing under HSE 29, the continued existence of deteriorated housing conditions, as attested to in complaints, independent housing inspections, and health department records, indicates a failure in the area of enforcement.

The State's enforcement tools include: 1) permit denial, 2) permit revocation, and 3) direct legal action by the Indiana Attorney General or county prosecutor, resulting in a court-ordered camp closing, a fine, and/or imprisonment.[96]

A review of the State's activities during FY 1973 by the Commission staff indicated that the Health Department denied 46 permit applications on the basis of one or more violations of the code. All but nine of these camps later received their permits after "coming into compliance" with the regulations. Neither the Department of Health, the Indiana Attorney General, nor the county prosecutor sought legal prosecution of any of the violations.

During the year, revocation hearings were initiated against 12 camps. One of the hearings was "informal," two were dropped, and the remaining nine were carried out and permits were revoked in each instance. However, in each of the cases, the revocation hearings were held in November, after the migrants had left the State, and the camps were closed. (vol. 3, pp. 63, 77, and 82) Permits were revoked only through the following June, before the arrival of the next year's migrant season.[97]

According to Mr. Patterson, six direct court actions were taken during the year. (vol. 3, p. 64) Four of the actions asked the court to enjoin the camp owner from operating without a license. In each case the State filed legal action months after the end of the migrant season and the camps had already closed down. No fines were levied for violations, no prison terms imposed, and no nonvoluntary camp closing enforced. Two of these camps were subsequently granted permits for operation during the 1974 migrant season, one camp has its permit currently pending for this season, and the fourth camp burned to the ground.

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96. Chapter 122, Acts of 1965, Indiana General Assembly, §§ 4, 5, and 9.

97. Camp Inspection Review.

The two additional court proceedings were filed in conjunction with the Lake County Board of Health, one resulting in a camp closing during the season, the other resulting in the condemnation of a building. Although a camp was closed, no fines were levied and no prison sentences were imposed.[98]

Migrant labor camps also come within the jurisdiction of the Federal Occupational Safety and Health Administration, which has the responsibility to protect farmworkers from unsafe or hazardous living conditions. OSHA is equipped with extensive inspection and enforcement powers, including fines of up to $1,000 for each violation.[99]

OSHA has, however, placed the random inspection of unsafe and hazardous migrant housing conditions in the administration's lowest priority category. It has instructed its personnel to inspect migrant camps "only in response to valid employee complaints, catastrophes, and fatalities."[100] OSHA has responded to seven complaints on housing but does not conduct random inspections of migrant housing. (vol. 3, p. 96)

The Rural Manpower Service also has responsibility for insuring safe and healthful living conditions in those camps for which it processes work orders for placement of migrants. Although inspection of these camps is carried out by RMS staff persons, the number of work orders processed has dwindled to such an extent (seven this year) that this provision has little or no effect on the vast majority of migrants in the State.[101]

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98. Camp Inspection Review.

99. 29 CFR §1910.142 and Keppler Interview.

100. Keppler Interview.

101. Dungan Interview.

WELFARE

> IT DOESN'T MAKE ANY DIFFERENCE WHAT THE LAW STATES; THE LAW IS IRRELEVANT AS FAR AS THE TOWNSHIP TRUSTEES ARE CONCERNED, AND FOR THAT MATTER, THE LAW IS PRETTY DARNED IRRELEVANT TO MOST PUBLIC OFFICIALS DEALING WITH MIGRANT WORKERS.
>
> Louis Rosenberg, executive director
> Indiana Center on Law and Poverty

Migrant farmworkers in Indiana are among the lowest paid, least educated, worst housed, and most medically impoverished groups in the State. Yet, they often do not receive the benefits of the local, State, and Federal welfare programs which are specifically designed to alleviate such conditions.

The migrant does not qualify for some programs simply by definition and by the fact that migrants do not fit the mold of the traditional poor family.

Few migrants receive "aid to dependent children" benefits because the migrant family is tightly knit and the father and mother are both normally present.[102] Few migrants collect unemployment insurance because the Government has defined farmworkers as ineligible for the program.[103] Few migrants become eligible for old age assis-

102. U.S., Congress, House, Subcommittee on Agricultural Labor of the Committee on Education and Labor, Seminar on Farm Labor Problems, 92d Cong., 1st sess., 1971, p. 29.

103. 26 U.S.C. §3306(c)(1) and (k).

tance because the migrant dies at the average age of 49, long before reaching the qualification age of 60 or 65.[104]

When migrants do qualify for a welfare program, the benefits do not come easily; sometimes they do not come at all.

Cheryl Gupton, food and nutrition specialist for AMOS, told the Advisory Committee that many migrants who are eligible for the U.S. Department of Agriculture's food stamp program have been denied food stamps in Indiana. She explained that the food stamp program requires "income verification" which for migrants is difficult because either they have not worked during the past 30 days or, if they have worked, they were not given pay stubs proving what their income and deductions were.

In addition, Indiana food stamp offices base the amount of food stamp allocation upon an "income projection" for the next 30 days. Such projections for migrants, according to Ms. Gupton, are quite difficult because there are no records upon which to base the projection, weather conditions (which determine if the migrant will work at all) are extremely unpredictable, and income projections provided by the migrants' employers are biased because the employers either do not want to admit they are underpaying their employees, or they include the income of underage children in the total income figure, a practice which is in violation of Federal regulations. (vol. 2, pp. 5-7)

One migrant farmworker, Juanita Lujan, stated in a sworn affidavit that her husband and nine children were refused food stamps in Tipton County because authorities had determined through "income projection" that the family would earn over $800 later that month. Heavy rains during the month restricted the amount of work available and the family earned only $7. The family had to borrow over $200 to provide food for the children.[105]

Thus, while migrants may be eligible for food stamps, they can be technically disqualified because of the unique nature of their work, the sporadic nature of their wages, and the inability of food stamp officials to accurately assess their income. Under Advisory Committee questioning, Edward Rucker, supervisor of the food stamp program in Indiana, conceded that migrant income projection was "most difficult" and acknowledged that the State's current procedure was to take a "shot in the dark" and hope for the best. (vol. 2, p. 82)

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104. AMOS Health Project, p. 2.

