

**MINUTES
MIGRANT AND SEASONAL FARMWORKERS BOARD MEETING**

July 22, 2009

The Migrant and Seasonal Farmworkers Board Meeting was held at the Shore Bank in Onley, Virginia.

The following Board Members were present: Kenneth Annis, Chairman; Ruth Brown, Veronica Donahue, Richard Hall, Lou Hart, Hart Hudson, and Christian Schweiger.

The following Board Members were absent: Mario Moreno, Vice-Chairman; Tupper Dorsey, Thomas Kellum, Kelly Robinson, Sharon Saldarriaga, Teresa Velle, and Peter Von der Lippe.

Staff in attendance from the Virginia Employment Commission were: Dolores Esser, Nicholas Kessler, Joyce Fogg, Michelle Abraham, Jack Bonniwell, Luis Echevarria, Ramon Hernandez, and Evelyn Lewis.

The following guests were present: Carman Colona, United Methodist Hispanic Ministries; Erika Peterson, E.S. Rural Health; Dianne Arenas, Telamon Corporation, Soraya Buchner, Telamon Corporation; Beau McHan, Pacific Tomato Growers; Gina Hutchinson, Virginia Department of Health, Nancy Stern, Eastern Shore Rural Health; Mike Good, Timeless Wines; Rachel Wheat and Kate Tubbs, Rural Family Development; Jim Mooney and Joe Corbin, U. S. Department of Labor; and Jim Albright, Catholic Diocese of Richmond.

Call to Order

Chairman Kenneth Annis called the meeting to order at 9:45 a.m.

Welcome and Introduction

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

Approval of Agenda

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

Approval of Minutes

With a correction on pages 6 of the March 18, 2009 draft minutes, a motion was made by Richard Hall to approve the amended minutes. It was seconded by Christian Schweiger, and approved by a unanimous vote.

Wage and Hour Issues

Jim Mooney of the U. S. Department of Labor provided an overview of the status of the Wage and Hour Division, and where it plans to be in the future under the new Administration.

Wage and Hour enforces 60 different labor laws, but there are four that affect farmers. They are:

- Fair Labor Standards Act
- Migrant and Seasonal Agricultural Protection Act
- OSHA Field Sanitation Standards
- H-2A Regulations

The state is divided into three sections for the purpose of Wage and Hour. There are three different offices that cover the three parts of Virginia. The Baltimore District Office covers the Eastern Shore and the Winchester Valley area of Virginia. The Richmond District Office covers the majority of Virginia. The Pittsburg District Office covers 13 counties in Southwest Virginia.

The stimulus package that is officially titled the American Recovery and Reinvestment Act (ARRA) includes all of the federal grants in contracts. Wage and Hour enforces all of the contractual provisions in any government contract. This will take up the majority of the agency's time in the next two years, and will be a major priority. However, the new Secretary has said that there are two programs that she still wants to maintain a presence in, and they are Child Labor and the Agricultural Program.

At this time, there are eight investigators on the Eastern Shore checking labor camps to see that contractors are in compliance with all the regulations. They are not finding the kinds of problems they found on the Eastern Shore three to four years ago. The housing violations they have found are significantly less. They have had very good contacts with the growers during the off-season asking questions, and the partnerships that have been created have been an excellent forum to meet and network.

There are a couple of issues that have come into play. The issues surround the fact that growers have begun to charge a fee for living in the labor camps. Traditionally, there has never been a charge, and a couple of years ago, two growers introduced the concept of charging \$10 per week, which was a phenomenal fee for the workers. This year that trend has increased to about \$30 per worker per week. There is concern from Wage and Hour because this information has to be disclosed in writing to the workers prior to their leaving home in route to their work destination. The second problem is that even if they are notified, the amount cannot be excessive. It cannot be beyond the actual cost of providing housing to the workers. That is, the growers cannot make a profit on this, and charging \$30 may be excessive. Therefore, for this season, this may be an issue that will have to be addressed.

Another issue that has cropped up this year that is not exactly a Wage and House issue is that this year a lot of workers have brought their families with them. The growers are trying to maintain a camp in which the camps are occupied by male workers rather than family groups. The growers communicated that change to the farm labor contractors; however, the problem is that the farm labor contractors did not communicate that factor to the workers when recruiting them, and when the families of the workers arrived, they were informed that they could not live in the camps.

