

Where Mules Outrate Men

Migrant and Seasonal Farmworkers in North Carolina

May 1979



—A report of the North Carolina Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the findings and recommendations of this report should not be attributed to the Commission but only to the North Carolina Advisory Committee.

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—A report prepared by the North Carolina Advisory Committee to the U.S. Commission on Civil Rights.

ATTRIBUTION:

The findings and recommendations contained in this report are those of the North Carolina Advisory Committee to the United States Commission on Civil Rights and, as such, are not attributable to the Commission. This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and Congress.

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The study was the principal staff assignment of Edith Hammond, equal opportunity specialist. The report was written by Katie Harris, research specialist, with contributions by Mark Schneider, regional attorney, who also provided legal counsel throughout the project. Portia Raby, Joan Harper, and Emma Allen provided support throughout the study. All worked under the supervision of Bobby Doctor, Director, and Idalia Morales, Deputy Director, of the Southern Regional Office.

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1. Introduction

The problems of migrant and seasonal farmworkers have often been studied, but never solved. In this nation of plenty, the migrant farmworker is considered by many to be the most needy, most oppressed, most powerless group of people in America today. They are, of course, most often racial and ethnic minorities.

The North Carolina Advisory Committee to the U.S. Commission on Civil Rights believes that the plight of migrant and seasonal workers is a major civil rights problem in the State. The Advisory Committee agreed in 1977 to study the enforcement of applicable State and Federal laws and the availability of legal services. This report focuses on those two issues as they concern migrant and seasonal workers in North Carolina.

On September 17, 1977, the Advisory Committee held an open meeting in Raleigh, North Carolina, where the status of migrant and seasonal farmworkers in the State was discussed. Representatives of advocacy groups, former farmworkers, and State and Federal officials responsible for enforcing laws related to farmworkers participated. In addition,

¹ Richard Joanis, deputy director, Migrant and Seasonal Farmworkers Association, statement at the open meeting before the North Carolina Advisory Committee to the U.S. Commission on Civil Rights, Raleigh, N.C., Sept. 17, 1977, p. 100 (hereafter cited as Transcript).

members of the Advisory Committee visited migrant worker camps and met individually with various agency and organization officials. This report is based on information provided at those private meetings, as well as the open meeting.

Officials estimate that 15,000 migrants worked in North Carolina in 1976. The majority were black and averaged a seventh grade education.¹ Approximately 24 percent were Hispanic and 10 percent Anglo.²

In addition to these interstate migrant workers, officials estimate that over 137,000 residents of North Carolina are employed as seasonal farmworkers.³

The Advisory Committee wishes to emphasize that all of the problems of migrant and seasonal farmworkers are not discussed in this report. The issues of education and health, for example, are not dealt with directly. Numerous studies by North Carolina organizations and agencies and Federal agencies deal with those and other issues, and are readily accessible to the public.

² Ibid., p. 96; and Lucy O. Hancock, "The Needs of Migrants in North Carolina" (final report to Church Women United of North Carolina (Sept. 1, 1975)), p. 5.

³ Joanis statement, Transcript, p. 100.

2. Laws and Enforcement Agencies

Among the Deep South States, North Carolina, with over 5 million residents in 1970, ranks second in population. Although the State's urban areas are well known as industrial and service centers of the South, agriculture is still a major facet of the State economy. Tobacco, vegetables, and apples are the primary crops harvested by migrant and seasonal farmworkers in North Carolina. The season begins in late May with the harvest of vegetables and ends in November with the harvest of apples and potatoes.

When a farmer or "grower" files a request for farmworkers with the Rural Manpower Service Division of the North Carolina Employment Security Commission, the cycle is set in motion that involves the crewleaders, three State agencies, three divisions of one Federal agency, and 40 percent of the State's migrant workers. The majority of the farmworkers work for "freewheelers"—crewleaders who either do not register with proper authorities or not required to do so.¹

The four major Federal laws that affect migrant and seasonal farmworkers, the one State law, and the agencies responsible for enforcing each are shown in exhibit 2.1.

Fair Labor Standards Act of 1938, as Amended

The Fair Labor Standards Act requires that agricultural workers be paid the current applicable minimum wage (\$2.90 per hour) and that the employer (the farmer) keep accurate records of the

earnings, hours worked, and other information. There are other provisions in the law, such as protection for workers under age 16, that are not discussed in this report. The law does allow reasonable cost for lodging, food, and other facilities provided by the farmer to be included in computing wages.

The act also provides for civil or criminal action against violators and makes the employer liable for the payment of back wages. The Employment Standards Administration, Wage and Hour Division, of the U.S. Department of Labor is responsible for enforcing the law. This authority is not delegated to any State agency.

Farm Labor Contractor Registration Act of 1963, as Amended

The Farm Labor Contractor Registration Act requires that any person who, for a fee, recruits, hires, or transports agricultural workers (within a State or across State lines) must register with the U.S. Department of Labor and comply with the following.

- Identify any vehicle or housing owned or controlled by the contractor that will be used to transport or house the workers.
- Show written proof that such vehicles and housing meet Federal and State health and safety standards.
- Show proof of adequate liability insurance as required.

¹ For specific requirements and exemptions of registration under the Farm Labor Contractor Registration Act, see 29 C.F.R. §40.1 *et seq.*

EXHIBIT 2.1

Laws Affecting Migrant and Seasonal Farmworkers (MSFW)—North Carolina and Federal

Federal Laws	Responsible State Agency	Responsible Federal Agency
<p>1. Farm Labor Contractor Registration Act, 1963, as amended *</p> <p>Requires registration, proof of insurance and financial responsibilities before transport of MSFWs. Violations: Withholding wages due, unlawful deductions, failure to pay wage promised, charging high interest on loans, etc. Penalties: Criminal, civil plus revocation of registration. Specific civil remedies allowed via private litigation without administrative remedies being exhausted.</p>	Employment Security Commission—Rural Manpower Service	U.S. Dept. of Labor, Employment Standards Admin., Wage and Hour Division
<p>2. Wagner-Peyser Act, 1933, as amended *</p> <p>Funds employment offices run by states. Among duties of those offices: regulate placement of MSFWs, interstate recruitment, housing. No interstate recruitment to be allowed unless labor unavailable in State. To place interstate order for MSFWs must certify need, wages same as for in-State MSFWs, housing meets standards (see #4 below), transportation meets standards, terms and conditions equal to those for in-State MSFWs. Penalties: loss of funds, State agency refusal to recruit interstate orders. Implied civil remedies for MSFWs via private litigation.</p>	Employment Security Commission—Rural Manpower Service	DOL—Employment Training Admin.
<p>3. Fair Labor Standards Act, 1938 as amended *</p> <p>Requires employers' payment of minimum wage and certain record keeping; prohibits oppressive child labor and retaliation. Remedies for violations: employee, DOL or U.S. Atty. Gen. suits. Specific civil remedies for MSFWs via private litigation.</p>	None	DOL—Employment Standards Admin., Wage and Hour Division
<p>4. Occupational Safety and Health Act, 1970 *</p> <p>Sets standards for living conditions of farmworkers (see p. 13, Church Women United report).</p>	Dept. of Labor—OSHA Division **	DOL—OSH Admin.
North Carolina Laws		
<p>130-13A Health Law, 1963</p> <p>Sets standards for living conditions of MSFWs.</p>	Dept. of Human Resources, Health Services Div., Sanitary Engineering	

*North Carolina's attorney general can bring suit.

**Relies on the North Carolina Department of Human Resources for certification of adequate water supply.
Source: Prepared by the U.S. Commission on Civil Rights, Southern Regional Office.

- When recruiting workers, inform them of the pertinent facts related to the offer of work, crops to be harvested, duration of work, charges to be made, and services to be provided by the contractors. All information must be provided in the language in which the worker is most fluent.
- Maintain payroll records and give each worker a statement of earnings, withholdings, and reasons for any withholdings. Give payroll information to the farmer also.
- Other requirements as stated by law.

A crewleader who works within a 25-mile intrastate radius of his permanent home for only 13 weeks or less each year is not required to register.

Wagner-Peyser Act of 1933, as Amended

State employment agencies, like the North Carolina Employment Security Commission, receive Federal funds under the Wagner-Peyser Act. Where farmworkers are concerned, the employment security commission fulfills these responsibilities: locates workers for farmers and ensures that the provision of housing, wages, and interstate transportation meets specific requirements.

The act requires that the Rural Manpower Service of the North Carolina Employment Security Commission issue what is popularly known as a "clearance order" before a crewleader is given a job order to bring farmworkers to North Carolina. The orders should be issued only when workers cannot be found within the State and only to crewleaders who are properly registered under the Farm Labor Contractor Registration Act. For the order to remain valid, the housing that will be provided to the farmworkers must be inspected by officials from the rural manpower service and found to meet the requirements of Federal or State law, whichever is stricter.

North Carolina Employment Security Commission, Rural Manpower Service

Manfred Emmrich, chair of the employment security commission, stated that it was the policy of the commission "to provide the full range of services that we are authorized and obligated by law to

provide to all migrant and seasonal farmworkers." In addition to administering the provisions of the Wagner-Peyser and Farm Labor Contractor Registration Acts, the commission is obligated to provide referrals for work, counseling, testing, job training, and various support services.²

Steve Adams, acting supervisor of the rural manpower service, told the North Carolina Advisory Committee that since the beginning of the season the staff of 40 had inspected 196 migrant camps as of September 17, 1977, and issued 196 permits for those camps to be occupied.³ Clearance orders were cancelled in five or six cases because the camps did not meet the required standards. If violations are noted during the inspection, then the camp will be reinspected approximately 2 weeks before the farmworkers are scheduled to arrive. The order for the workers is cancelled if the violations still exist.

However, the stricter standards for inspection under the Federal law are applied rather than the State's sanitation law. The differences in the two standards will be discussed later in this report. James Wells, chief of a local employment security commission office, said that if there is doubt about any migrant housing passing inspection that officials from the State department of labor are called upon to conduct the inspection. It is only after the approval of the State inspector that an "occupancy permit" is issued.⁴

When a crewleader enters the State, he must report to the local employment security commission's office nearest to the farm where his crew will work. At that time, officials determine if the crewleader is properly registered and meets the requirements of the Contractor Registration Act.⁵

James Wells said that his office goes beyond the basic requirements of issuing a copy of the work order to each worker in his or her native language and explaining the complaint procedure. Each worker is told of the availability of job training and referral opportunities.⁶

Wage surveys made by the employment security commission showed that migrants working on the East Coast averaged more than \$3 an hour in wages. The 1977 average was \$3.50-\$4, according to Mr. Wells. A survey conducted by the U.S. Department of Labor found that adequate services were being

² Statement at the open meeting before the North Carolina Advisory Committee to the U.S. Commission on Civil Rights, Raleigh, N.C., Sept. 17, 1977, p. 186 (hereafter cited as Transcript).

³ Ibid., p. 239.

⁴ Ibid., p. 159.

⁵ Ibid., p. 237.

