

MINUTES
MIGRANT AND SEASONAL FARMWORKERS BOARD MEETING

September 11, 2008

The Migrant and Seasonal Farmworkers Board Meeting was held at the Virginia Employment Commission Administrative Office in Richmond, Virginia.

The following Board Members were present: Kenneth Annis, Chairman; Ruth Brown, Veronica Donahue, Richard Hall, Lou Hart, Hart Hudson, Sharon Saldarriaga, and Peter Von der Lippe. The following Board Members were absent: Mario Moreno, Vice-Chairman; Tupper Dorsey, Thomas Kellum, Kelly Robinson, Christian Schweiger, and Teresa Velle. Staff in attendance from the Virginia Employment Commission were: Dolores Esser, Nicholas Kessler, Shelby Robinson, Jim Cocke, Joyce Fogg, Jack Turner, Michelle Abraham, and Evelyn Lewis. The following guests were present: Micah Raub, Virginia Department of Agriculture, Office of Pesticides; Marlene Larios, Telamon Corporation; Tim Freilich, Virginia Justice Center for Farm and Immigrant Workers; and Gary Hagy, Virginia Department of Health.

Call to Order

Chairman Kenneth Annis called the meeting to order at 10:02 a.m. and asked for a moment of silence in memory of the victims of the September 11, 2001 terrorists attack.

Welcome and Introduction

Chairman Annis welcomed all in attendance and extended greetings to the guests, board members, and all those present.

Approval of Agenda

A motion was made by Richard Hall to approve the agenda. It was seconded by Sharon Saldarriaga, and approved by a unanimous vote.

Approval of Minutes

A motion was made by Richard Hall to approve the minutes of the June 18, 2008 meeting. It was seconded by Peter Von der Lippe, and the minutes were approved by a unanimous vote.

Pesticide Safety Program – Marlene Larios, Telamon

Sharon Saldarriaga of Telamon Corporation introduced Marlene Larios, who is the Pesticide Safety Trainer. Ms. Larios has been conducting this program for two years. The program has been very successful. During the first year, the goal was to train 1,200 farm workers, and it was exceeded. Over 2,000 farm workers were trained. The program is free, and it helps the

agriculture employers have the documentation they need when they must present proof that they have trained their workers.

The purpose of the presentation is to provide an idea of what Telamon is providing to growers for the Worker Protection Standards (WPS) and at the same time help farmers understand the exposures and dangers of working around pesticides and the prevention of getting poisoned.

The Worker Protection Standards are federal regulations designed to protect employees on farms, forests, nurseries, and greenhouses from occupational exposures to agricultural pesticides. If you own or operate a farm, there is a manual that will assist you entitled “The ‘How to Comply’ Manual.”

Telamon Corporation contracted with the Virginia Department of Agriculture in the summer of 2006. Services are provided to growers that qualify under the WPS, and at no cost.

Definitions that are needed for the program are:

- Employer: any person who hires contracts for the services of workers for the production of agricultural plants;
- Handler: any person who mixes, loads, applies, cleans application equipment, or disposes of pesticides, including flaggers; and
- Worker: any person involved with production of agricultural plants but not handling pesticides.

The key points of the Worker Protection Standards in which growers need to comply with are: Information should be at a Central Location such as safety posters;

- Provide safety training;
- Provide personal protective equipment;
- Provide decontamination supplies;
- Notification;
- Emergency Assistance; and
- Information exchange between commercial applicators and agricultural employers.

The person who is qualified to conduct pesticide safety training is someone who has at least an applicator license. The training is required once every five years. EPA approved materials must be used and the trainer must be able to answer the workers questions. Documentation of training is highly recommended. A training roster and a verification card can be used as proof of training attendance.

The best time for training to be conducted is as follows:

- Handlers must be trained before any handling task – 1st day of work;
- Workers must be trained before the 5th day of work.

The benefits for conducting the training are:

- Locations – flexible, will come directly to the farm;
- Timeframe – key is to schedule ahead of time;
- Sessions are interactive – small group discussions, visuals, and props;

- Seeing is believing – use different opportunities to make class interactive;
- EPA verification card; and
- Training log for employer files.