The families had to live in alternate housing, which meant that at the last minute they had to pay rent and live in an area that may have been lower level housing.

Disclosure is a hot topic. Particularly, the growers are okay with the issue of notifying their workers in writing of what they are going to get paid, the length of the season, and whether there will be a charge for housing. However, the farm labor contractors in Florida may not disclose this information. When the workers are interviewed, they are unaware of this information.

The issue of joint responsibility is addressed particularly with the Vegetable Growers Association. If a grower and farm labor contractor make arrangements together for housing, the two of them become jointly responsible. The grower will then be held responsible for a certain amount of liability for alternate housing, if alternate housing is arranged.

The level of fines (civil money penalties) for violations has risen. Because the federal law has been in place since 1983, it is 26 years old and the growers are willing to pay a fine of \$1,000 which they feel is more reasonable, rather than pay a higher amount such as \$10,000 to correct a problem at the labor camp. The attorneys in the federal office have come up with a new fine schedule. The penalties are now much more significant, and the fine structure is steeper. It is to Wage and Hour's advantage to work together with the growers to avoid violations during the season.

Wage and Hour enforces several immigration laws. Wage and Hour did not previously have enforcement over H-2B. They will now have enforcement that will become effective on October 1, 2009. H-2B is when you bring in low-wage workers to do non-agricultural jobs.

H-2A Wage and Hour has nothing to do with the approval process. Virginia is the largest user of the H-2A system in the United States. The old regulations of 1986 were replaced with the new regulations effective January 17, 2009. On March 17, 2009, Wage and Hour was notified that the new regulations would be suspended and return to the old regulations. On June 29, 2009, the new regulations were suppose to go away; however, on June 28, the suspension of the new regulations was suspended, and the new regulations did not go away and are still in effect.

There are three big changes in the H-2A regulations that the growers need to be aware of. From the growers' perspective, the new regulations are easier. The three changes are:

- There will no longer be an Adverse Effect Wage Rate (AEWR); instead, there will be a prevailing rate for the workers they bring in.
- If you went out to a farm and they had 10 H-2A workers working in tobacco and 10 U. S. workers that worked for them year round, and the U. S. workers were doing anything that was described on that H-2A contract, they had to be paid the higher rate as that of the H-2A workers in the contract because the H-2A workers could not be paid a higher rate than the U. S. workers. In the new regulations, only the U. S. workers hired after the onset of the contract period are entitled to the higher rate. It is called corresponding U. S. workers.
- The third big change is the 50 percent rule. In the past, you had to write in the contract of any U. S. workers that applied for a job on your farm, you had to hire up to 50 percent of U. S.

workers until your contract expires. Now you only have to hire a U. S. worker for the first 30 days the contract begins.

Wage and Hour will generate a one-page fact sheet to distribute to growers explaining the rules. Wage and Hour does not know if this extension will remain in effect indefinitely. In 2010, there will probably be another set of regulations joining the old and new regulations that are now in effect. It is not certain that this will happen.

The new regulations also had a new category called the H-2A Labor Contractor (H-2ALC). It is a company or agent that does recruiting on the grower's behalf. They will charge a fee and do all the recruiting and paperwork. Some of them are very legitimate organizations; however, some are much less reputable.

Wage and Hour generally does enforcement on the Eastern Shore in July and August. The cooperation level on the Eastern Shore is very high. The Eastern Shore Health Department is doing a very good job. The problem areas are the camps that are set up by the contractors without the growers' knowledge.

At this time Wage and Hour has two partnerships in Virginia. One is with the Vegetable and Potato Growers Association. Wage and Hour is invited to the annual meeting every year to speak to the growers and provide handouts and posters that are needed by the growers. The other association that Wage and Hour signed with is the Virginia Agricultural Society. They attended their annual meeting in January. Wage and Hour met with the growers and discussed H-2A.

In conclusion of his presentation, Mr. Mooney stated that he had an excellent fact sheet that he will send to Mr. Hall for dissemination to the Migrant and Seasonal Farmworkers Board and the growers associations.