105. Migrant Legal Action Program Monthly Report, September 1974, p. 3.

Migrants have also been technically disqualified from receiving food stamps in Indiana based on "residency requirements," a practice which is illegal under Federal Regulations 7 C.F.R. §271.1(e) and U.S. Department of Agriculture directive F.N.S. 1732-1 (7).

"Even to this date," reported Cheryl Gupton, "residency requirements which have been void for a long time now are being imposed on migrant workers. Either individuals and households are not rendered any assistance," she continued, or assistance is rendered only "after a long series of meetings, discussions, and general education of food stamp officials to their own regulations." (vol. 2, p. 7)

Migrants have not only been "technically disqualified" from receiving stamps in Indiana but have been disqualified because of misleading and inaccurate interpretations of food stamp regulations by State and local officials.

Mrs. Eusedio Rodriguez reported to the Indiana Advisory Committee that she and her family were denied stamps in St. Joseph County because officials claimed the family owned property in another State. The property, as it turned out, was the Rodriguez's home in Texas. (vol. 2, p. 66)

Edward Rucker testified before the Advisory Committee that he interpreted migrant home ownership in another State as grounds for disqualification under Federal regulations. (vol. 2, pp. 95-96, 127-128) Al Nichols, district manager of the Food and Nutrition Service of the U.S. Department of Agriculture, which audits the State's food stamp activities, told the Committee, however, that the regulations said no such thing and that home ownership by a migrant was entirely permissible under the law.

"The possession of a house in Texas, in the case of a migrant... does not prohibit...participation in the food stamp program in Indiana," Mr. Nichols said. "I don't think anybody [could say] that because [a migrant] happens to have a house in another State that he is ineligible." (vol. 2, pp. 122-123)

Indiana food stamp officials have also failed to correctly interpret and enforce regulations preventing the inclusion of a child's income in the total family income upon which food stamp eligibility is based. Federal Title VII regulations state that the income received by children under 18, "shall not be considered income to the household."[106] (Emphasis added.)

106. 7 CFR §271.3 (c)(1)(ii)(a).

Indiana officials have instead adopted the position that they will include the child's income in the family income unless a grower or crew leader notifies the food stamp office of the exact amount of the child's earnings. "If the grower or...the crew leader can identify what the child earned," Edward Rucker told the Advisiory Committee, "then that cculd be excluded from the income." (Emphasis added.)

As a result, migrant family incomes can become illegally exaggerated and inflated. Asked if the State's policy could inflate income figures to the point of disqualifying an eligible family from food stamps, Mr. Rucker told the Advisory Committee, "That is conceivable; yes." (vol. 2, p. 103)

Mr. Rucker further revealed to the Committee that the State's food stamp offices do not doublecheck on the family income figures supplied by growers. Instead, the State has taken a "that's just tough" attitude toward migrants who are disqualified because of inaccurate income figures. "There again," Mr. Rucker told the Advisory Committee, "that is the bind the worker is in." (vol. 2, p. 100)

Indiana migrants have also been disqualified from food stamps due to the State's inaccurate and restrictive interpretation of regulations governing "income projection." Mr. Rucker insisted that U.S. Department of Agriculture (USDA) regulations prohibited the use of average past income as a means of predicting a migrant's anticipated future income. (vol. 2, p. 98)

A spokesman for USDA, Donald Thompson, told the Advisory Committee, however, that the use of past average earnings was perfectly acceptable as a basis of income projection. "If I thought it was a reasonable estimate," said Mr. Thompson, "I would recommend they accept it." (vol. 2, p. 122)

Federal Regulation 7 C.F.R. §270.3(b) requires: "The State agency shall...be responsible for...outreach to potentially eligible households," providing them with information concerning food stamps. Mr. Rucker told the Advisory Committee, however, that he is currently doing "nothing" to comply with the outreach requirement, explaining, "Since the first of January, I have been pretty busy" with other duties. (vol. 2, p. 92)

Federal Regulation 7 C.F.R. §271.6(e) authorizes the State agency to accept vouchers and warrants from other public or private agencies as payment for food stamps for individuals unable to meet the purchase price of the stamps. The Indiana food stamp office has refused to accept the vouchers of the federally funded AMOS program, thereby depriving some migrants of their ability to purchase stamps. (vol. 2, p. 11)

To insure that eligible families who move are not deprived of stamps during the time of their move to another State or project area, Federal regulations require that the State agency "shall provide for continuing the certification for 60 days." The regulations require that the agency "shall take effective action...to inform low income households...of the availability and benefits of the program and encourage the participation of eligible households."[107]

Indiana provides for no such "effective action" either to inform migrant households of the availability of "continued certification" or to encourage their participation. Asked if food stamp offices did anything special to inform migrants of the program, or attempt to sign them up or provide application forms, Mr. Rucker answered "no." (vol. 2, p. 94)

Federal Regulation 7 C.F.R. §271.4 (a)(4)(iii)(d) authorizes food stamp agencies to certify "households deriving their income from ...farm employment," for up to 12 months at a time. Migrants in Indiana are certified for only 1 to 3 months at a time, the shortest periods possible.