Some of the partners that have collaborated with Telamon’s Safety Training Program are:

- Virginia Cooperative Extension
- Virginia Employment Commission
- Virginia Tech Office of Pesticide Programs
- Association of Farmworkers Opportunity Programs-Hope Project

For outcomes for the first year of the program, the following were trained:

- 59% of vegetable growers;
- 39% in the greenhouse and nursery industry;
- 2% in the vineyards and fruits industry;
- 2,830 total farmworkers trained.

Sharon Saldarriaga extended accolades to the Virginia Employment Commission for the cooperation it provided, and to the Migrant and Seasonal Farm Workers Board for the letter of support.

Ruth Brown stated that one topic not mentioned in the program outline was “right to know.” There are a lot of prenatal women, and they should be aware of the pesticides dangers to their health. The men should also be aware of the dangers. If that element could be added to the program, it would be extremely helpful. Micah Raub, Virginia Department of Agriculture, Office of Pesticides will get the needed information and send it to Commissioner Esser, who will distribute it to the MSFW Board.

Legal Issues - Tim Freilich, Virginia Justice Center for Farm and Immigrant Workers

Mr. Freilich provided a brief legislative update on what has been going on at the federal, state, and local levels.

On the federal level, not much has been going on with legislation. There is a bill that is working its way through the House that could have an impact that seeks to recapture any visas that have been available in the past, but because of bureaucratic delays were never issued. It is HR5882.

Most of the action at this time is in the Executive branch. With the failure of comprehensive immigration reform, the Executive branch is trying to find things they can do without having to have Congress go along with it. The two main items that are of interest to the MSFW Board are new regulations to be issued for the H-2A Program. There is expectation that these regulations will come out shortly. The immigrant and worker advocates are very concerned about what we anticipate will be reductions of protection of the wages of H-2A visa workers as well as housing requirements. One of the goals of the regulations will be to make it much easier to certify that you have a need for workers; streamlining the certification process.

Another action on the federal level has been increased worksite enforcement throughout the U. S. in the last few months. This should be of particular concern to Virginia's agricultural industry because there is a large dependence on both documented and undocumented workers.

For the state level, laws that were discussed at the previous MSFW Board meeting went into effect on July 1. Two of the most interesting laws for the immigrant workers population in Virginia were: 1) any individual taken into custody by a sheriff, and once they are at the jail, there will be an inquiry on immigration status before a pre-conviction; for those areas that have an agreement with ICE, it is resulting in more people being detained for deportation; 2) an anti-loitering statute in areas deemed a public safety hazard for people to gather in; if people continue to gather at such a location, they will be guilty of loitering.

For the local level, the two new laws that were passed are being enforced. The town attorney in one of the local areas declared that the anti-loitering statute is unconstitutional the way it is written. There will probably be efforts to redraft this law for the upcoming General Assembly session.

To conclude, Mr. Freilich encouraged all members of the Board to continue to inform the Governor and the General Assembly of the desperate need for comprehensive reform on the federal level that recognizes our dependence on the workforce of both documented and undocumented workers, and also the need for policy on the state and local levels that recognizes the dependency of the agricultural industry on immigrant workers. The policies that attack Virginia's immigrants are direct attacks on the workforce as well.

Mr. Freilich's opinion of E-verify is that it is not accurate. The error rate is extremely huge.

Employment Eligibility Verification – Michelle Abraham, Virginia Employment Commission

The VEC's grant for providing funding for the foreign labor certification process was submitted to the federal office. Upon receipt, they reviewed it and have required the VEC, in order to receive the funding to run the foreign labor certification process in Virginia, to perform employment verification on U. S. workers that are referred to H-2A contracts. Based upon their refusal to give us the funding, the VEC has opted to comply with that request, which was stated in TEGL 1107. The VEC has elected to use the I-9 process rather than the E-verify. The VEC will conduct that process the same way that it has been conducted on the Eastern Shore for employers who request it. The I-9 will be done for the employer, and then a certificate will be sent to the employer once the employer informs the VEC that the worker will be hired. This is in accordance with 274-A Code of Federal Regulations, Section 8 which implements the Immigration Nationality Act. Any U. S. worker that is referred to an H-2A contract, will send after performing the I-9, a certificate to the employer that will satisfy his requirements to complete the I-9.