Migrant Ministry on the Eastern Shore

Mr. Jim Albright, Coordinator for the Diocese of Richmond Catholic Migrant Ministry, Eastern Shore Office, stated that they consider the migrant workers in their whole entirety and not just their work entity. It involves their faith and family relationships.

The migrants are provided with pastoral services, church liturgies, assistance with funerals, and assistance with problems that may involve their homes in Mexico. The Migrant Ministry is there to share the holy word with the migrants and the fact that they recognize their dignity. The law and a good farmer try to do that as well, and treat them with compassion. As for pastoral concerns, the Ministry moves into the area of Social Services and social advocacy.

The Migrant Ministry has people who will go to Richmond and Washington to try to advocate for the affect of working conditions for migrants' rights or other legislation that might be pertinent to migrants.

The Migrant Ministry does a lot of social work and charity work. They provide items that the migrants could not bring with them because of their transportation methods. The Ministry tries to augment some of their living expenses. The bottom line is the Migrant Ministry views the migrants as brothers and sisters/family, and want them to have certain treatments with respect.

There are some social issues that may arise in which the Ministry tries to assist with such as mental, addiction, and domestic violence issues. Whatever issues come up, the Migrant Ministry tries to help the churches as well as the social agencies.

Eastern Shore Services

Ms. Soraya Buckner of Telamon Corporation presented a PowerPoint presentation on the Telamon Corporation. The presentation consisted of the following information.

- Telamon Corporation, a non-profit organization, began providing a diverse array of services to farmworkers and other disadvantaged populations, with a special emphasis on the rural poor since 1965.
- In Virginia, Telamon began providing services on the Eastern Shore in 1975.
- Today, in Virginia, Telamon operates over 25 programs with an emphasis on serving the rurally disadvantaged.
- The mission is to promote the development of human potential by providing resources and creating opportunities in the communities it serves.
- Telamon offers a wide variety of programs for migrant and seasonal farmworkers and their dependents and other low-income populations.
- Telamon offers the Environmental Protection Agency's mandated Agricultural Worker Protection Standards training to farmworkers in Spanish and English using an engaging and interactive method.
- On the Eastern Shore, Telamon has established a Food Bank to assist farmworkers with their nutritional needs. This is possible through funding from the Emergency Food and Shelter Program and the United Way.
- The Barth Program is a program designed to provide farmworker youth on the Eastern Shore with educational and cultural enrichment activities. The program provides:
 - books
 - tutors
 - field trips
 - art and other activities
- The National Farmworker Jobs Program is a program that provides employment, training, and supportive services to migrant and seasonal farmworkers and their dependents. These services include:
 - Orientation to the One-Stop System
 - Job search and placement assistance
 - Labor market information posted in Telamon offices
 - Referral and link to job opportunities in the community
 - Access to computers
 - Classroom Training

- Vocational/Technical/College
 - GED/ABE
 - English as a Second Language
 - Job Readiness Training
 - Financial Literacy
 - Basic Computer Literacy
 - On the Job Training
 - Work Experience
 - Related Assistance
 - Pesticide Safety
 - Job Placement
 - Follow-up (12 months)
 - Emergency services
- The National Farmworker Jobs Program Eligibility requirements are:
 - Have legal permission to work in the United States
 - Must have not violated Military Selective Service Act by knowingly and willfully failing to register for the Selective Service Registration
 - Have worked in the field or a warehouse where they handled an agricultural product during the last 24 months
 - Earned at least \$800 or have worked at least 25 days in farmwork during 12 consecutive months within a 24-month period, and
 - Had either 50% of their time or 50% of their earned income in qualifying farmwork during 12 consecutive months within a 24-month period
 - Total family income must not exceed the WIA 167 farmworker income guidelines by the spouse of the eligible farmworker or be the dependant of the eligible farmworker
 - The National Farmworker Jobs Program office locations are:
 - Danville
 - Exmore
 - Warsaw

Eastern Shore MSFW Council Update

Ms. Erica Peterson, Migrant Program Manager of Eastern Shore Rural Health reported that Rural Health is a community health center that has five health centers located on the Eastern Shore. They see the migrant population for their health care needs while on the Eastern Shore. They average 2,600 visits from migrant farmworkers in the health centers every summer. They have bilingual staff in all the centers and they offer services such as pharmacy assistance, health fairs, health education, and dental services.