⁶ Ibid., p. 148; and see appendix C, Response of the Acting Regional Administrator, U.S. Department of Labor, OSHA.

provided to North Carolina migrants by the State employment security commission; however, migrants were more often placed in jobs paying under \$3 an hour than were other workers.⁷

It must be noted, however, that at the time of the Advisory Committee open meeting, the Federal minimum wage for agriculture workers was lower than that set for other hourly workers and without a provision for overtime pay. Since January 1, 1978, the law has changed and agricultural workers are paid the same rate as industrial workers (\$2.65 per hour beginning January 1, 1978, and increased to \$2.90 in 1979). However, there still is no provision for overtime pay.

Dennison Ray of the Legal Services of North Carolina, Inc., stated in a December 11, 1978, letter to Bobby Doctor of the U.S. Commission on Civil Rights that the 1978 wage for farmworkers in Johnston, Sampson, and Harnett Counties was "considerably less" than \$2.65.

U.S. Department of Labor

There are three separate bureaus within the U.S. Department of Labor that have responsibilities for migrant and seasonal farmworkers. They are the Employment Standards Administration (specifically, the Wage and Hour Division), the Employment and Training Administration, and the Occupational Safety and Health Administration.

The Wage and Hour Division is responsible for enforcing the Fair Labor Standards Act and the Farm Labor Contractor Registration Act. In 1977 the Wage and Hour Division's office in Raleigh was staffed by 14 compliance officers and served 46 counties.⁸

Jose Fernandez, director of the Raleigh office, said that the first 2 years after Wage and Hour was given the enforcement authority for the Contractor Registration Act in 1972 (previously another division of the Department was responsible) the Division concentrated on registering crewleaders. Subsequently, efforts on compliance have been emphasized. The 1974 amendments to the act provided for civil penalties with fines for violations that greatly strengthened the law, according to Mr. Fernandez.⁹ The penalties range up to \$1,000 per violation and

may be levied against a crewleader, his employee, or farmers who contract with a crewleader.

During the migrant season in 1977, approximately 200 compliance investigations were conducted. Due to the extensive documentation required for the investigations, information on only 80 had been completed by September 1977 and forwarded to the officials in the Department of Labor for action. Injunctions against 33 farm labor contractors were issued between 1975 and 1977.¹⁰

The past record of the Wage and Hour Division, the Employment and Training Administration, and the Occupational Safety and Health Administration in the enforcement of migrant and farmworker rights has been poor. In the case of *NAACP v. Brennan*,¹¹ the U.S. District Court for the District of Columbia ruled in 1973 that the Department of Labor violated:

the Fifth Amendment of the U.S. Constitution, the Civil Rights Act of 1964, and the Wagner-Peyser Act by approving program operations of, and providing financial support for, state-operated employment services for migratory labor that engaged in racial and other types of discrimination and that failed to insure that migrant and seasonal farmworkers would receive such amenities as adequate food and housing from the employers to whom they were referred.¹²

Subsequently, the court granted injunctive relief requiring enforcement of the law and the monitoring of State agencies to which the Department of Labor had delegated those powers. In August 1974 the court ordered the Department to take all necessary action to ensure that State agencies comply with the standards and provisions of the program in question, including making compliance a prerequisite for receiving Federal funds. In addition, a special review committee including representatives of migrant and seasonal farmworker groups was established by Judge Charles R. Richey to monitor compliance with the court's order.¹³ The committee concluded in October 1976 that the U.S. Department of Labor was still not in compliance and the Department continues to perpetuate the discrimina-

⁷ Transcript, pp. 151-52.

⁸ As of November 1978, however, the Raleigh office had 13 compliance officers and its territory had been reduced to 37 counties.

⁹ Transcript, pp. 282-84.

¹⁰ *Ibid.*, pp. 288-89.

¹¹ 360 F. Supp. 1006, 1014 (D.D.C. 1973).

¹² *NAACP v. Brennan*, U.S. District Court for the District of Columbia, Civil Action No. 2010-72. Memorandum Opinion and Declaratory Judgment and Injunctive Order filed May 31, 1973. Richey, D.J.

¹³ *NAACP v. Brennan*, U.S. District Court for the District of Columbia, Civil Action No. 2010-72, order filed August 13, 1974. Richey, D.J.

tory provision of services for migrant and seasonal farmworkers.¹⁴

A report prepared by the National Association of Farmworkers Organizations, under a contract to review the U.S. Department of Labor's services for farmworkers, states that a lack of coordination within the Department is a major reason for its ineffectiveness in serving farmworkers.

There is no long-range planning or overall policy for farmworkers within the Department of Labor. While the Employment and Training Administration (ETA), the Employment Standards Administration, and the Occupational Safety and Health Administration (OSHA) all perform functions related to farmworkers needs, the Department offers no focal point with enough oversight and authority above all of these agencies to . . . determine how they might be more effectively coordinated. These agencies operate largely in ignorance of each other, and sometimes at cross-purposes.

* * *

Different inspectors, within different DOL agencies conduct crewleader inspections under the Farm Labor Contractor Registration Act, wage and child labor inspections under the Fair Labor Standards Act, pre-occupancy housing inspections under the Wagner-Peyser Act, post-occupancy housing inspections under the Occupational Safety and Health Act (OSHA), and random field checks under the *NAACP v. Brennan* Court Order.¹⁵

In 1978 the National Association of Farmworkers Organizations, on behalf of about 70 local and regional farmworker groups, filed a new complaint against the Department, again charging it has not complied with the 1973 court order. U.S. District Court Judge Richey ruled in favor of the plaintiff and made it clear that the 1973 order covered wage and hour, health and safety, and crewleader registration regulations as well as employment services.

According to one news story, aides to Ray Marshall, Secretary of the U.S. Department of Labor, said, "the Department is doing all it can, considering budgetary constraints and other priorities."¹⁶

¹⁴ National Association of Farmworkers Organizations, *An Analysis of the Department of Labor's Services for Farmworkers* (DOL Contract No. 99-77-1089-36-45, May 1978), p. iii.

¹⁵ *Ibid.*, pp. 1 and 3.

¹⁶ *Washington Post*, Nov. 25, 1978, p. A-16.

The Occupational Safety and Health Act of 1970

In addition to being somewhat affected by the Wagner-Peyser Act, farmworker housing and camp-site conditions are governed by the Occupational Safety and Health Act (OSHA). In North Carolina, the State department of labor is responsible for monitoring compliance with the OSHA. The authority to do so is, for all practical purposes, totally delegated by the U.S. Department of Labor. In addition, the State has its own Occupational Safety and Health Act (1973) that parallels the Federal law and is enforced by the North Carolina Department of Labor, OSHA Division. Some of the OSHA requirements are shown in exhibit 2.2.

The North Carolina Department of Labor

John Brooks, the commissioner of the State department of labor, set a goal in January 1977, at the time he assumed office, of having all migrant camps inspected. Approximately 521 camps are known to be in the State. Officials guess there may be as many as 200 more. By September 9, 1977, the North Carolina Department of Labor had inspected 208 camps (including 10 reinspections) and visited 264 others that they did not have the authority to inspect because there were fewer than 11 workers housed in each. In the 3 years prior to the commissioner's term, only 263 inspections had been made.¹⁷ The average cost of an inspection is \$150.¹⁸

Commissioner Brooks cited limited personnel—only 36 inspectors for all industries—and Federal OSHA priorities that make it "difficult to justify repeated yearly inspections of all known occupied camps. . . ."¹⁹

The U.S. Department of Labor measures the effectiveness of the North Carolina Department of Labor by the decrease in on-the-job accidents. The criteria used by the State's labor department to determine the inspection schedule, therefore, should include the number of accidents in a given industry. Under this criterion, inspections of migrant and seasonal farmworker camps have a low priority. Commissioner Brooks stated that it is the living

¹⁷ Transcript, p. 178.

¹⁸ L.A. Weaver, acting director, North Carolina Department of Labor, OSHA Division, Transcript, p. 255.

¹⁹ Brooks statement, Transcript, p. 179.

EXHIBIT 2.2

Comparison of State Law and Federal Regulations Governing Camp Conditions

State	Federal (OSH Act)
Article 13-A, Chapter 130, North Carolina General Statutes.	29 CFR §1910.142.
Responsibility for Camp Maintenance Camp operator responsible for complying with provisions of act. Crewleader responsible for camp sanitary conditions and general conditions of cleanliness.	Responsibility for Camp Maintenance Camp operator and Crewleader jointly responsible for all camp maintenance according to a ruling by the North Carolina attorney general.
Site The camp area shall be well drained and maintained in a clean, safe, and sanitary manner.	Site Site must be adequately drained and not subject to flooding. Site must not be located within 200 feet of collections of water. It must be graded to be free of depressions.
Water Supply Adequate, safe, and convenient. Approved by the Department of Human Resources. Outlets not more than 200 feet from housing units. Thirty-five gallons per person per day.	Water Supply Approved by appropriate health authority. Outlets to be not more than 100 feet from housing units. Drinking fountains provided one per 100 occupants.
Sewage Toilet facilities for each sex. One toilet seat for 20 users for each sex. No further than 200 feet from dwelling units.	Sewage Toilet provisions within 200 feet—no closer than 100 feet from structures. Separate, marked facilities for each sex with 15 users per toilet seat. Facilities to be lighted day and night and with adequate supplies. Proper drainage and sanitation requirements also listed.
Insect & Rodent Control No specific provisions.	Insect & Rodent Control Effective measure to be taken to prevent infestation.
Bathing Facilities Warm water must be provided. In camps housing 15 or more workers, showers will be provided at a ratio of 1 per 15 persons for each sex.	Bathing Facilities This section also includes laundry and hand-washing. Handwashing basin for each 6 persons, shower head for every 10 persons, and laundry tub for every 30 persons. Adequate supply of hot and cold water to be provided.
Shelter In living and sleeping quarters, one or more windows per room, equal to 10 percent of floor space. Building will be safe and water resistant with provisions against fire hazards. Twenty square feet per person in dormitory buildings.	Shelter Provide protection against elements. Same window requirements as State law except covering screens must be provided and one-half of windows must be open for ventilation and equal one-tenth of floor space. Fifty square feet of floor space required for each occupant. Also outlines space and distances of cots and beds in detail. Wood floors must be 12 inches from ground for circulation.
Garbage Disposal Water tight receptacles will be provided for storage of garbage and will be emptied daily.	Garbage Disposal Impervious containers shall be provided and emptied when full or at least twice per week.
First Aid No specific provision.	First Aid Adequate facilities to be provided and be under the charge of a person trained to administer first aid. It is the responsibility of camp superintendent to immediately report to area.