The VEC is also providing training, for the state, on the process of completing the certificate. Because other offices that do not have farm staff will be making referrals to H-2A job orders, the VEC will be doing training for the remainder of the state. A training course is being put together with the assistance of the agency's Human Resources Office that will be utilized throughout the

state. The farm staffs have already been trained on the process of the I-9, and the people on the Eastern Shore have been doing this process for quite some time.

Disaster Planning by the Red Cross for Migrant and Seasonal Farm Workers – Peter Von der Lippe

Peter Von der Lippe reported that a new member of the Red Cross Advisory Committee, Gladys Bracket has been working with the Latino population in Fredericksburg and Northern Neck for the past eight years. Fifty percent of her time is spent working with the community, and fifty percent is spent working with agencies. When she arrived at the Red Cross Advisory Committee meeting that was held on September 10, she had a huge supply of items for disaster kits, such as flashlights, hand cranked radios, toothbrushes, cordian file folders, etc. Her point was that in addition to surveying new immigrants and sharing information about disaster preparedness, the Advisory Committee has to make it concrete. Therefore, she proposed that the immigrants be given small disaster preparedness kits. The budget cost would be about \$15 per kit. The Red Cross carved out enough money from their overall budget to provide Ms. Bracket with about 50 kits. She will put the kits together, and has two sites selected for distribution, Fredericksburg and Northern Neck. The Red Cross will try to come up with additional funds to target one of the growers with these kits. Ms. Bracket will go directly to the grower to provide disaster preparedness training and distribute the kits. This will give the Red Cross the opportunity to see what would be needed to adjust the outreach.

This project is focused on reaching out to students. After that meeting, the Red Cross Advisory Committee met with the graduates “Business and Development Club at VCU. There are 500-600 graduate students in this Club, and they are interested in partnering with the Red Cross on this pilot project. They want to do some fundraising.

On the afternoon of September 11, the Red Cross Advisory Committee will be meeting with students at the University of Virginia.

The Red Cross Advisory will be doing the student orientation in which they will be going door-to-door for the outreach. Two dates have been set for this, September 15 and 20. Last month they went to Fredericksburg, met with Virginia State University and Petersburg Area Chapter, and hope to do the same in the Hampton Roads area.

Virginia Latino Pilot Project Update – Peter Von der Lippe

It is hoped that the Virginia Latino Pilot Project will create an outreach model for not only the Red Cross but also for other agencies. A copy of the agenda for the Virginia Latino Pilot Project Forum was distributed to the MSFW Board. The Red Cross is trying to reach out to about 300 mainstream Virginians, participating and interested students, and partner organizations that might be interested in learning about the Latino community. It will be held December 5th at the Ramsey United Memorial Methodist Church located on Hull Street. The Virginia Latino Higher Education Network (VALHEN) members will be a co-host of this forum. This network consists of 40-50 different universities and community colleges; therefore, this pilot could become a statewide outreach. The forum will be videotaped and located on the Red Cross website. The

target is to reach as many residents as possible. Mr. Van der Lippe encouraged the members of the MSFW Board to attend this worthwhile forum.

Biennial Report – Jack Turner, Virginia Employment Commission

Every two years the VEC must report to the Secretary of the Commonwealth on the activities, issues, various discussions that the Migrant and Seasonal Farm Workers Board has had, and also those from the Interagency Migrant Worker Policy Committee. The biennium ended on June 30, and the report is basically a recitation of what has occurred over the past two years. A draft copy was distributed to the MSFW Board, and it will also be available for review electronically on the VEC website. It is due September 30, 2008.