Federal Regulation 7 C.F.R. §271.4 (a)(2)(iii) authorizes food stamp offices to provide emergency certification and stamps to families reporting zero income or income so low that they would have no purchase requirement. Such certification can last up to 30 days and requires no verification of eligibility factors.

Indiana food stamp offices have failed to use the emergency certification procedure in the case of migrants. AMOS representatives reported to the Commission staff that in Jay County alone, 35 farmworker families with incomes verified by crew leaders as "zero," "none," or "not known" were denied certification by the food stamp office during 1974.[108]

Federal Regulation 7 C.F.R. §271.4 (a)(3) requires that food stamp agencies process applications within "reasonable time standards" not to exceed 30 days. An Indiana migrant must wait for certification from 40 to 60 days in some counties, however, because of 2- to 4-week delays in scheduling appointments at which the migrant can submit an application.[109] Until such an appointment is held and the application

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107. 7 CFR §§271.1 (k) and 271.4 (a) (6).

108. Cheryl V. Gupton, letter to Commission staff, Sept. 6, 1974, Commission files.

109. Ibid.

officially submitted, the 30-day Federal time limit does not technically go into effect.

Federal Regulation 7 C.F.R. §271.1(o) requires that in the event of a complaint by an aggrieved household and a request for a hearing, "Prompt, definitive, and final administrative action must be taken by the State agency within 60 days from the date of a request for a hearing." Indiana's food stamp agency has failed to comply with this law.

On July 10, 1974, after being denied food stamps for their "property ownership in another State" (described earlier in this chapter), the Rodriguez family filed a request with the State food stamp office for a "fair hearing" to appeal that decision. Sixty days later, Sept. 9, 1974, the State had not only failed to take a "prompt, definitive, and final administrative action" but had failed even to hold a hearing on the matter.

On Friday, Sept. 20, 1974, the required hearing was convened at which time a decision was reached to allow the Rodriguezes to purchase food stamps.[110] The failure of the food stamp agency to correctly interpret the law and the failure of the State agency to act according to the law resulted in the denial of food stamps to an eligible family for 72 days.

In addition to the Federal food stamp program, migrants in Indiana may qualify for the State's general assistance welfare program which provides funds for medical attention and emergency medical needs, rent, utility payments, emergency food and clothing, and school fees. The general assistance program is operated under the authority of the local township trustees and is funded by each local township. Indiana is the last State in the Union to continue operating its general assistance program on the local township basis. (vol. 2, p. 82)

"The [Indiana] Poor Relief Program is distinguished by the fact that there are no statewide standards," said Lou Rosenberg, executive director of the Indiana Center on Law and Poverty. "[It] is absolutely decentralized to 1,008 township trustees, locally elected, and it is financially supported by the township.

"There is tremendous localism here," continued Mr. Rosenberg, "and people from outside the townships don't fare too well. It is very difficult to get poor relief, but it is especially difficult if you are

110. Efrem Bernal, legal representative for the Rodriguez family, telephone interview, Oct. 24, 1974.

a migrant worker, because you do not have the power to vote in or out that township trustee. You are unfamiliar to that township trustee; you are unfamiliar to that community." (vol. 2, pp. 32-34)

"We get the response from the township trustees that they have only so much money in their budget and it does not include migrant workers," said Cheryl Gupton of AMOS, whose job it is to refer needy migrants to the appropriate relief agencies. "In very few instances have we had assistance from the township trustees." (vol. 2, p. 16)

Many migrants reportedly have difficulty in simply locating the local township trustee. "In these rural areas, township trustees don't even have office hours," Mr. Rosenberg told the Advisory Committee. "As a matter of fact...in a sample of 100 township trustees that we surveyed, 75 percent of these persons weren't even listed in the phone books as township trustees." (vol. 2, p. 34)

If the migrant is able to identify and locate the township trustee, he may still have difficulty in applying for relief. "I know of one instance where the trustee was eating supper and he would not get up from the table to come and give the family the applications," Lupe Rocha, an ex-Indiana migrant, told the Advisory Committee. "The trustee told them to come back another day 'when I am not too busy.' In fact, he didn't tell them that; his daughter said that 'My father is busy; he can't see you now.'" (vol. 2, p. 55)

Migrants succeeding in contacting the trustee and making out an application for relief may still not receive aid even when eligible. Some townships in the State still reportedly disqualify migrants from poor relief based upon residency requirements which were declared unconstitutional in Indiana in 1970.

In Tipton County, for example, legal action was pursued during 1974 in behalf of migrants who had been turned down for relief by a township trustee. "We spoke with...the township trustee...but our efforts were to no avail," the attorney in the case told the Advisory Committee. "He took the position that because of a residency requirement...he could not" provide poor relief to the migrants. (vol. 2, pp. 29-30)

Other township trustees claimed that they did not provide poor relief to migrants because they "never saw them." (vol. 2, p. 38) One trustee told the Advisory Committee that he does not provide poor relief to migrants but instead "sends them to the food stamp office." Another trustee told the Committee that "the only thing we do is fill up their gas tank when they are leaving town."[111] Trustee Louis Wislocki

111. Mrs. Skip Waymire, wife of Richland township trustee, interview, August 1974, and Opal Kaiser, Pipe Creek township trustee, interview, August 1974.

testified that he had granted $600 worth of food to six migrant families during 1974. (vol. 3, p. 15)

At present, the State asserts very little authority over township trustees who fail to grant poor relief to migrants. Although the State Board of Accounts is required to audit each trustee's budget on a yearly basis, the only action taken is to eliminate any expenditures which are illegal. The board takes no action to eliminate "illegal nonexpenditures" or to insure that trustees are granting relief to eligible recipients in a nondiscriminatory manner. (vol. 2, pp. 40-41)

Commenting on the welfare system in Indiana, one migrant told the Advisory Committee, "The [welfare] agencies often look at migrant farmworkers as outsiders, outsiders who come to take something away from their people. They do not see the farmworker as a human being, a citizen, a person with pride and dignity. To them he is a beggar. The farmworker's contribution to the agricultural economy is overlooked. The farmworker, the rented slave, has no place on the local welfare rolls." (vol. 2, p. 48)

CONCLUSIONS AND RECOMMENDATIONS

EMPLOYMENT

Conclusions

1) Federal legislation, including the National Labor Relations Act of 1935, the Fair Labor Standards Act, and the Federal Unemployment Tax Act, results in unequal treatment of migrant and other agricultural workers by specifically excluding these workers from the benefits of the law while including other classes of American workers.