Source: North Carolina; Departments of Human Resources, Labor, and Justice, and the Employment Security Commission, "Report of the Committee to Revise the Laws Pertaining to Migrants" (May 1976, draft report), pp. 8-11.

conditions of farmworkers that compelled the commitment of his department.²⁰

In making these inspections in 1977, the North Carolina Department of Labor personnel found that only 58 of the 198 camps or 29 percent met the OSHA standards. Fines imposed for violations averaged \$621 per migrant camp. The most frequently cited violations included failure to provide proper garbage containers, screen windows or doors, a drinking fountain, first aid supplies, window space not less than one-tenth of the floor space, separate toilet facilities marked for each sex, space for storing clothing and personal articles, at least one electrical outlet, adequate water supply, clean grounds, and locating toilets at least 100 feet but less than 200 feet from the housing.²¹

Other hazards to farmworkers that might not be covered by specific requirements of the law can be regarded as violations of the North Carolina OSHA "general duty clause," according to L.A. Weaver of the North Carolina Department of Labor:

The general duty clause requires that all employees must be provided a safe and healthful work place. As a result, North Carolina OSHA Division [of the State DOL] will require. . . that employers protect agriculture employees from any conditions which are likely to cause death or serious physical harm.²²

In addition to conducting inspections, the State's labor department meets with farmer organizations to explain the requirements for adequate housing and to urge compliance. In the spring of 1977 it made visits to the offices of local farmworker advocacy groups, and met with other State agencies responsible for farm labor camps. Through these meetings, information about the location of camps and other matters is exchanged.²³

North Carolina General Statutes—Chapter 130, Article 13-A

The North Carolina law governing the "sanitation of agricultural labor camps" requires that any person who operates a camp for 10 or more migrant farmworkers obtain a permit from the local health department. The permit is issued, at no cost, after

the camp passes a preoccupancy inspection by meeting the standards specified in the law. Exhibit 2.2 shows some of the requirements of both the North Carolina sanitation law and the Federal OSHA (which the North Carolina OSHA parallels). It is evident that the laws conflict and that in general the State law is less strict than the Federal law.

If a farmer is denied a permit for his camp, he can appeal the decision to the local board of health. Once a permit is obtained, it must be posted on the premises. The permit is valid for 1 year and charges that both the camp operator and crewleader are responsible for the sanitation of the camp:

The camp operator shall be responsible for complying with the provisions of this Article concerning sanitation standards. The crewleader shall be responsible for maintaining the agriculture labor camp in a sanitary condition.²⁴

The North Carolina Department of Human Resources "or its duly authorized representative" is authorized to enforce article 13-A.²⁵ A fine of \$50 and/or 30 days in jail is the penalty for violations.

North Carolina Department of Human Resources

Within the North Carolina Department of Human Resources, the Division of Health Services, Sanitation Branch, Sanitary Engineering Section, is specifically responsible for the sanitation of farmworker camps. During 1976 sanitarians working out of the local health departments issued 215 permits for migrant camps housing approximately 5,100 workers. The district sanitarian, Richard Clayton, who spoke at the North Carolina Advisory Committee open meeting, estimated that only 5 percent of the camps that are inspected eventually do not meet the standards and receive permits.²⁶

Officials of the State report that the \$50 fine for violations of the State sanitary law is often imposed but did not recall that the 30-day sentence had been. Mr. Clayton said that the penalties were not sufficient to compel compliance:

I can cite several cases where a grower either failed to get a permit for his camp or he was in violation and the permit may have been revoked and he was cited under the statute. He

²⁰ *Ibid.*, pp. 178-86.

²¹ Weaver statement, Transcript, pp. 245-46.

²² *Ibid.*, p. 246.

²³ Brooks statement, Transcript, pp. 175-77.

²⁴ N.C. Statute, Article 13-A, §130-166.4.

²⁵ *Id.*, §130-166.14.

²⁶ Transcript, p. 258.

would have the case continued until the migrants left and then he would plead guilty and pay the \$50 fine.²⁷

Attempts to upgrade the State law have failed. Sanitarians and other health department officials are concerned that they can and must issue a permit for a camp that can be found at fault later when inspected by the stricter standards of the Federal OSHA law as applied by the North Carolina Department of Labor and the North Carolina Employment Security Commission. Health officials therefore, "have tried to promote the OSHA standards. . . ." according to Mr. Clayton.²⁸

The sanitarians try to make at least one inspection after the migrants have arrived at the camp in addition to one or more prior to occupancy. Students of environmental health from a nearby university are hired in the summer to visit the camps and alert the sanitarians to any problems found. In 1976 the students made about 4,000 visits to migrant camps.²⁹

Efforts to Coordinate Enforcement

Since 1967 representatives of Federal and State agencies and private organizations that provide services to migrant workers have met to discuss their mutual problems. Each year the group, known as the North Carolina Advisory Committee on Services to Migrants, publishes a directory of the agencies and the services available. James Wells of the State employment security commission was serving as chair of the committee in September 1977. He stated that the monthly meetings have a "bird-dogging" effect on each member group. The members report on the work of their agency or organization and criticism or compliments are exchanged among the membership.³⁰

The express purpose of the committee is stated in the foreword to its directory:

To promote the economic well-being of migrants living and working in North Carolina, as well as migrants in transit. . . by aiding the stabilization and growth of their environment through facilitating, coordinating, and coopera-

tion of the various agencies that serve these clients.³¹

Mr. Wells maintains that services to migrants have improved since the committee was formed; nevertheless, he openly says that the statements about the services provided by some groups listed in the migrant services directory "are less than accurate."³²

In 1975 a major effort to study the laws and standards applicable to migrants was launched by four State agencies: the North Carolina Departments of Justice, Human Resources, and Labor, and the Employment Security Commission. Called "The Committee to Revise the Laws Pertaining to Migrants," the group focused on laws and enforcement related to housing and sanitary conditions in migrant camps. Unsworn testimony was taken at an August 1975 public hearing and in May 1976 a draft report was issued.

There was no doubt in the minds of the State officials who compiled the report that camp conditions were inadequately monitored, laws governing conditions were in conflict, and coordination and enforcement were ineffective:

The housing afforded the migrants by the farmer is continuously being inspected by representatives of the various agencies using different measuring rods. The frustrations inherent in being subjected to this type of governmental regulation, no matter how well intentioned, are obvious.³³

Testimony at the 1975 public hearing revealed that even when inspectors cited violations repeatedly, district attorneys were "unreceptive to criminal prosecutions" under the State law and when convictions were achieved the fines were too nominal to serve as a deterrent to future violations.³⁴

In assessing the efforts of their own agencies, the committee members wrote:

The interaction between the [North Carolina] Department of Human Resources and the [North Carolina] Department of Labor is subject to question, and there appears to be

²⁷ Ibid., p. 261.

²⁸ Ibid., p. 258.

²⁹ Ibid., p. 260.

³⁰ Transcript, pp. 146-47.

³¹ North Carolina State Advisory Committee on Services to Migrants, *Serving Migrant Families* (1977), not paginated.

³² Wells statement, Transcript, p. 147.

³³ North Carolina, Department of Human Resources, Department of Labor, Employment Security Commission, Department of Justice, "Report of the Committee to Revise the Laws Pertaining to Migrants" (May 1976 draft), p. 4.

³⁴ Ibid., p. 12.

much duplicity of effort in regulating conditions at migrant labor camps.³⁵

A lack of trained personnel and the inability to impose any sanction other than the cancellation of a clearance order for workers were cited as handicaps in the inspections made by the North Carolina Employment Security Commission.

The committee's long range proposals for ensuring decent conditions for migrant workers included the enactment of a State law requiring the registration of all crewleaders (in hopes of cutting down on the number of freewheelers in the State), the repeal of article 13-A of chapter 130 of the North Carolina General Statutes (regarding the sanitation of migrant camps), and the development of State regulations identical to the U.S. Occupational Safety and Health Act that would be enforced by the North Carolina Department of Human Resources.³⁶

When he campaigned for office, Commissioner John Brooks of the State department of labor advocated the development of a "coordinated inspection program" and citing "serious problems with the enforcement" of laws promised to study the possibility of having the human resources department conduct all inspections.³⁷ Yet, when Mr. Brooks assumed office in 1977, he removed the labor department's representative to the Committee to Revise the Laws Pertaining to Migrants.³⁸

In September 1977 at the open meeting of the North Carolina Advisory Committee to the U.S. Commission on Civil Rights, Mr. Brooks was asked about the committee and its recommendations to revise the laws and procedures. The commissioner said that he was now the representative to the committee that was "probably dormant," and he was not familiar with the 1976 draft report. He also

stated that "I have not attended a committee meeting of the group, and I am not familiar with their earlier recommendations, so I could not comment on the current status of the recommendations."³⁹

Commissioner Brooks now maintains that the inspection and enforcement efforts of the three State agencies that have such responsibility are not duplications of effort but permit the use of the various expertise of each agency. He does believe that "some possible duplication" exists in the pre- and post-occupancy inspections made by the employment security commission and his agency and says that better coordination is being sought.⁴⁰

Ben Aiken, deputy director of the department of human resources, and Manfred Emmrich, chair of the employment security commission, concurred with Commissioner Brooks' call for more coordination and cooperation, but neither one would express opinions as to whether inspections and enforcement of the law should be the job of one agency. Mr. Emmrich maintains, however, that the employment security commission should not be in the housing inspection business because his staff is simply not trained to conduct such inspections.⁴¹

James Wells, chair of the North Carolina Advisory Committee on Services to Migrants, said he and a majority of the member groups of the committee endorse the idea of a single State agency with the responsibility to enforce laws related to migrant and seasonal farmworkers. During the Advisory Committee's open meetings, various members of the Migrant and Seasonal Farmworkers Association, Church Women United, and North Carolina Council of Churches agreed.⁴²

³⁵ Ibid., p. 13.

³⁶ Ibid., p. 17.

³⁷ John Brooks, "John Brooks on Migrant Labor Policy" (campaign literature, Aug. 7, 1976), p. 2.

³⁸ W.W. Webb, assistant attorney general, North Carolina Department of Justice, interview in Raleigh, N.C., June 1, 1977.

³⁹ Transcript, p. 202.

⁴⁰ Ibid., pp. 193-94.

⁴¹ Ibid., pp. 194-95.

⁴² Ibid., pp. 140, 102, 132-33.

3. Farmworkers and Advocacy Groups

Representatives of organizations concerned with the well-being of migrant and seasonal farmworkers provided valuable information to the North Carolina Advisory Committee during this study. The work of five of those organizations is briefly described as a prelude to their observations of living and working conditions of farmworkers and their opinions of State and Federal efforts in enforcing the laws related to migrant and seasonal farmworkers.

Florida Rural Legal Services, Inc.

The Florida Rural Legal Services, Inc., is a federally-funded legal aid society based in Florida. Because of its interest in workers who travel from Florida to other States to work, the corporation applied for and received a grant from the National Legal Services Corporation to investigate the conditions of migrants in North Carolina. Between 100 and 120 migrant camps in Sampson and Johnston Counties were visited in the summer of 1977. The investigators (the team varied in size from 2 to 12) served as attorneys to the workers they contacted. The results of their work will be available to Congress or other investigative bodies of the State or Federal Government.¹

¹ Carl Webster, attorney, and Sixto Durant, paralegal, Florida Rural Legal Services, statement before the North Carolina Advisory Committee to the U.S. Commission on Civil Rights, open meeting, Raleigh, N.C., Sept. 17, 1977, transcript, pp. 14-31 (hereafter cited as Transcript).

Center for Rural Studies and Change

The Center for Rural Studies and Change is a private, nonprofit organization that has operated in Durham, North Carolina, for 2 years. The center is funded by the Robert Kennedy Memorial and the Duke University Ministry. Although the center is concerned with the needs of the rural poor, its resources have been concentrated recently on the needs of migrants. During 1977 staff of the center visited approximately 200 migrant farmworker camps.²

Church Women United

Various Protestant and Catholic church women's groups form the nationally known organization of Church Women United. The North Carolina Church Women United commissioned a study of migrant workers in the summer of 1975. During the 12-week study, approximately 50 migrant camps were visited, and a written report and slide show were produced. The report contains specific recommendations that the church women believe would improve the conditions for migrants if implemented.³

The North Carolina Council of Churches

In 1977 the Migrant Ministry Committee of the North Carolina Council of Churches turned its emphasis from helping to provide services to

² Steven Kirk, program director, Center for Rural Studies and Change, Transcript, pp. 314-15.