A Guide to Naturalization – Veronica Donahue

Effective October 1, 2008, the Naturalization test changes. Ms. Donahue was one of the people that returned comments to the Department of Homeland Security when they requested input on this. The document will be emailed to the MSFW Board members. There were several changes to the document that included:

- The U. S. Citizenship and Immigration Services (USCIS) has the option to give out personal and mailing addresses, except for the citizenship application; you must have an e-mail address to make any changes.
- Clarifies that USCIS has no authority to change a person's name; however, when you apply for citizenship, one of the questions is "what would you like your name to be once you become a citizen." Why are they collecting data that they do not need? They still have not given out guidelines of how they want people's names.

There have been many, many meetings about the content and format of the tests. Located in the back of the document are sample questions about this. It will take about a year for processing the tests and becoming a citizen. There is a backlog, which is different for each agency. You can go online to see what the backlog is. The most important issue at this time with USCIS is that you must have an e-mail address to make any changes. If changes are not made by e-mail, which is the only way to do it, your case is closed, you are denied, and they move on.

Ms. Fogg has an electronic .pdf copy of all the things USCIS has provided such as flash cards, new books and materials, and kits for people who are offering citizenship classes.

There justification for the changes is that attorneys would cancel appointments for the clients and the clients wouldn't even know it, and the families are still being charged for the service that should have taken only a few months, but the attorneys are charging by the year. Therefore USCIS has said that you get one chance, you want to make a change but the attorney cannot make the change, you need to bring another attorney because you will be given only one chance and then your case is closed and you are denied. You have to start all over again. They are trying to protect people from being ripped off by attorneys for years that should only take a few months.

Children in the Fields (video) – Sharon Saldarriaga, Telamon

About a year ago, Ms. Saldarriago attended a conference with the Association of Farmers with Opportunity Programs. They have been part of an effort over the past several years of the Children in the Fields Campaign, which it get children, sometimes as young as five years old, from out of the fields and being exposed to pesticides. They have been working to get the Children's Act for Responsible Employment (CARE) Act passed. The video documentary was filmed in North Dakota, Minnesota, and Texas, in cooperation with another program that is similar to a Telamon program that offers assistance from another state. Fortunately, Virginia does not have any Children of the Field. The International Labor Organization estimates that 165,000,000 children between the ages of 5 and 14 participate in child labor. This is throughout the world. In the United States, there are approximately 500,000 children working in the fields between the ages of 5 and 14.

Ms. Brown asked if someone from the Department of Education could provide a presentation to the MSFW Board on the trends and funding over the last five years, along with a detailed budget on migrant education for the children. Commissioner Esser pointed out that enclosed in the board members meeting folders there was information from the Department of Education on last year's funding for the migrant students population in Virginia. The funding was decreased from 2007 to 2008. In conclusion, Ms. Megan Moore, Migrant Education Specialist with the Department of Education would be invited to come do a presentation to the MSFW Board at one of its meetings. Also, a request was made to obtain data on the migrant student funding. Commissioner Esser will also make this request to Ms. Moore to provide this information as part of her presentation at the next Interagency Migrant Worker Policy Committee meeting that is scheduled for January 14, 2009. Ms. Donahue stated that she will forward the exact wording of the request to Commissioner Esser for Ms. Moore.

Old Business

Chairman Annis stated that Medicaid Reciprocity was discussed at the Interagency Migrant Worker Policy Committee meeting that he attended on September 10. His interpretation was that the presenter, Jeffrey Nelson with the Virginia Department of Medical Assistance Services, did not feel that Medicaid Reciprocity is justified throughout the states. The FAMIS Program has more potential for reciprocity. Mr. Nelson was asked to gather additional information on the reciprocity issue, for January's committee meeting.

Chairman Annis was enthusiastic that the Interagency Migrant Worker Policy Committee had been re-established.

New Business

Ms. Donahue inquired if any Board member would be attending the Eastern Forum to be held in Rhode Island. She knows someone from Tappahannock who received a scholarship to attend, and wanted to make arrangements for travel with a Board member, if possible, that might be attending. Ms. Brown will be attending, but is traveling via air.