2) Indiana State legislation, including the Workmen's Compensation Act, the Workmen's Occupational Disease Act, the Minimum Wage Law, the Maximum Hours Law, and portions of the Child Labor Law, results in unequal treatment of migrant and other agricultural workers by specifically excluding this class of workers from coverage while including other classes of Indiana workers.

3) The Indiana Rural Manpower Service, funded by the U.S. Department of Labor, has been cited for sex, age, and racial discrimination by the Department of Labor and has failed to follow the directives of the Secretary of Labor to eliminate such practices. The Indiana Rural Manpower Service and the Secretary of Labor have both failed to comply with the court order in NAACP v. Peter J. Brennan to eliminate such practices.

The Indiana Rural Manpower Service has failed to comply with the 1972 directives of the Secretary of Labor requiring expanded and complete employment services to migrant farmworkers. Instead, the Indiana Rural Manpower Service has reduced its program and discriminates against migrant farmworkers by not providing them with the full and complete job training, counseling, development, and placement services.

4) The Employment Standards Division of the U.S. Department of Labor has contributed to the continued violation of migrant rights through its failure to diligently monitor and seek prosecution against violators of the Fair Labor Standards Act and the Farm Labor Contractor Registration Act. Although the division documented violations of the law in 7 out of every 10 cases investigated during 1973, not one of the 203 separate illegal activities was prosecuted by the Department of Labor.

5) The U.S. Department of Labor's Occupational Safety and Health Administration has legal authority to eliminate the unhealthy and hazardous living and working conditions of migrants through the strict enforcement of their regulations. The administration has instead placed random inspection of migrant camps in its lowest priority, and has disallowed submission of "valid complaints" by anyone other than a migrant or his/her authorized legal representative. As a result, camp conditions and working conditions remain both unsafe and unhealthy.

6) The National Migrant Farmworker Program, operated by the Midwest Council of La Raza in Indiana, is a promising program which has provided genuinely beneficial job training and placement services to migrant workers.

7) Migrant referral, support service, and outreach programs operated by Associated Migrant Opportunity Services and funded through the joint efforts of the U.S. Departments of Labor and Health, Education, and Welfare, provide important and necessary services to migrants in the State of Indiana.

Recommendations

1) The Indiana Advisory Committee to the U.S. Commission on Civil Rights recommends that the U.S. Congress amend the Fair Labor Standards Act, the National Labor Relations Act, and the Federal Unemployment Tax Act to include migratory farmworkers; that Indiana Senators Vance Hartke and Birch Bayh jointly draft the amendments for the next legislative session; and, that they seek the support of all Senators representing either migrant "home States" or "receiver States" as primary sponsors of the amendments.

2) The Advisory Committee recommends that the Indiana State Legislature amend the State's Workmen's Compensation Act, the Workmen's Occupational Disease Act, the Minimum Wage Law, the Maximum Hours Law, appropriate portions of the Child Labor Law, and the Unemployment Compensation Law to include migratory farmworkers.

3) The Advisory Committee recommends that the U.S. Secretary of Labor terminate present or future Department of Labor funding of the Indiana Rural Manpower Service, either through the Manpower Administration or the Comprehensive Employment and Training Act of 1973, and that U.S. District Court Judge Charles R. Richey, who retains jurisdiction over the Secretary of Labor and the Rural Manpower Service program, "to insure that plaintiffs (migrants) receive the benefits and protections to which they are entitled," review the findings of this Advisory Committee and initiate appropriate action based thereupon regarding compliance by the Department of Labor and the Rural Manpower Service with his judicial order of 1973. (NAACP v. Peter J. Brennan 360 F. Sup. 1006, District of Columbia, 1973)

4) The Advisory Committee recommends that the Indiana Employment Standards Division of the Department of Labor increase its farm labor inspections to cover every camp in Indiana by the migrant season of 1976. The Committee further recommends that the division and the Department of Labor enforce all provisions of the Fair Labor Standards Act and the Farm Labor Contractor Registration Act and insure compliance with the law through court action, fines, and other appropriate action when necessary.

5) The Advisory Committee recommends that the Deputy Assistant Secretary/Administrator and the Assistant Secretary of Labor for the Occupational Safety and Health Administration reconsider the priority given to random inspections of migrant working and living conditions and that they amend the administration's current interpretation of "valid complaint" to include complaints filed by individuals with direct knowledge of unsafe or hazardous conditions.

EDUCATION

Conclusions

1) The Indiana Legislature has inhibited the ability of the migrant child to obtain an equal education in Indiana by: a) passing legislation exempting migrant children from compulsory education, b) failing to foster and fund sufficient and adequate day care centers to allow older migrant children to attend school rather than babysit, and c) failing to fund a single program designed to provide educational services to meet the unique needs of migrant children.

2) The Indiana Department of Public Instruction has failed to comply with its responsibility of providing equal education to all students. The department has continually funded schools serving Spanish speaking migrant children without proper assurance and verification from those schools that the migrant children were receiving an "equal education" as required and defined by the Department of Health, Education, and Welfare.