³ Lucy O. Hancock, former migrant project director, Church Women United, Transcript, p. 121.

migrants to advocating legislation that would improve their plight and educating others to the needs of migrants.

The Migrant Ministry Committee is composed of representatives of Protestant and Catholic churches who are dedicated to social services as part of their ministry. The council endorsed the report of Church Women United and through meetings with State officials has sought to implement the recommendations made in the report.⁴

The Migrant and Seasonal Farmworkers Association

Since 1965 the Migrant and Seasonal Farmworkers Association has provided employment, skill training, and various support services (day care, transportation, etc.) to migrant workers in Maryland, Virginia, and North Carolina. The association employs 400 people in those three States and operates 26 offices in North Carolina. It is a private, nonprofit organization funded primarily through the Community Services Administration under the Executive Office of the President and by grants under the Comprehensive Employment and Training Act from the U.S. Department of Labor. The association's work is governed by a board in each State that includes farmworkers among its membership. The Migrant and Seasonal Farmworkers Association's priority is finding jobs for farmworkers and preparing them for those jobs.

In 1977 the association served approximately 17,500 farmworkers, 75 percent of whom lived in temporary camps.⁵

Status of Farmworkers

From the first contact between a migrant worker and a crewleader to the end of the season and the last "payroll," the organizational representatives cited countless examples of neglect and abuse that resulted in deplorable conditions. Also, the inadequacies of some laws and the lack of coordination among State and Federal agencies with the power to enforce these laws feed the cycle that locks farmworkers into poverty.

⁴ Sister Evelyn Mattern, member, Migrant Ministry Committee, North Carolina Council of Churches, Transcript, pp. 129-31.

⁵ Richard Joanis, deputy executive director, Migrant and Seasonal Farmworkers Association, Transcript, pp. 93-96.

⁶ Robert Ritch Ford and Peter Johnson, Transcript, p. 71.

Recruitment

Two former migrant workers told the North Carolina Advisory Committee that they had been recruited by "sweet talk," some dollars put in their pockets, and a few drinks courtesy of their future crewleader. Often a companion of the crewleader was available to attest that the leader was a good man to work for.⁶ Workers for Florida Rural Legal Services also stated that crewleaders often recruit in bars, from jails (by paying the bond), or from mental institutions.⁷ Juanita Morrison, the director of a State health clinic serving the Johnston, Sampson, and Harnett Counties area, also substantiated the claim that some migrant workers are mentally ill persons who, unknown to the personnel in authority, have been picked up at hospitals where, because they are heavily sedated, they are allowed to roam the hospital grounds.

Within 3 to 5 days after they have been off their medication they have either gone into catatonic state or they are sort of manic, exhibiting all types of weird behavior.

It seems to be a recruiting policy that, if you don't have enough men to fill your list—if you are supposed to bring 50 people into North Carolina and you have only got 30, somewhere along the way you pick up 20 people.⁸

On the other side of the spectrum, however, is the migrant majority population that links up with a crewleader simply because he or she must work and can find no other employment. Peter Johnson, a migrant worker for 15 years, explained, "It is the idea of living. I can't go out in the streets and beg nobody for money."⁹

The deputy director of the Migrant and Seasonal Farmworkers Association sought to dispel the myth of the migrant as a happily employed gypsy with these remarks:

we must remember that a migrant doesn't travel, doesn't follow the crops because it is in his blood to travel. You know, he is not the gypsy that a lot of people paint him to be. He travels out of economic necessity. When a person is traveling in desperate search for employment, then he is altogether subject to the kinds of abuses that we have heard about this

⁷ Sixto Durant, Transcript, p. 26.

⁸ Juanita Morrison, coordinator, Johnston-Sampson-Harnett County Migrant Health Clinic, Transcript, p. 267.

⁹ Transcript, p. 71.

morning [at the open meeting of the North Carolina Advisory Committee].¹⁰

Once a crewleader has recruited workers, he is obligated under the Farm Labor Contractor Registration Act to inform the worker about the wages, conditions, etc., of employment. Former migrants who spoke at the open meeting said that they had never received any such information in writing from a crewleader.¹¹ Carl Webster, staff attorney of the Florida Rural Legal Services, said that in his 7 years of work with migrants he had never seen a written statement disclosing the information required under the act.¹²

Pay

Further abuse of a farmworker's right to the minimum wage and accurate reporting of earnings as required under the Fair Labor Standards Act was cited by Mr. Webster and his coworker Sixto Durant. Among the hundreds of farmworkers interviewed during Webster's and Durant's study, not one worker had seen an itemized statement of his earnings. Often the worker is paid in cash. If there is a check, the worker must endorse it over to the crewleader to cash. Check stubs showed an amount for "debt owed" without a reference to how the debt was incurred.¹³

The report of Church Women United also cited excessive deductions from farmworker wages:

[the] Fair Labor Standards Act is grossly and flagrantly violated in the North Carolina labor camps. In every camp where such information was obtained, prices charged for items furnished were far in excess of what could conceivably be termed "reasonable cost."¹⁴

Reasonable deductions for food, lodging, etc., are permitted under the law. But time and again, the former migrant workers and representatives of the farmworkers advocacy groups told the North Carolina Advisory Committee that the deductions violated the law. The price of beer bought from the crewleader was quoted at \$1, \$0.75 for cigarettes, \$2 for wine that retails for less than \$1, and \$2.50 for "paltry, nonnutritional meals."¹⁵

The workers are charged \$40 to \$50 a week for room and board and often deductions for social security are made but not reported. Sixto Durant reported that he knew of cases in which, after working for 4 months, a worker would be almost \$500 in debt and never had received any money during the time he worked.¹⁶

Enforcement of the laws applicable to wages is ineffective, according to the Church Women United report and to the Florida Rural Legal Services. In instances in which the U.S. Department of Labor had investigated wage deduction violations, the crewleader would first lower the prices, then raise the prices again soon after the investigator left. There was no followup on the part of the investigator to assure continued compliance.¹⁷ Violations of the Farm Labor Contractor Registration Act are often settled with consent decrees when the crewleader promises not to violate the law again. If a crewleader's license is revoked for violations, he or she will register under the name of a family member. Migrant advocates charge that the U.S. Department of Labor never detects such abuse.¹⁸

Physical Abuse

In virtually every camp visited by Mr. Webster and Mr. Durant, the workers said they were in debt to the crewleader and had been told they could not leave.¹⁹ The link between violations of the Fair Labor Standards and the Contractor Registration Acts and involuntary servitude and peonage is undeniable:

The failure to pay the worker the required minimum wage, the failure to give the worker an accurate statement of how much he or she earned. . . an itemized statement of deductions taken from wages results in a situation where the crewleader can arbitrarily keep the worker in a state of perpetual debt. The worker is then made acutely aware through the use of force and threats that he or she may not leave the labor camp until the debt to the crewleader is paid off. The possibility of ever getting out of debt under these circumstances is in most instances an absurdity.²⁰

¹⁰ Richard Joanis, Transcript, p. 107.

¹¹ Transcript, pp. 57-92.

¹² Ibid., p. 16.

¹³ Ibid., pp. 13-17.

¹⁴ Florida Rural Legal Services, Inc., "Statement to the North Carolina Advisory Committee to the U.S. Commission on Civil Rights" (Sept. 17, 1977), p. 8 (hereafter cited as "Florida Rural Legal Services Statement").

¹⁵ Ibid.

¹⁶ Transcript, p. 30.

¹⁷ "Florida Rural Legal Services Statement," p. 9.

¹⁸ Carl Webster, Transcript, p. 18.

¹⁹ "Florida Rural Legal Services Statement," p. 9.

²⁰ Ibid., p. 8.

Former migrant worker Charles Cannady said that he was only permitted to leave camp on Saturdays when the crewleader would transport the workers to a nearby store and then return them to the camp. It was only with the help of lawyers from the Florida Rural Legal Services that he finally got out.²¹ Mr. Durant, a paralegal with the Florida organization, said that he personally has helped about 15 persons out of camps in North Carolina.²² Carl Webster believes peonage is prevalent in the State:

More than half of all the crewleaders operating here are telling workers that they are in debt to them and they cannot leave, and if they try to leave, "We are going to get you, and if you get away, we are going to get you eventually."²³

Steve Kirk of the Center for Rural Studies and Change told the Advisory Committee that there was little difference between a camp run by a licensed crewleader and an unlicensed leader, or "freewheeler":

[T]he serious problems . . . of intimidation, fear, crewleaders continually harassing, beating, and threatening the workers continue in the employment security commission camps [i.e., camps run by crewleaders who received clearance from the commission].²⁴

James Wells, the chief of an employment security commission office, maintained that the clearance system prevented bad conditions for workers:

Freewheeling crews are where we get 80 percent of our problems in North Carolina. Freewheeling crews are where your migrant workers are being exploited, taken advantage of, abused, beaten, held, and the whole scope of it.

The crewleaders that come through the system—through the employment security commission—are monitored on a weekly basis. And, if these conditions prevail, in most cases—I would say in 98 percent of the cases—it will turn up, and we can turn it over to the appropriate authority.²⁵

²¹ Transcript, p. 21.

²² *Ibid.*, p. 45.

²³ *Ibid.*, p. 34.

²⁴ *Ibid.*, p. 328.

²⁵ Transcript, p. 144.

²⁶ Steve Kirk, Transcript, p. 330; see appendices A and B for response of the North Carolina Employment Security Commission to Mr. Kirk's statement and the North Carolina Advisory Committee's reply.

Where chains and whips are said to have been used years ago in migrant worker camps, today's crewleader "has advanced" to using guns and vicious dogs to scare the workers.²⁶ Various tactics of intimidation or outright physical abuse were reported to the Advisory Committee. Former migrants told of seeing both men and women beaten in the camp.²⁷ The director of a health clinic stated that although many injuries are the result of workers fighting with each other, she does see injuries she believes to be inflicted by crewleaders. On one occasion, workers who reported beatings in camp were beaten when they returned to the camp. By the time travel arrangements were made to get them out of the camp, the workers fled the State rather than take legal action against the crewleader.²⁸ Amin Khalil of the North Carolina Department of Human Resources (DHR) said that in Johnston and Sampson Counties, year after year, he sees workers from camps run by the same crewleaders admitted to the hospital for stab and gunshot wounds.²⁹

Hunger

Being kept in a perpetual state of hunger is another form of abuse cited by migrants and migrant advocates that is attributed to crewleaders and unchecked by State or Federal authorities. A group of former migrant workers told of being left in camp over a weekend without food. The crewleader reportedly went to Florida "to pick up his wife" and before departing locked the kitchen. On Monday morning the migrants were sent to the fields to work, without having anything to eat.³⁰ When meals were finally served, they were inadequate in the opinion of former migrant Robert Ritch Ford:

[W]hen he feed you, he feed you nothing but beans. He just give you a few beans, two or three spoonfuls and two pieces of bread and that is it. Man, he cooked a chicken for 19 men one time, one chicken.