Items from Commissioner Dolores Esser

Commissioner Esser gave a brief report on the additional items derived from the Interagency Migrant Worker Policy Committee. They were as follows:

- Provided the Policy Committee with a copy of the change in the law that moved the Migrant and Seasonal Farm Workers Board from the Virginia Department of Labor and Industry to the Virginia Employment Commission; she emphasized on the establishment of the Policy Committee that was stated in that law. She provided the Policy Committee with this information because there were several new members.
- After the presentation from Megan Moore with the Department of Education, Commissioner Esser requested that she also provide this statistical information to the MSFW Board. Ms. Moore further stated that there was a new definition to qualify as a migrant for Education. She forwarded Ms. Fogg the Federal Register that contained this information. Ms. Fogg will e-mail it to the Board members.
- The attendee representing the Department of Agriculture and Consumer Services reported that their new director has been traveling around the state conducting town hall meetings. A question that he gets from the growers is that they are having trouble finding legal workers. The H-2A Program was explained to the Policy Committee. Commissioner Esser suggested that the Board invite the new director of the Department of Agriculture to a meeting to do a presentation.
- The Workers Compensation Commission has a new representative, Diane Dusseau, on the Policy Committee. She discussed new laws regarding wages. Her main point was that there are now interpreters available for workers compensation. There is a toll-free number available to obtain an interpreter. The VEC will also utilize this number, which can be found on the Workers Compensation website. It is 1-877-664-2566.
- The Department of Social Services, Jane Brown, gave an overview of how the Social Services structure works and how the policy is administered. She also talked about the Earned Income Tax Credit which she thought that anyone who filed income taxes in the state is qualified for and they are not taking advantage of it. Her objective is a way to get that information out. There is a lot of money in Virginia that is left on the table because they are not using the Earned Income Tax Credit.
- With the Department of Motor Vehicles (DMV), there was an excellent presentation with some of the questions that had been asked in the past. From DMV a long time ago, we had someone speak at a MSFW Board meeting, and it was thought to be a good idea to have this person come speak to the Policy Committee.
- The Virginia Employment Commission gave an update on our programs because there were people in attendance that did not fully understand VEC programs. After going back and looking at past legislation and policies, it occurred to Commissioner Esser that what was missing was the State Police. There are so many proposed laws that require the State Police

to take some kind of action; therefore, the Department of State Police will be asked to be a part of the Interagency Migrant Worker Policy Committee.

- The Policy Committee was informed that the next meeting of MSFW Board was scheduled for January 21; therefore, the Policy Committee elected to meet on January 14. The dates selected were good because the General Assembly will have convened and the vast majority of the legislation would have been proposed. Commissioner Esser charged the Policy Committee for the next meeting that any proposed legislation that their agency has that they let us know so it could be brought before the MSFW Board.

Items from the Board Members

Sharon Saldarriaga reported that the Latino Summit 2008 would be held on September 19 at John Tyler Community College in Chesterfield.

Lou Hart had an interest in farmers markets. The farmers market in Charlottesville has really grown. He wondered if there was information from the Department of Agriculture to provide to people if they are interested in starting a farmers market. Mr. Von der Lippe suggested that the Board could ask Penny Parks who organized the Oregon Hills Farmers Market to speak at the next Board meeting and provide information on the process of starting a farmers market. Mr. Hall stated that the Department of Agriculture has a marketing division that sponsors farmers markets. There is also the *Virginia's Finest* Programs. If you are growing crops in Virginia and you want to market them as *Virginia's Finest*, there are rules and quality establishments that have to be followed, which allows you to be a *Virginia's Finest* producer. Commissioner Esser stated that these would be pursued.

Chairman Annis extended accolades to Sharon Saldarriago and the Telamon Corporation for the good work they are doing on the Eastern Shore.

Public Comments

Micah Raub with the Virginia Department of Agriculture stated that they have a good marketing program, as well as a Virginia growing guide. All of this information is located on their website.

Joyce Fogg has sent an e-mail to all of the farm placement specialist to find out what their planning district offices are planning as it relates to disasters, how they are going to insure Spanish language populations, and to start providing the MSFW Board with the minutes from the local council meetings.

Adjournment

Chairman Annis motioned that the Migrant and Seasonal Farm Workers Board meeting adjourn. The motion was moved by Richard Hall, and seconded by Sharon Saldarriaga. By unanimous vote, the meeting adjourned at 12:20 p.m.