3) The Division of Migrant, Bilingual and Cultural Education of the Indiana Department of Public Instruction has failed to comply with the requirements of the Title I migrant program which the division administrates. The division has: a) allowed school corporations to "supplant" their regular school funds with Federal Title I funds, b) allowed Indiana school corporations to receive Title I funds even though the corporations provided no "specially designed programs" for migrant students as required by law, and c) failed to require compliance with the State's objective of parental participation in the migrant program.

Recommendations

1) The Advisory Committee recommends that the State legislature adopt an amendment to include migrant children within the scope of the compulsory education law. The Committee recommends that the legislature designate an appropriate subcommittee to: a) ascertain the present need for day care facilities for migrant families, b) define the unique educational needs of migrant children, and c) report on the feasibility of appropriate programs to meet those needs. The subcommittee shall utilize the resources presently available within the Division of Migrant, Bilingual and Cultural Education.

2) The Advisory Committee recommends that the State Department of Public Instruction require each school corporation serving Spanish speaking migrant children to design and submit to the State a description of the educational program it intends to provide to meet the "special needs" of migrant children, and to comply with the "equal education" requirements of the law. Schools failing to meet those special needs or failing to provide an equal education should be declared unqualified to receive State funding.

3) The Advisory Committee recommends that the Audit Division of the U.S. Department of Health, Education, and Welfare conduct an audit of the Indiana Title I migrant programs, paying special attention to evidence of supplanting of Federal funds, funding of school corporations which have no "specially designed programs," and failure of the programs to provide for parental participation.

HEALTH

Conclusions

1) The Indiana Comprehensive Health Planning Agency has ignored the health care needs of migrant farmworkers and has excluded migrants from the State's health planning activities.

2) The Indiana Board of Health has failed either to evaluate the health care needs of migrants in the State or to implement health care programs to provide for those needs. The department currently operates only two programs of direct benefit to the migrant, but neither program reaches a substantial proportion of the migrant population.

3) Health care provided on a local level by county health departments is sporadic, with little provision for accountability. Approximately one-third of the State's migrant-populated counties have migrant nurses provided by the State, one-third provide their own migrant nurse, and one-third provide no health care program at all. The State provides no overall evaluation or accountability procedures to insure the effectiveness of the county programs.

4) The continued high incidence of disease and illness among migrants indicates that the State as well as local health agencies have been ineffective in providing adequate health care to migrants.

Recommendations

1) The Advisory Committee recommends that the Indiana Comprehensive Health Planning Agency invite migrant candidates to serve on the CHP advisory Committee and adopt a migrant health task force, including representatives of migrant farmworkers, public and private agencies currently involved in migrant health, as well as medical and health representatives, to begin an immediate evaluation of the health care needs of migrants in Indiana and to recommend a program which will meet those needs.

2) The Advisory Committee recommends that the Indiana Department of Health utilize the findings of the health task force in designing and implementing a uniform statewide program aimed at serving the health needs of the entire Indiana migrant population.

3) The Advisory Committee recommends that until such a full plan can be implemented, the State Board of Health provide a migrant health nurse in each county which presently does not support its own migrant health nurse.

HOUSING

Conclusions

1) The State Board of Health, Division of Sanitation, has allowed unsafe, unclean, uncomfortable, and overcrowded housing conditions to exist in migrant labor camps by:

a) failure to monitor or require compliance with restrictions on overcrowding;

b) allowing camp owners to consistently violate laws which require them to apply for camp permits 60 days in advance of opening;

c) failure to inspect the interior of migrant camp housing during occupancy; and

d) ineffective use of its enforcement tools such as permit revocation and direct court action.

2) The Occupational Safety and Health Administration has authority to eliminate many of the unsafe and hazardous living conditions in migrant housing. The administration has instead instructed its personnel to inspect migrant camps "only in response to valid employee complaints, catastrophes, and fatalities." Unsafe and hazardous conditions are thus allowed to continue in existence.

3) The Rural Manpower Service has "certification" powers, which include housing regulations, for those camps which use the service for recruitment of workers. However, the number of camp owners using the service has dropped so low that their housing requirements affect virtually none of the camps.

Recommendations

1) The Advisory Committee recommends that the Indiana State Board of Health, Division of Sanitation:

a) monitor and enforce overcrowding regulations through a program including mandatory head counts by inspectors, the inclusion of those head counts in the regular inspection report, and the prosecution of any camp owner found in violation of overcrowding restrictions;

b) immediately comply with State regulations and discontinue the practice of granting camp permits to applicants who do not apply "60 days prior to opening" as required by law;

c) revise its policy regarding interior inspections of migrant housing in order to provide for discrete but effective inspection of conditions inside migrant housing; and

d) provide for timely and effective enforcement procedures through immediate revocation hearings (instead of hearings after the crop season as is now the practice), and immediate court actions where warranted.

2) The Advisory Committee recommends that the Assistant Secretary of Labor for the Occupational Safety and Health Administration, John H. Stender, revise current OSHA migrant camp inspection policy to include random inspections, and that "valid complaints" be redefined to include complaints filed by individuals with direct knowledge of camp conditions.

WELFARE

Conclusions

1) Eligible migrant farmworkers have been denied Federal food stamps in Indiana because of:

a) technical ineligibility due to the State's inability to accurately project migrant income and due to the continued use, in some counties, of residency requirements;

b) misinterpretation of the law by the Indiana supervisor of food stamps and by local county officials, including incorrect interpretations of the provision for property ownership, inclusion of income of underage children in family earnings, and undue limitations placed upon methods of income projection; and

c) the failure of the Indiana program to function properly as required by law, including the failure of the State supervisor to operate an outreach

program, honor payment vouchers from other public and private agencies, to provide "continuing certification" for families who are moving, make use of the emergency zero purchase procedure, to act on stamp applications within reasonable time standards, and to hold complaint hearings within the time limits imposed by law.