But you had to pay him his \$30 [for board].³¹

On one occasion, two former migrants who walked to a store to buy food had the purchased food taken away from them by their crewleader.

²⁷ Robert Ritch Ford, Transcript, p. 57, and Martha Brown, Transcript, p. 84.

²⁸ Juanita Morrison, Transcript, p. 265.

²⁹ Transcript, p. 30.

³⁰ Robert Ritch Ford et al., Transcript, p. 59.

³¹ Transcript, p. 60.

They were told they could not cook their own meals but had to buy the meals he provided.³²

The lack of an adequate diet, of course, can lead to illness. In most migrant camps, according to Florida Rural Legal Services, workers who get sick and do not work do not get fed.³³

Both the Florida organization and Dr. Bruce Payne of Duke University revealed actions on the part of some local county food stamp offices that virtually preclude migrants from receiving food stamps. Migrants can qualify, based on their income, for food stamps for a limited period of time when poor weather or other adverse conditions make it impossible to harvest crops. The food stamp offices in North Carolina are run by the county government, under the general supervision of the State department of human resources, division of social services. Money for the food stamps is provided by the U.S. Department of Agriculture. In Sampson and Johnston Counties, two of the three North Carolina Counties with the largest migrant populations, county officials require that migrants provide a written statement from the grower or crewleader that the migrant is in need of food stamps³⁴ and provide an estimate of the worker's income based on the accommodations provided, etc. In practice, few crewleaders or growers will provide the necessary signed statement. According to Florida Rural Legal Services staff, the crewleader wants to keep the migrant in debt by selling him meals and keeping him in camp until the crops are ready, and the farmer does not want to attest to the nature of accommodations being provided on his property.³⁵

In response to an editorial in the *Raleigh Times* referring to statements of the Florida Rural Legal Services' staff regarding the denial of food stamps to migrants, the director of Johnston County Social Services (serving Harnett and Sampson Counties also) denied the allegations. Donald Morrison said, "Both applicants were working. . . and drawing good wages. . . ."³⁶ Nonetheless, John Kerr of the division of social services did not deny that food stamps in different counties are administered under different procedures. He stated, "There are. . . a number of the smaller counties where there are

migrants which do diversify the rules and the laws. They simply are not carried out uniformly. . . ."³⁷

Mr. Kerr made it clear that the workers in the food stamp offices can, under the State and Federal rules, simply take the migrant worker's word for his income instead of requiring a statement signed by the crewleader or grower. "But," he continued, "again, I must go back to the statement I made earlier that different areas of the State have different views and policies—conservative attitudes and so forth." The State, according to Mr. Kerr, does not have the power to alter the county practices.³⁸

James Wells of the employment security commission agreed that getting and keeping food stamps is a problem for migrants in some counties:

In some cases we have found out that the crewleader did get the stamps from the worker once he got them, and then we raised a little hell, and then we got them back. But, in some counties, you cannot hardly get food stamps for migrant workers. This is a problem.³⁹

Noting that a farmer would certainly feed a horse or a mule to keep it able to work, the Rev. W. W. Finlator, Chair of the North Carolina Advisory Committee, asked the State officials to explain "the reluctance of the people to allow poor people access to food stamps."⁴⁰ In response, John Kerr, director of the DHR food stamp program, proposed that, "the fault lies in society's revulsion of the perpetual poor. . . I think it is the general attitude. . . to ignore the miserable plight of the poor and the migrant. . . ."⁴¹

Camp Conditions

There was unanimous agreement among the representatives of the five advocacy organizations and the former migrants at the Advisory Committee's open meeting that conditions in migrant camps are usually unsanitary, often unsafe, and always inhumane.

The Center for Rural Studies and Change concluded, based on the record of inspections and the types of violations cited by the North Carolina Department of Labor, Occupational Safety and Health Act Division, that the North Carolina

³² Martha and Henry Brown, Transcript, p. 86.

³³ Sixto Durant, Transcript, p. 29.

³⁴ Bruce Payne, Ph.D., member, North Carolina Advisory Committee, and John Kerr, director, Division of Social Services, North Carolina Department of Human Resources, Transcript, pp. 213-15.

³⁵ "Florida Rural Legal Services Statement," p. 16.

³⁶ Sept. 27, 1977.

³⁷ Transcript, p. 215.

³⁸ Ibid., p. 217.

³⁹ Ibid., p. 146.

⁴⁰ Ibid., p. 218.

⁴¹ Ibid., p. 220.

Employment Security Commission, Rural Manpower Service, issues clearance orders knowing that labor camps do not meet the required standards. The ESC will cancel any clearance order issued if violations noted during an inspection are not corrected before the camp is occupied.⁴²

Steve Kirk compared the preoccupancy inspection results of the employment security commission with the results of later inspections by the North Carolina Department of Labor, Occupational Safety and Health Act Division. Despite the fact that the employment security commission uses the identical inspection standards as the OSHA division, Steve Kirk found that 43 of 53 camps that had been cleared by the ESC and later inspected by the OSHA division were found to be in violation of the standards. The majority of the violations found (e.g., lack of adequate sleeping space, lack of toilets, poor drainage) by the OSHA division in the ESC-inspected camps were not abated prior to occupancy.⁴³ In short, Mr. Kirk believes that the employment security commission had repeatedly certified migrant camps for occupancy that were in violation of the law.⁴⁴

Steve Kirk stated that approximately half of the camps he had visited were overcrowded if the standard of 50 square feet per person is applied.⁴⁵ Officials of the employment security commission say that they use that standard for their inspections and call in U.S. Department of Labor officials if there is any question about the conditions of the camp.⁴⁶ Permits issued by local sanitarians under the authority of the human resources department and posted at camps he visited consistently showed ratings in the eighties and nineties despite unsanitary conditions, Mr. Kirk said. He termed the conditions "abominable."⁴⁷

Sixto Durant of the Florida Rural Legal Services said that none of the 100 to 120 camps he visited in North Carolina, although licensed by the State, were "fit for humans." The camps Durant visited were located by using information provided on employment security commission forms used in the clearance order system. Approximately 12 of the camps visited were run by crewleaders who were not

registered under the Farm Labor Contractor Registration Act⁴⁸—a requirement of the employment security commission that must be verified when a crewleader enters the State.

Lucy Hancock does not doubt that housing conditions for migrants are probably better than they were years ago, yet she told Church Women United:

[H]aving visited migrant labor camps which were extremely overcrowded, structurally unsound, and which had unsanitary toilet and shower facilities, I cannot refrain from saying that this State has not come close to solving the problem of poor housing conditions in migrant labor camps.⁴⁹

Ms. Hancock noted that some migrant camp housing certainly did meet the local, State, and Federal standards. Richard Joanis of the Migrant and Seasonal Farmworkers Association also stated that several farmers in the State provide and maintain housing that meets the required standards.⁵⁰

Speakers at the open meeting suggested that both the overlapping and/or conflict between agencies and laws in the inspection system itself and the attitudes of some State and Federal officials serve to perpetuate poor conditions for migrant and seasonal farmworkers.

Inspections are limited to camps that house more than 10 workers, yet the workers often have members of their families with them.⁵¹ When inspectors visit during the day, the workers are in the field so they rely on the word of the crewleader or farmer as to the number of farmworkers occupying the housing. Conveniently, the number given will correspond to the camp's known capacity, according to Steve Kirk.

Mr. Kirk suggested that a system of "voluntary compliance" is the order of the day in North Carolina due to the limited number of inspectors available for all the responsible agencies. The meager fines imposed for violations are incentive not to improve conditions. It is actually economically

⁴² Center for Rural Studies, "Testimony Before the North Carolina State Advisory Committee to the U.S. Civil Rights Commission" (Sept. 17, 1977), not paginated (hereafter cited as "Center Statement").

⁴³ Transcript, pp. 217-21.

⁴⁴ See appendices A, B, and C.

⁴⁵ Transcript, p. 334. See appendices A, B, and C.

⁴⁶ James Wells, manager, Mt. Oliver Office, North Carolina Employment Security Commission, Transcript, p. 159.

⁴⁷ "Center Statement."

⁴⁸ Transcript, pp. 31-33.

⁴⁹ Lucy Hancock, "The Needs of Migrants in North Carolina" (final report to Church Women United of North Carolina, Sept. 1, 1975), p. 12.

⁵⁰ Transcript, p. 105.

⁵¹ Yvonne Wade, assistant program director, Center for Rural Studies and Change, Transcript, p. 323.

rewarding to perpetuate the poor conditions, in Mr. Kirk's opinion.⁵²

Richard Joanis suggested that the employment security commission is in a position of conflict in regard to administering Federal laws that apply to migrant camps. Because North Carolina is a heavily agricultural State, and ESC's primary job with regard to farmers is to help them find workers to harvest their crops, the employment security commission must serve the farmer more so than protect the migrant or seasonal farmworker.⁵³

Some farmworker advocates cited the racist and sexist attitudes on the part of some inspectors as major reasons for inadequate enforcement of the laws. Workers for the Center for Rural Studies and Change talked with 6 of the 12 North Carolina Department of Labor inspectors (all are white males) who "resent the high priority that has been placed on migrant camps."⁵⁴ The following statements were made by four of those inspectors:

⁵² "Center Statement."

⁵³ Transcript, pp. 103-04.

⁵⁴ Kirk and Wade, Transcript, p. 324.

They [farmworkers] are just dirty people. It doesn't matter whether or not we inspect. Take screens: they knock them out and we issue a citation. A week later they will have knocked them out again. They don't care about anything. I guess it is because they don't have anything. The grower spends his hard-earned money to abate a violation and they just let the place go to hell again.

The young [Chicana] girls are really something to look at. I don't mind these Spanish camps. But they start having kids and the next things you know they are as broad as barns. Baby machines. Just look at them.⁵⁵

One inspector referred to black children as "pickaninnies" and said that a white family that worked and lived with a black crew was a "disgrace to the white race."⁵⁶

⁵⁵ "Center Statement."

⁵⁶ Ibid.

4. Legal Services for Migrants

The irony is clear. Migrants, perhaps more than any other group, have historically been confronted with the greatest need for, but the least access to, legal services. One of the major reasons for this dilemma is inherent in the condition of being a migrant, a condition that largely accounts for the overall plight of the migrant today. Migrants, by definition, have lacked the permanency to create a lasting constituency that is the prerequisite for political influence. Working here today and traveling on tomorrow, largely in isolated rural areas, migrants have been victims of the system, not a part of it.

There are several important laws to protect the rights of migrants that have been discussed in this report. Without access to the legal services necessary to apply the remedies of the law, however, the laws are meaningless. The history of governmental enforcement of laws at the local, State, and particularly the Federal level, where the laws are the strongest, shows that the efforts have been insufficient. This fact reinforces the need for migrants to have access to attorneys who have the will and the ability to protect their rights. The economic status of migrants, coupled with the lack of transportation and other problems, makes it difficult if not impossible to obtain private legal representation.

Clearly, therefore, if migrants are to be ensured of any semblance of the basic rights that the majority of society takes for granted, they must have access to legal services.

The Need in North Carolina

The statements, written and oral, solicited by the North Carolina Advisory Committee from representatives of State government, as well as public and private groups in the State, were unanimous: there is a desperate need to provide access to legal services for migrants.

Denison Ray, executive director of Legal Services of North Carolina, Inc., set the tone:

The conditions under which migrants live—the deplorable housing, breaches of agreements, cheating them out of wages earned, enforced labor under threats and coercion that have been testified to today—are not only inhumane and immoral. Those conditions are violations of the legal rights of migrant people.

According to a study conducted by the national Legal Services Corporation [in 1977], in the peak month for migrant labor in North Carolina there are more than 40,000 migrants working in the State. That is the eleventh highest total of all the States. It is also more than the population of 60 of the 100 counties in North Carolina. It would be incredible to think of having a county of 40,000 persons without any lawyers to solve their legal problems.

Yet that is what migrants have been faced with. Poor, transient, uninformed of their rights and repeatedly victimized by others, migrant people are a classic instance of the failure of our society—and especially our legal system—to

assure the provision of fundamental rights to all people.¹

When asked specifically how he would assess the need in North Carolina for migrant legal services, Mr. Ray replied, "Drastic." He summed up the history of efforts in North Carolina to provide migrants with legal services as, "None whatsoever."

The North Carolina commissioner of labor, John Brooks, stated that based upon the observations of his employees during their work in migrant labor camps, there was a "crying need of migrant farmworkers for access to competent legal services." Commissioner Brooks noted that access to legal services is "an apparent need which is currently not an assigned concern of any State agency."²

Representatives of the Florida Rural Legal Services, Inc., underscored the lack of legal services in North Carolina and its effect upon the lives of migrants. In the summer of 1977, a team of Florida Rural Legal Services attorneys visited over 100 migrant camps in North Carolina. The staff attorney of the team, Carl Webster, explained that the attorneys came to North Carolina on behalf of their clients, "based upon repeated allegations and statements by our clients when they returned to Florida about mistreatment in North Carolina—either lack of proper protection by governmental agencies or mistreatment by the crewleader they were working under."³

Based upon experience in North Carolina, Mr. Webster said that access to legal services for migrants "is the most needed aspect for the protection of farmworkers. . . ." He stated:

The reason is not only to represent individuals who may [need to] get away from camps, but also to try to force the governmental agencies which are charged with the duty of protecting farmworkers to do their job.⁴

Remedies Available Through Legal Services

The Florida Rural Legal Services attorney touched upon one of the most important aspects of legal services to migrants; i.e., the ability to exercise the laws available to aid migrants that are not being

adequately enforced by the responsible agencies, both State and Federal. Although it is true, as stated by Commissioner Brooks, that migrants otherwise, "experience the need for legal assistance through the whole range of legal problems shared by persons who do have close community ties," there are several laws that are directed specifically to migrants.⁵ The enforcement of these laws is indispensable to improving the conditions under which migrants live.

Certain Federal laws, as examples, if properly enforced would greatly improve the condition of migrants. Three Federal laws in particular—the Farm Labor Contractor Registration Act, the Fair Labor Standards Act, and the Wagner-Peyser Act—provide extensive protection for migrant living and working conditions. Broadly speaking, these laws provide the basic guarantees of livable health and sanitation conditions and the guarantee of a minimum wage. Staff attorney Webster said that "certainly if the laws were enforced as they are written, the condition of the farmworkers when they are in the migratory stream would improve immeasurably—immeasurably."⁶

Although the primary enforcement of these laws is vested in the U.S. Department of Labor, the laws also may be enforced through private civil legal action. Both the Farm Labor Contractor Registration Act and the Fair Labor Standards Act specifically provide that persons aggrieved under the law, either individually or through class actions, may sue violators of the law independent of any action by the U.S. Department of Labor. The relief available to migrants under the law is not limited to a recovery of monetary damages, but also includes the full equity powers of the courts, e.g., to ensure that the conditions that gave rise to the violations are eradicated.

In addition to getting remedies under laws independently of the responsible Federal agency, private suit can be brought to compel the agency to carry out its responsibility under the law. The classic example is the case of *NAACP v. Brennan* in which the Federal court found that the U.S. Department of Labor had violated the constitutional rights of

¹ Denison Ray, executive director, Legal Services of North Carolina, Inc., statement submitted to the North Carolina Advisory Committee to the U.S. Commission on Civil Rights, Sept. 17, 1977, pp. 1-2 (hereafter cited as Ray Statement).

² Statement before the North Carolina Advisory Committee to the U.S. Commission on Civil Rights, open meeting, Raleigh, N.C., Sept. 17, 1977, transcript, pp. 183-84 (hereafter cited as Transcript).

³ Transcript, p. 13.

⁴ *Ibid.*, p. 37.

⁵ *Ibid.*, p. 184.

⁶ *Ibid.*, p. 68.

migrants by its failure to ensure the rights of migrants under the Wagner-Peyser Act.

Because action through legal services cannot enforce the various criminal sanctions under the laws, appropriate legal civil actions can otherwise provide a means of relief through suits for violations of rights. Particularly in instances of peonage and physical assault, offenders can be sued for monetary damages as well as injunctive relief.

Beyond the benefits of lawsuits, providing legal services to migrants has another beneficial effect—deterrence. Those who are current and potential violators of migrants' rights are put on notice that those rights can no longer be violated with impunity.

North Carolina Farmworkers Legal Services

At his appearance before the Advisory Committee on September 17, 1977, Denision Ray said:

It is fitting on this day, when the United States Commission on Civil Rights is focusing the attention of North Carolinians on the terrible plight of migrants in this State, that Legal Services of North Carolina, Inc., is able to announce the receipt of a grant from the national Legal Services Corporation to establish a Migrant Legal Action Project in 1978.⁷

Thus, for the first time in the State's history, the initial step was taken to begin a program for legal advocacy in North Carolina for migrants. The State, however, had nothing to do with the grant. The award was made by the Legal Services Corporation, a private, nonprofit corporation established in 1974 and funded by the Federal Government to provide legal assistance in civil matters to persons unable to afford legal services. The Legal Services of North Carolina, Inc., is funded almost entirely through the national Legal Services Corporation.

Mr. Ray outlined the initial steps that the Legal Services of North Carolina would take in establishing its migrant law project:

We will seek out talented and experienced lawyers who are or can become expert in migrant law; we will begin a preventative education program to inform migrants of their legal rights and responsibilities and how to use lawyers and the legal system; we will extend

that educational program to other social service agencies, professionals, and government officials who work with migrants so that they too, will be able to help migrants attain the rights to which migrant people are entitled to under the law.⁸

The initial grant for the Migrant Legal Action Project in 1978 was approximately \$84,000. Mr. Ray stated that the grant "will get us started, but only just." He further explained:

The average per capita cost in providing legal services, in order to do it well, should be at least \$14. . . . You have in North Carolina over the June through November season an average, according to a study made by the national [Legal Services] Corporation, about 29,000 migrants per month. So, \$400,000 would be a much more necessary figure.⁹

Subsequent to the open meeting of the Advisory Committee, Steve Kirk of the Center for Rural Studies and Change worked for the North Carolina Legal Services, Inc., as a consultant to aid in the implementation of the Migrant Legal Action Project. Mr. Kirk had gathered extensive experience in dealing with migrant problems through his work with the center.

A discussion was held at the open meeting about the need to establish a field office in an area most accessible to migrants, solely to deal with migrant legal problems.¹⁰ The initial efforts of the Legal Services of North Carolina have been directed to this activity. On July 10, 1978, a Farmworkers Legal Services office was opened in Newton Grove in Sampson County. With a budget consisting of the original \$84,000 grant and a supplemental \$20,000 from the general fund of the Legal Services of North Carolina the office currently has a staff of five; two attorneys, a paralegal, a law clerk, and a VISTA worker.

According to Mr. Kirk, the office has initiated actions to enforce the migrants' rights to decent working conditions under the Farm Labor Contractor Registration Act and the payment of minimum wages as required under the Fair Labor Standards Act. Not unexpectedly, the staff has been confronted with resistance in gaining access to some migrant camps. Access to camps, virtually all of which are on private property, has traditionally been a problem

⁷ Ray Statement, p. 1.

⁸ *Ibid.*, p. 2.

⁹ Transcript, pp. 301-02.

¹⁰ Transcript, pp. 309-11.

in attempting to provide services to migrants. According to Mr. Kirk, litigation in court may be required in some instances to compel access to camps.¹¹

Compared with the previous void in migrant legal services in North Carolina, the progress gained in establishing the Newton Grove Farmworkers Legal Services office is an enormous step in the direction of adequate legal representation for migrant workers. This one step, however, is by no means sufficient. Drastically increased funding is required in order to make sufficient legal representation of migrants in North Carolina anywhere near a reality.

Despite the universal recognition of the need for migrant legal services heard by the North Carolina Advisory Committee (particularly noteworthy from State officials), there have not been any funds contributed from any source within the State to

fulfill this need. The commissioner of labor, John Brooks, emphasized the need and then told the Advisory Committee that there were no funds available in his department.¹² Deputy Secretary Benjamin Aiken of the department of human resources told the Advisory Committee of the likelihood for supplemental funding from his department for migrant legal services, "I would not rule it out as being possible. I think it is possible [and] we should look at it."¹³

Regardless of the possibilities of sources that may exist, including the North Carolina Legislature, to help focus attention on the compelling need of migrant workers, the extent of legal services for migrants in North Carolina today depends entirely upon the insufficient funds available from the Federal Government.

¹¹ Telephone interview, Nov. 1, 1978.

¹² Transcript, p. 206.

¹³ *Ibid.*, p. 208.

5. Findings and Recommendations

Coordination by State Agencies

Findings

The North Carolina Advisory Committee to the U.S. Commission on Civil Rights finds that the three State agencies responsible for the administration of laws affecting migrants—the Employment Security Commission, the North Carolina Department of Labor, and the North Carolina Department of Human Resources—are not effectively ensuring equal treatment under the law for migrant and seasonal farmworkers in North Carolina. The tremendous workloads and responsibilities that these agencies have are further complicated by their mutual lack of coordination. One thwarted attempt to coordinate the work of these North Carolina agencies was taken in 1975 by the ad hoc Committee to Revise the Laws Pertaining to Migrants. The committee included representatives from the three agencies mentioned earlier plus the North Carolina Department of Justice. The ad hoc committee's draft report, issued in 1976, identified the same problems that the North Carolina Advisory Committee to the U.S. Commission on Civil Rights has identified: camp conditions are inadequately monitored, laws governing camp conditions conflict, and coordination and enforcement is ineffective. Unfortunately, the work of the ad hoc group stopped with the draft report; a final report was never issued and the recommendations of the group were apparently never considered by officials with the authority to implement them.

The Advisory Committee is aware that in 1978 the North Carolina Department of Human Resources

contracted with the North Carolina Department of Labor, Occupational Safety and Health Act Division, to conduct camp inspections in selected counties. This experimental arrangement will be evaluated by State officials for possible use on a permanent basis. Such efforts to resolve duplication and the conflict created by differences in the North Carolina and Federal laws governing the sanitary conditions of camps are commendable.

The Advisory Committee believes, however, that the North Carolina Employment Security Commission and the North Carolina Departments of Labor and Human Resources cannot fulfill their responsibilities to the farmers or the farmworkers until extensive and permanent changes are made.