2) Migrant farmworkers in Indiana have been denied poor relief from township trustees because of:

a) limited access to the trustee;

b) illegal residency requirements imposed by some trustees; and

c) outright denial of relief by trustees or "referral" to some other agency.

Recommendations

1) The Advisory Committee recommends that the Food and Nutrition Service of the U.S. Department of Agriculture monitor and review the practices of the Indiana food stamp agency, and as provided by law place the State agency on notice of its "failure to comply" with Federal regulations.[112]

2) The Advisory Committee recommends that the Governor and the chief presiding officer of the State Board of Accounts request that the State Attorney General prepare a memorandum of law concerning the unconstitutional use of residency requirements in determining welfare eligibility and that the memorandum be distributed to each trustee in the State. The Committee also recommends that the Attorney General prepare a memorandum of law defining the State Board of Accounts' authority over "illegal expenditures" and "illegal nonexpenditures" by township trustees.

3) The Advisory Committee recommends that the State legislature consider the abolition of the township trustee form of poor relief and the development of a more effective delivery system.

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112. Federal regulations [7 CFR §271.1 (t)] require that State agencies placed on notice of "failure to comply" must correct such failures within a reasonable period of time, as determined by the Food and Nutrition Service.

General Recommendations

1) The Advisory Committee recommends that the Governor constitute a task force on migrant farm labor with responsibility to:

a) design a model plan of migrant education for consideration and possible use by school corporations which presently have a migrant population but no special migrant program;

b) act as a consultant to the legislature in its study of migrant education, providing information on the unique needs of migrant children and programs necessary to meet those needs;

c) design a model migrant health outreach system for submission to the Comprehensive Health Planning Agency and the State Board of Health; and

d) monitor the enforcement efforts of the Department of Health, Division of Sanitation in camp inspections to insure compliance with current regulations, and make recommendations for improvements in either the regulations or enforcement procedures.

2) The Advisory Committee recommends that the Governor of Indiana review the policies and practices of the Department of Education, its Division of Migrant, Bilingual and Cultural Education, the Board of Health, Division of Sanitation, the Welfare Department's food stamp program, and the Board of Accounts' audit of township trustees, regarding compliance with the State and Federal regulations described in this report. The Governor should notify the agency of his findings, and in the event of noncompliance, he should require the agency to take affirmative action to reach compliance.

3) The Advisory Committee recommends that the Inter-Regional Council Committee on Migrants, representing public and private agencies involved in migrant affairs, and its Midwest component, the Region V Federal Regional Council Migrant Task Force, evaluate the feasibility of interstate/interregional transfer of food stamp certification based on a 12-month certification period. Such a plan would enable migrants to move from State to State and region to region without interrupting their ability to obtain food stamps, and without unnecessary delay caused by lengthy recertification procedures.

APPENDIX

FEDERAL AND INDIANA LAWS AFFECTING MIGRANT FARMWORKERS

Laws Governing Labor

Wages

Although Federal legislation regulating minimum wages has been on the books since 1938, farmworkers were not included in the wage provisions of the Fair Labor Standards Act (FLSA) until 1966. A minimum wage of $1.60 per hour is now provided for agricultural employees [29 U.S.C. §206(a)(5)]. That figure will rise to $2.30 in 1978. Not all farmworkers are covered under FLSA. Agricultural workers are covered only if their employer used at least 500 man-days of agricultural labor during any quarter of the preceding year [29 U.S.C. §213(a)(6)]. Regulations governing the wage sections of the FLSA pertaining to migrants are contained in 29 C.F.R. Part 780.

The Sugar Act of 1948 [& U.S.C. §1131(c)(1), 7 C.F.R. §860] authorizes the payment of subsidies to producers and processors of sugar cane and sugar beets, conditioned upon the payment of "fair and reasonable wages" to farmworkers and on the employer's avoidance of the use of child labor. The Secretary of Agriculture is required annually to set wages and hours for the following season and is also required to establish procedures to ensure that producers actually pay the established minimum wage. Very few sugar beets are grown in Indiana; consequently, protections under this legislation, even though deficient in many respects, do not have major impact on the Indiana migrant.

The Indiana minimum wage law (Burn's Ind. Ann. Stat. §40-132 et seq.) specifically excludes farmworkers from its coverage. This is so even though the public policy section of the Act (§40-133) would seem to be aimed specifically at migrants who are employed at "insufficient rates of pay threat[ening] the health and well-being of the people of the State of Indiana and injur[ing] the economy of the State."

Hours

The maximum hour provisions of the Fair Labor Standards Act do not apply to farmworkers employed by employers who did not use more than 500 man-days of agricultural labor in any quarter of the preceding year [29 U.S.C. §213 (a)(6)]. Regulations pertaining to the overtime provisions of the FLSA for farmworkers are found at 29 C.F.R., Part 780.

Indiana statutes exempt agricultural labor from provisions relating to maximum hours. (Burns Ind. Ann. Stat. §40-401).

Child Labor

The Fair Labor Standards Act sets a minimum age of 16 for employment in agriculture (29 U.S.C. §212). This minimum does not apply, however, when school is not in session [29 U.S.C. §213(c)(1)]. Recent amendments to FLSA prohibit children under the age of 12 from working in the fields at any time, although these provisions are not currently being enforced because of an adverse Federal court ruling that this age limitation is a restriction of the child's rights. The Secretary of Labor is authorized to prohibit children under the age of 16 from working in particularly hazardous occupations in agriculture [29 U.S.C. §213(c)(2)]. Regulations relating to child labor under FLSA are contained in 29 C.F.R. §§1500.123, and 1500.70 to 1500.72.

The Sugar Act also restricts the use of child labor in farmwork. Generally, children between 14 and 16 (except children of the owner) may not work longer than 8 hours per day. Violations of child labor provisions will not mean a loss of allotment to the farmer, however [7 U.S.C. §1131(a)].

Indiana law not only fails to protect children working in agricultural labor, but it specifically exempts minors in farm labor from the requirement to have work certificates, to submit to physical examinations, and to have work hour limitations (Burns Ind. Ann. Stat. §28-5338 - 5340). In addition, compulsory school attendance laws are rarely, if ever, enforced with migrant children, and indeed are written so as to exclude most migrant children from their coverage. The Indiana compulsory attendance law exempts children who are in the State for no longer than 90 days (Burns Ind. Ann. Stat. §28-5306).

Working Conditions

The Occupational Safety and Health Act of 1970 (29 U.S.C. §§651 to 678) authorizes the Secretary of Labor to promulgate Federal occupational safety and health standards applicable to businesses affecting commerce. This includes farmers with one or more employees, except that the Act will not be applied to members of the farmer's family who work for him. Four of the standards issued thus far by OSHA are applicable to agriculture. They are: 1) sanitation in temporary labor camps; 2) storage and handling of anhydrous ammonia; 3) pulpwood logging; and 4) slow-moving vehicles (29 C.F.R. §1910.267). OSHA also requires employers to maintain accurate records and to make periodic reports of work-related illnesses. Farmers are also supposed to keep records of employee exposures to potentially toxic materials under OSHA regulations (29 C.F.R. §1910).

Indiana's legislation governing occupational safety, the Workmen's Occupational Disease Act, specifically exempts agricultural labor from its provisions (Burns Ind. Ann. Stat. §40-2206).

Labor Contractors

The Farm Labor Contractor Registration Act (7 U.S.C. §§2041 - 2053) seeks to improve conditions for interstate migrant farmworkers by requiring that the contractors observe certain rules in dealing with farmworkers and employers. The law generally covers a person who, for a fee, recruits, hires, furnishes or transports 10 or more migrant workers at any one time in any calendar year for interstate agricultural employment. A person who is covered must register with the U.S. Department of Labor; must fully inform workers at the time of recruitment about living and working conditions; must, if responsible for paying the workers, keep payroll records and provide earnings and withholdings statements; must post the conditions of employment; must post housing conditions, if responsible for providing housing, and must insure vehicles used to transport workers. Noncompliance with the Registration Act may result in revocation of registration and a fine of up to $500.

No provision regulating labor contractors exists in the State of Indiana.

Collective Bargaining

The Taft-Hartley Act (29 U.S.C. §§141 to 187)--passed in 1947--guarantees the right of employees to organize and engage in collective bargaining. As defined by the act, however, the term "employee" excludes agricultural workers (29 U.S.C. §152). In addition, all appropriation bills passed by Congress to implement the Taft-Hartley Act have specified that no part of the appropriation may be used to intervene in labor disputes in agriculture (as defined by the Fair Labor Standards Act). In recent years legislative proposals have regularly been introduced to extend Federal collective bargaining rights and duties to farmworkers. The proposals on how to accomplish this have been many and varied. Some would merely amend the National Labor Relations Act to make its provisions applicable to agricultural workers (the AFL-CIO approach), while others desire a more liberal bill free from restrictions on union practices that have come with recent amendments to the present NLRA (the Cesar Chavez - United Farm Workers Organizing Committee approach).

Indiana has no laws relating to collective bargaining rights for farmworkers.

Job Training and Employment Services

The Wagner-Peyser Act authorizes the U.S. Employment Service to maintain a farm placement service through the State employment office system and to set standards for the use of this service (29 U.S.C. §49b). A Federal district court [NAACP, Western Region v. Brennan, 360 F. Supp. 1006 (1973)] has held that the operation of the State employment service had subjected minority farmworkers to racial, national origin, sex, and age discrimination and had denied these farmworkers the employment services to which they were entitled under the federally financed and supervised State Rural Manpower Service.

The State of Indiana operates through the Rural Manpower Service, a farmworker placement service. Although approximately 19,000 migrants enter Indiana each year, in 1974 the Indiana Rural Manpower Service processed only seven job orders and offered virtually no alternative placement, testing, or counseling services to agricultural workers. The State of Indiana provides no other resources for retraining migrant farmworkers or for assisting them in the settling out process.

The Federal Comprehensive Education and Training Act (CETA) (29 U.S.C. §801 et seq.) consolidates employment and job training programs formerly available to migrant farmworkers under the Manpower Development and Training Act (42 U.S.C. §2571) and the Emergency Employment Act (42 U.S.C. §§4871-4883).

Social Security

Under the Social Security Act, a tax is imposed on "wages" to fund the Old Age, Survivors, and Disability Insurance (OASDI) program (26 U.S.C. §3101). However, as defined, the term "wages" does not include non-cash payment for agricultural labor [26 U.S.C. §3121(a)(8)(A)] or cash payments of less than $150 per year or payments for less than 20 days of work. Agricultural labor is defined by 26 U.S.C. §3121(g) and 42 U.S.C. §410(f). Also exempt from the tax are payments made to foreign agricultural employees [26 U.S.C. §3121(b)(1)] and payments for services performed under sharecropping arrangements [26 U.S.C. §3121(b)(16)]. The Social Security Act provides that these categories of persons whose wages are not taxed do not qualify for OASDI coverage [42 U.S.C. §§409(h)(1) and (2), 410(a)(16) and (19), 410(f)].