Recommendations

The following three recommendations are directed to the chair of the employment security commission, the commissioners of labor and human resources and the attorney general of North Carolina.

North Carolina General Statutes Chapter 130, Article 13-A ("Sanitation of Agricultural Labor Camps"), should be repealed. It should be replaced by legislation that would enable the North Carolina Department of Labor to develop regulations applicable to all migrant farmworker camp conditions that would be identical to the provisions of the Federal Occupational Safety and Health Act. The legislation should designate the North Carolina Department of Labor as the only State agency responsible for the inspection of farmworker camps.

All crewleaders who work in the State should be required to register with the North Carolina Depart-

ment of Labor. Currently, registration is mandated only by Federal law and in effect is applied only to crewleaders who find work through the employment security commission. State officials acknowledged that 60 percent of the farmworkers employed in North Carolina work for "freewheelers," and James Wells of the employment security commission believes that 80 percent of the migrants who are mistreated work for freewheelers. Migrant advocates, however, maintain that there is little difference between camps run by registered leaders and those run by freewheelers. Regardless of this difference of opinion, the Advisory Committee believes that it is in the best interest of North Carolina farmers, farmworkers, and officials—those who provide medical care, enforce the law, etc.—that crewleaders should be registered.

The State department of labor should seek legislation that would empower its inspection of farmworker camps that house 10 or fewer workers. Funding for this work should be made available through State resources. Commissioner John Brooks of the State department of labor noted that out of 472 camps visited during a given portion of the 1977 migrant season, 264 could not be inspected because they were occupied by 10 or fewer workers. The Advisory Committee believes that workers and their families (who are not counted for purposes of the inspection) have a right to a clean and safe place to live and work regardless of the number of workers employed. Although the Advisory Committee realizes that some limits for the inspection of work places must be set, it believes that the well-documented historical pattern of poor conditions in migrant worker camps warrants the inspection of all camps, regardless of size.

Enforcement by the U.S. Department of Labor

Findings

Because of the poor record of North Carolina State agencies that administer the provisions of the Farm Labor Contractor Registration Act, the Wagner-Peyser Act, and the Occupational Safety and Health Act on behalf of the U.S. Department of Labor, the Advisory Committee must conclude that the U.S. Department of Labor is not enforcing the laws related to migrants.

The rulings of the U.S. district court in *NAACP v. Brennan* in 1973, 1974, and as recently as November

1978 that the U.S. Department of Labor is in violation of the fifth amendment of the Constitution of the United States, the Civil Rights Act of 1964, and the Wagner-Peyser Act further substantiate the Advisory Committee's findings. The U.S. Department of Labor was judged guilty of illegally supporting State agencies that, among other infractions, referred farmworkers to jobs where the living and working conditions violated housing, health, and sanitation laws and to unlicensed crewleaders or crewleaders who operated illegally. Certainly, where the continued funding of the North Carolina Employment Security Commission is concerned, the court's ruling is most applicable.

Recommendation

The Advisory Committee recommends that the U.S. Commission on Civil Rights urge Secretary Ray Marshall of the U.S. Department of Labor to conduct a full review of the work of the Employment and Training Administration, the Employment Standards Administration, and the Occupational Safety and Health Administration that relates to the enforcement of the law pertaining to farmworkers in North Carolina.

Specifically, the work of each administration that relates to the North Carolina Employment Security Commission and the North Carolina Department of Labor should be examined. The North Carolina Employment Security Commission, Rural Manpower Service, and the North Carolina Department of Labor, Occupational Safety and Health Act Division, should be closely monitored and, if violations of the laws enforced by U.S. Department of Labor persist, Federal monies that fund the State employment security commission and the department of labor should be cut off in accordance with applicable Federal laws and regulations.

Acquisition of Food Stamps

Findings

Getting food stamps is a critical problem for many farmworkers in North Carolina. Farmworkers and State officials publicly attested that the procedures of some county food stamp offices resulted in burdens on food stamp applicants who are farmworkers and the ultimate denial of food stamps for which they qualify.

Farmworkers, like other persons who apply for food stamps, are required to show proof of their

earnings so that county food stamp administrators can determine if they qualify for stamps. The Advisory Committee found that the crewleaders and farmers are often reluctant to provide such certification. The Advisory Committee also found that statements of earnings are rarely given to farmworkers when they are employed, although such statements are clearly required by Federal law.

In short, farmworkers in North Carolina have greater barriers to overcome in acquiring a statement of their earnings to qualify for food stamps than do persons in other types of work. The result is often the denial of food stamps to migrant and seasonal farmworkers.

Officials of the North Carolina Department of Human Resources maintain that they are powerless to alter the procedures of the autonomous county agencies. It is clear, however, that under the regulations of the U.S. Department of Agriculture, which funds food stamp programs by contracting with State agencies (the human resources department in North Carolina), the State agency is responsible for complying with the Federal regulations. In addition, the U.S. Department of Agriculture is responsible for enforcing compliance.

Recommendations

The U.S. Department of Agriculture must take whatever action necessary, including withholding Federal funds if need be, to ensure the right of migrant and seasonal farmworkers in North Carolina to food stamps for which they qualify.

The Advisory Committee asks the U.S. Commission on Civil Rights to request that Secretary of Agriculture, Bob Bergland, order a review of the procedures used in the distribution of food stamps to farmworkers in Sampson, Johnston, and Harnett Counties of North Carolina.

Because of the apparent difficulties encountered when farmworkers request some written form of certification of income from crewleaders or farmers, the North Carolina Advisory Committee recommends that an alternative procedure for income certification of farmworkers be developed. The alternative procedure would be used in instances when the routine certification is not provided by crewleaders or farmers. The Advisory Committee believes that the unique circumstances under which farmworkers live and work necessitate unique responses from those who administer food stamp programs and that such responses can be made

within the regulations of the U.S. Department of Agriculture.

Provision of Legal Aid

Findings

The economic status of migrant farmworkers coupled with their transient lifestyle makes it virtually impossible to acquire legal services through private attorneys.

It is evident to the North Carolina Advisory Committee that farmworkers need legal representation just as other Americans do. Further, it is evident that farmworkers also need legal representation to help them claim their rights as specified under Federal laws applicable to farmworkers. Although the responsibility for enforcing those laws is primarily vested in the U.S. Department of Labor, the provisions for civil legal action should not be overlooked.

Both the Farm Labor Contractor Registration Act and the Fair Labor Standards Act specifically provide for suits either by individuals or through class action. Relief available through civil action includes monetary awards as well as use of the courts' powers in assuring full equity.

Until 1978 with the funding of the Migrant Legal Action Project in Sampson County by the federally-financed Legal Services Corporation, there was no source of legal aid for migrants. Legal Services of North Carolina, Inc., is to be commended for obtaining the grant to establish the migrant project.

There have been no funds contributed from any source in North Carolina to the Migrant Legal Action Project. State Commissioner of Labor John Brooks maintains that there are no funds available within his department. Deputy Secretary Benjamin Aiken of the department of human resources believed that his department should explore the possibility of contributing funds.

If crewleaders and growers did abide by the law, the work of the State agencies would be lightened. In short, the State would benefit by supporting the provision of legal services for migrants.

Recommendation

Additional money for the maintenance and expansion of legal services to migrants must be acquired. All State agencies responsible for administering laws related to migrants should consider the feasibility of providing such funds. Appropriate committees of

the North Carolina General Assembly should also consider channeling State funds directly to the Migrant Legal Action Project. Such a move would

be in the best interest of the State agricultural industry as well as of the farmworker.



EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

Post Office Box 25903, Raleigh, North Carolina 27611

December 5, 1978

Mr. Bobby D. Doctor, Regional Director
United States Commission on Civil Rights
Citizens Trust Company Bank Building
Room 362, 75 Piedmont Avenue
Atlanta, Georgia 30303

Dear Mr. Doctor:

In response to the draft drawn up by the North Carolina Advisory Commission to the U. S. Committee on Civil Rights concerning migrant and seasonal farmworkers in N. C. we express the following:

1. We take exception to the statement on Page 28 by Mr. Kirk of the Center for Rural Studies that "the serious problems ... of intimidation, fear, crew leaders continually harrassing, beating and threatening the workers continue in the ESC camps (i.e. camps run by crew leaders who received clearance from the Commission)".

We would like to have the statement removed from the final report unless Mr. Kirk or the Center for Rural Studies can substantiate, with documented proof, that these conditions exist in N. C. camps operated by crew leaders coming through the ESC.

2. The reference made by the Center for Rural Studies on Page 29, "where chains and whips are said to have been used years ago in migrant labor camps, today's crew leader 'has advanced' to using guns and vicious dogs to scare workers", is in our opinion asinine as well as degrading to the entire report. We hope this statement will be removed and a more mature reflection there entered.



EMPLOYMENT SERVICE... UNEMPLOYMENT INSURANCE... LABOR MARKET INFORMATION

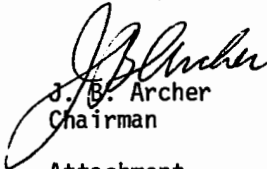
Bobby Doctor - 2 - December 5, 1978

3. On Insert Page 35, a follow-up investigation was initiated by the ESC on allegations made by Mr. Kirk that he found 43 out of 53 camps that had been cleared by the ESC and later inspected by OSHA and violations were noted. Mr. Kirk's statement, for the most part, was erroneous and we submit the attachment to refute this statement. (See Attachment # 1)
4. In regard to the statement on Page 35 made by the Center for Rural Studies that Mr. Kirk continued to find labor camps overcrowded and that when these conditions existed he was of the opinion that the ESC should have cancelled the order. The ESC policy for inspecting labor camps during this period was to initiate clearance activity to bring in the exact number of adult workers that would accommodate the square footage requirement. The ESC has no way of controlling the number of workers that the crew leader brings to the camp with the exception of reporting overcrowding to the appropriate agency. This was done during the particular report period covered and should be so noted in the final report.

The ESC Rural Manpower Service Supervisor is of the opinion that this report should be severely edited in reference to numerous quotes and inserts by certain individuals who are stating opinions based on biased observations. It would appear that the staff conducting the major part of this investigation did not have the background or knowledge of the migrant program in N. C. as it truly exists.

The ESC does agree that conditions for migrant workers in N.C. are not what they should be and in some cases deplorable, but the ESC will aggressively continue to upgrade the economic well being of migrant workers with all resources at our disposal, as far as regulations will permit.

Sincerely,



J. B. Archer
Chairman

Attachment

SUMMARY REPORT ON ESC RESPONSIBILITY REGARDING MIGRANT AND SEASONAL FARM WORKERS

The two principal laws regulating the transportation and housing of migrant and seasonal farm workers are the Occupational Safety and Health Act (OSHA) and the Farm Labor Contractor Registration Act (FLCRA).

FLCRA requires that crewleaders engaged in the transportation of agricultural labor be registered and certified according to the U.S. Labor Department standards. The Wage and Hour Division of DOL is the enforcing agency. Initially applying only to interstate migrant crews, the act was amended in 1974 to apply also to intra-state crews & day hauls, and the restrictions of the law severely limited the transportation of local and in-state workers to agricultural jobs. Consequently, growers were forced to place increasing dependence on interstate migrants.

In recent years, therefore, an increasing number of migrants have been entering North Carolina to assist with the harvest of a variety of agricultural crops.