Farm crew leaders who themselves pay the workers are deemed the employers if there is no agreement to the contrary. As the employers they are liable for payment of Social Security taxes and other duties required of employers by the statutes [26 U.S.C. §3121(o), 42 U.S.C. §410(n)]. Quarters of coverage for agricultural labor under the Social Security Act are computed somewhat differently from other employees [42 U.S.C. §413(a)(2)(iv) and (v)].

Unemployment Compensation

The Federal Employment Tax Act (26 U.S.C. §3301 et seq.) requires employers to pay a tax on "wages paid with respect to employment" for the purpose of funding the unemployment compensation program. However, the term "employment" is defined to exclude agricultural labor [26 U.S.C. §3306(c)(1) and (k)]. Thus, agricultural workers are not eligible to receive unemployment compensation. Attempts have been made to broaden coverage to include migrants. None, however, have succeeded thus far.

Workmen's Compensation

The workmen's compensation program in this country is basically a State system. Farm occupations have been excluded from most State workmen compensation laws. Originally, the rationale used by farm employers was that farmwork was nonmechanized and not hazardous. Although this is not true today, Indiana continues to be among the States that exempts agricultural labor from its Workmen's Compensation Act (Ind. Ann. Stat. §52-1532).

Education

Under Title I of the Elementary and Secondary Education Act, State educational agencies may apply for grants from the Office of Education for projects to meet the special education needs of children of migratory agricultural workers [20 U.S.C. §241e(c)]. Under recent amendments to this program, State educational agencies are entitled to receive Title I funds for migrant children [Pub. L. No. 93-380, §122(a)(i)] based on the average daily attendance to migrant children in their schools. An important provision of the 1974 amendments to Title I allows the Commissioner of Education to make special arrangements with other public or private agencies to provide educational services to migrant children if the State is unable or unwilling to conduct such programs or if it would be more efficient or effective to do so [Pub. L. No. 93-380, §122(a)(2)].

The State of Indiana provides no special State educational funds to serve migrant children.

Health

The Public Health Service Act of 1962 authorizes the Department of Health, Education, and Welfare to make grants and to provide other assistance to health agencies to provide health services for migratory farmworkers (42 U.S.C. §242h). Regulations for these programs are found in 42 C.F.R. Part 56. Under this program grants may be made to any public or nonprofit institution, agency, or organization. The types of services may include family health service clinics, hospital care, and the training of persons to provide migrant health services. This program provides the only Federal health money specifically for domestic agricultural migrants. However, migrant farmworkers also benefit somewhat from other Federal health funds coming to the State of Indiana, through, for example, maternal and child care programs which offer family planning services and child care health services. A portion of the Federal maternal and child care monies is also apparently used to fund the migrant dental program and to assist some of the counties in Indiana in providing migrant health nurses.

The State of Indiana, through the township trustee, is required to provide for the costs of medical care for all poor persons within the townships (Ind. Code §12-2-1-6). The law as written does not impose a residency requirement. The county welfare department is also required to provide medical care for nonresident indigents (Ind. Code §12-5-2-1). The welfare department must be notified within 72 hours by the physician or hospital furnishing the medical services. The cost of providing the services is to be borne by the county in which the indigent person is injured or becomes ill.

Welfare

The food stamp legislation (7 U.S.C. §§2011-2025) does not specifically mention migrants, although it is apparent that many migrants qualify for this assistance. Certain food stamp regulations have been drafted to assist State agencies in certifying migrants and in providing food stamps for continuing periods, despite the mobile aspects of the migrants' life [7 C.F.R. §271.1(k), 7 C.F.R. 271.4(a)(4)(iii)(d)]. There is no residency requirement for food stamps.

Migrants would also be eligible for the Federal categorical welfare programs under the Social Security Act (42 U.S.C. §201 et seq.) but most cannot meet the requirements of a single parent family, or of disability, age, or blindness. The general assistance programs of the States are the only feasible welfare programs for which most migrants can qualify.

In Indiana the system of general assistance is administered by the local township trustees (Burns Ind. Stat. Ann. §52-139 et seq.). The trustees are elected officials and have great discretion in administering the welfare system. Trustees have authority to act in a number of areas, the primary ones being medical services and the provision of rent and utility payments. Although many States formerly used the township trustee system, Indiana is the last State to function under this system.

Labor Camps

Labor camps in Indiana are subject to the Indiana Agricultural Labor Camp Act of 1965 (Ind. Code 1971 §S13-19-1 et seq.), and the rules promulgated pursuant to the Act [Burns Stat. Ann. Ad. Rul. & Reg. (15-2501) - 1 et seq. (1972 Supp.)].

Basically, the law requires the State Board of Health to enact and enforce rules of minimum health and safety standards. Enforcement of these rules is accomplished by a system of inspecting camps and issuing licensing permits, but the act also provides for criminal and civil sanctions for violations.

The State Board of Health has adopted the following procedures in enforcing the law: Following the receipt of an application for a permit, the board inspects the camps and, if it is satisfied that a camp meets the minimum requirements, issues a permit for its operation. If a camp is found to be operating without a permit, the board may request that the local prosecutor bring criminal action against the

operator or it may only notify the operator of the legal requirements and set forth a date wherein legal compliance must be attained. If compliance is not obtained, the board may institute proceedings to enjoin the operation.

Camps which have received a permit must be maintained according to regulations. If a camp is found to be in violation of the act, the camp permit can be revoked after proper notice and opportunity for a fair hearing has been given to the operator.

If a camp is closed by the State Board of Health, the board must notify the county agricultural agent, the county welfare board, and the representative of the nearest office of public employment service in order that workers and their families housed in the closed camp may be adequately placed.

Return

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