The activity begins around April and continues until mid-November.

During 1977 approximately 15,000 migrants came to North Carolina, occupying approximately 900 labor camps.

Under provisions of the Wagner Peyser Act, the Employment Security Commission accepts job orders from certain growers, recruits migrants, and arranges for their appearance in North Carolina at a certain date, at a specified farm, at a stated wage. Approximately half the migrant number, called "free wheelers," enter the state without ESC assistance and contract directly with growers.

Under provisions of the FLCRA, the Employment Security Commission must require crewleaders transporting workers under an ESC clearance order to be FLCRA registered to meet certain federal transportation and chauffeuring requirements. An uncertified crewleader transporting workers violates the federal statute, and the grower employing an uncertified crewleader also violates the FLCRA.

The Employment Security Commission is required by the Employment and Training Administration, U.S. Labor Department, to inspect agricultural labor camps prior to occupancy by workers (ES Manual part II, para. 2030-2039; 20 CFR 620). In case of violations, the ESC has no enforcing authority under federal or state statutes to require that they be corrected. It can only refuse service to crewleaders and growers whose facilities fail to meet specific standards relating to health, safety, sanitation and transportation, and report violations to the appropriate agency for necessary corrective action.

The inspection provisions required by the Code of Federal Regulations (620) are generally less stringent than those of OSHA. However, in its inspection efforts, the ESC attempts to acquaint growers with the OSHA standards.

In 1977, the representatives of the Employment Security Commission's Rural Employment and Training division inspected over 400 labor camps and checked the FLCRA registration of approximately 400 crewleaders. They had contact with approximately 7,000 migrants. More than 6,000 were placed with about 430 growers in approximately 270 labor camps:

Migrant camps inspected by ESC interviewers	405
Employer concerned withdrew order (approx.)	100
	<u>305</u>
Order canceled by ESC for failure to meet standards	42
Remaining Camps available to place migrants	<u>263</u>
<hr/>	
Camps ESC inspected, OSHA reinspected	166
Number failed OSHA standards	35
Less number ESC canceled orders	<u>8</u>
Number accepted by ESC, failed by OSHA	27
Less number where violations occurred after "occupancy"	<u>15</u>
Potential ESC oversight	12
Number investigations pending - no OSHA report	<u>2</u>
Number ESC should have detected OSHA violations	10

Most violations were classified by OSHA as "non-serious."

In 1973, the Employment Security Commission began operating a system by which workers, growers, and crewleaders could register complaints. The following year, a "monitor-advocate" position was created for an individual to work with migrant

and seasonal farm workers and their employers to address grievances by individuals and parties engaged in agricultural labor. Posters, brochures and other literature and directives, printed in Spanish as well as English to explain the complaint procedures and the rights of migrants and seasonal farm workers, are distributed throughout the State through local ESC offices.

In 1977, 67 violations were reported and 28 migrant and seasonal farm workers were assisted in filing worker complaints.

The Employment Security Commission wishes to provide quality services to growers and workers alike, but due to the multiplicity of rules, laws, and regulations governing the transportation and housing of farm workers and the diverse agencies charged with fragments of responsibilities, the interest of all parties is difficult to achieve. Labor camp inspection, for example, involves four agencies---the ESC, the State Labor Department, the U.S. Labor Department and local health departments. The agencies have different standards of inspection.

The ESC is currently developing plans to review procedures regarding housing inspection and the provision of improved services to migrants. Furthermore, the agency in October began intensifying its training of rural manpower personnel to clarify housing inspection procedures. The agency will improve coordination of its activities with all agencies involved in migrant and seasonal farm workers, employ an additional monitor-advocate, and establish procedures to document all activities in an effort to improve services to workers.

The ESC believes certain actions will be helpful in resolving problems inherent in movement and housing of large numbers of farm workers, including:

- 1) Close coordination of agencies, possibly the establishment of a committee of state officials to review and take action on policies and to recommend legislation involving migrants.

- 2) Vesting in a single agency the responsibility of pre and post occupancy inspection of migrant and seasonal farm worker labor camps.
- 3) Standardizing inspection regulations so that multi-agencies will have a common criteria.

UNITED STATES COMMISSION ON CIVIL RIGHTS

SOUTHERN REGIONAL OFFICE

Citizens Trust Company Bank Building
75 Piedmont Avenue, Room 362
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Telephone: (404) 526-4391

Response of the North Carolina Advisory
Committee to the Comments of the Chairman,
North Carolina Employment Security Commission

Comments 1 and 2 in Chairmap Archer's letter (with attachment) reflect a difference of opinion with the statements made by the representatives of the Center for Rural Studies regarding conditions in ESC approved camps. Regardless of the difference of opinion, however, the challenged statements remain in the final report. The informed opinion of the Center for Rural Studies representative comports with the opinion of other reliable sources and, the North Carolina Advisory Committee finds it an accurate reflection of conditions to be found in many migrant, including ESC approved, camps.

On page 2 of the appended response, Chairman Archer states that the Center for Rural Studies representative erred in stating that violations were found in "43 of 53 camps. . . ." On page 2 of the "Summary Report" (See attachment to Appendix A) ESC claims that out of 166 camps inspected by ESC and reinspected by OSHA, only 35 "failed OSHA standards." First of all, it must be noted that any OSHA violation found in any camp must be remedied in order for the camp to meet OSHA standards. The impression given by ESC, therefore, is that 131 of the 166 camps cleared by ESC and later inspected by OSHA were found in compliance with OSHA standards. This statistical analysis is not only in conflict with the information supplied by the Center for Rural Studies but also conflicts with data compiled and published by the North Carolina Department of Labor, OSHA Division, as well. According to the data in the OSHA Division publication, "Migrant Labor Statistical Summary" (1977), out of a total of 226 camps inspected by OSHA (including both ESC and non-ESC approved) only 68 were found in compliance with OSHA standards. Even assuming that all of the 68 violation-free camps were ESC inspected, the drastic difference between the figure supplied by ESC (131 camps inspected by ESC and approved by OSHA) and OSHA (maximum of 68 camps approved by OSHA) is inexplicable, absent a self-serving motive by ESC in completing the data.

It should also be noted, that on page 2 of the "Summary Report," ESC attempts to pass off the violations found by OSHA in ESC-approved camps as being mostly "non-serious." In the words of Steve Sykes, Administrative Assistant, OSHA Division, the term "non-serious" is a "misnomer" (Telephone interview, December 13, 1978). OSHA violations, in order to be termed "serious" must present a clear or actual threat of severe physical bodily harm. As an example of the infrequency of such violations, in 1977, out of the hundreds of violations found by OSHA, only one met the high standard of review in order to be deemed "serious" by OSHA standards. Violations including filthy, overcrowded, and dilapidated housing conditions are, incredibility, deemed "non-serious."

In his comment number 4, Chairman Archer correctly states that the "ESC has no way of controlling the number of workers that the crew leader brings to the camp with the exception of reporting overcrowding to the appropriate agency." He also claims that such reporting "was done in 1977 "and should be so noted in the report." The North Carolina Department of Labor, OSHA Division, is the "appropriate" state agency to receive such reports of overcrowding. According to Al Weaver, Director OSHA Division, (Telephone interview, December 13, 1978) as confirmed by Mr. Sykes, (Telephone interview, December 13, 1978) the OSHA Division had not received a single referral from ESC in either 1977 or 1978 concerning overcrowded conditions in migrant camps. While Mr. Sykes stated that there has been some informal conversations with certain ESC representatives regarding overcrowding, he was convinced that there neither is nor has there been any written or otherwise official reporting of overcrowded camps by ESC to the OSHA Division.

On pages 3-4 of the "Summary Report," four recommendations were offered by ESC to help in "resolving problems inherent in the movement and housing of large numbers of farm workers . . ." In principal, the Advisory Committee agrees with all four recommendations. In particular, the Advisory Committee agrees that a "single agency" have "the responsibility of pre and post occupancy inspection of migrant and seasonal farm workers camps." The Advisory Committee made such a recommendation in Chapter 4 of the final report.

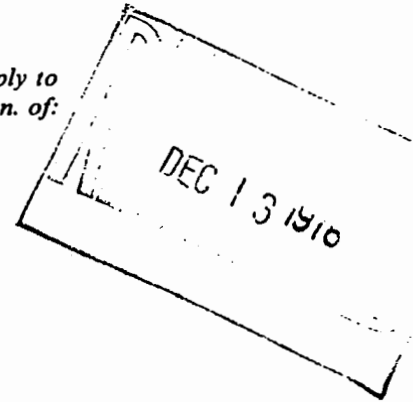
Appendix C

U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
SUITE 587 1375 PEACHTREE STREET, N.E.
ATLANTA, GEORGIA 30309



December 11, 1978

Reply to
Attn. of:



Mr. Bobby D. Doctor
Regional Director
United States Commission on Civil Rights
Citizens Trust Company Bank Building
75 Piedmont Avenue, Room 362
Atlanta, Georgia 30303

Dear Mr. Doctor:

The following is in response to your request of November 7, 1978, to the OSHA Regional Administrator for comments concerning the North Carolina Advisory Committee's draft report to the U. S. Commission on Civil Rights on the subject of migrant and seasonal farmworkers. We apologize for not meeting your requested December 4 deadline for comments, but the following remarks are for whatever purpose that time permits.

Pages 5-6. It is our belief, based upon OSHA monitoring experience in North Carolina, that the Rural Manpower Service in North Carolina has not been nearly as rigorous in the discharge of its enforcement duties as the statements made on these pages indicate.

Page 13.b. It is suggested that lines 2-4 be modified to leave no doubt that the discussion is comparing the North Carolina law governing "sanitation of agricultural labor camps" and the North Carolina OSH law and standards (which are identical to Federal OSHA migrant labor camp standards).

The entire report appears to be based primarily on statements in response to inquiries, rather than to observations or pure facts. Obviously many responses to inquiries in the report are self-serving.

It is our feeling that the mandated close Federal OSHA monitoring of the North Carolina OSH program promotes a greater level of program effectiveness than our occasional observations indicate of the State enforcement of the Wagner-Peyser Act. (See page 35 and page 35 insert, among other references.)

Mr. Doctor
December 11, 1978
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Our Federal OSHA monitoring activities of North Carolina OSH inspections of migrant labor camps (and observation of the results or effects of State Department of Human Resource enforcement of camp sanitation standards) reveal generally weak enforcement of these sanitation standards.

An over-riding theme throughout the report is the plight of all enforcement agencies having some jurisdiction over the migrant and seasonal farmworker environment in feeling compelled to allow camp residents to remain in housing until the crops are harvested (even though the housing is found to be substandard and the contractor may be in violation of FLCRA or the Wagner-Peyser Act by not having the necessary certificates or approvals, etc.). The agencies' unattractive alternative is to gain technical compliance with the applicable standard or law by evicting farmworkers from substandard housing but forcing them "into the street" with no housing at all.

We believe that a significant improvement in the overall working and housing conditions of migrant and seasonal farmworkers in all States could be attained if all regulatory activity could be vested in one Federal agency, and if such activity were sub-delegated to a state agency, then close Federal agency monitoring is essential.

If you have questions concerning these comments, please call us.

Sincerely,


GERALD A. MAYES
Acting Regional Administrator