There has been an update to the Eastern Shore Migrant Farmworkers Council. It is the Community Coalition. It meets every two months and discusses issues with the migrant and seasonal farmworkers on the Eastern Shore. The agencies and faith-based organizations that are represented include Social Services, Eastern Shore Rural Health, Rural Family Development, Health Department, Literacy Council, Community Services Board, the Migrant Ministry, and other faith-based organizations that are working with the migrant farmworkers. Some of the

issues discussed include housing issues and changes/updates with the camps, health fairs, different health events that may be occurring, updates on the migrant headstart centers, Medicaid and food stamp changes, interpretation services that may be available, and nutrition and immigration issues updates. Guest speakers are invited that may include the FBI that discuss human trafficking issues, and DMV to discuss the changes in the driver's license.

One item the Coalition is working on that may have impact within the community is communication. Ms. Peterson distributed copies of the Migrant Services Directory that was printed in Spanish. It lists all the services on the Eastern Shore that the migrants may need to use. This directory was recognized in the Innovative Outreach Practices National Newsletter.

The Coalition has also been working on disaster emergency preparedness by developing stickers with the name of the local radio station that will announce information on disaster emergencies. The stickers can be placed on the migrant farmworker's radio. They have also developed disaster kits for evacuations, if needed.

Farmworker Activities

Mr. Jack Bonniwell, Manager of the Virginia Employment Commission Eastern Shore Office, stated that it was a privilege to meet members of the MSFW Board. He introduced two VEC Eastern Shore Farm Placement Specialists, Ramon Hernandez and Luis Echevarria. They assist the Eastern Shore growers and migrants that come into the area. They work hard to meet the needs of the growers and farmworkers.

The Eastern Shore Office has been designated by the U. S. Department of Labor Employment and Training Administration as a significant bilingual migrant and seasonal field office, and is the only office in Virginia with this classification. From 1999 to 2004, estimates indicated a decline in the migrant and seasonal farmworkers population by about 15 percent, from a high of about 5,250 workers in 1999, to a low of about 4,450 in 2004. This is a result of two primary factors: Certain farming operations have gone out of business, and others have changed to non-handpicked products. Since 2004, the population remains at or around 4,450. During the previous program year that ended June 30, 2009, the Eastern Shore Office had processed about 3,300 job applications and referrals for migrant and seasonal farmworkers. The second most important thing that the Eastern Shore Office does for the migrant and seasonal farmworkers population, other than finding them a job, is providing assistance for specific need such as emergency food assistance, temporary housing, medical treatment, and transportation assistance. There are very close working relationships with many of the local agencies to provide these services. Some of these agencies are the Eastern Shore Food Bank, Department of Social Services, Social Security Administration, DMV, Telamon, and Virginia Council of Churches.

This year, the tomato season started around July 1 and has been accelerating since that time. Large crews began arriving at the end of June and continued to arrive daily since that time. On Monday, July 13, the Eastern Shore Office had processed 350 farmworkers by 12 noon, with an additional 200 farmworkers standing in line to be processed.

In conclusion of Mr. Bonniwell's presentation, Chairman Annis extended accolades to the VEC Eastern Shore Office for all their work with migrant and seasonal farmworkers.

H-2A Program Updates

Michelle Abraham, VEC Monitor Advocate/Rural Services Manager, distributed copies of a Motion for a Hearing, the Complaint, and the Opinion that Granted the Injunction regarding the court case on the North Carolina Growers' Association, Inc. v. Hilda L. Solis in her official capacity as Secretary of the U. S. Department of Labor. The case pertained to 18 growers that came together and filed a complaint in relation to the suspension of the H-2A regulations that went into effect on January 17, 2009. At this time, we are currently operating under the new regulations and processing H-2A orders under those regulations. They also issued a directive by the U. S. Department of Labor that will extend the transitional regulations. The new regulations had two phases, transitional and full implementation, and a directive was issued stating that the transitional regulations will continue to the end of 2009. Therefore, any H-2A applications that are submitted will continue to be adjudicated under the transitional regulations to the end of this year.

Eastern Shore Agriculture – History

Rick Hall, MSFW Board Member, and employer of Loblolly Farms provided a presentation on the history of the Eastern Shore Agriculture. The presentation consisted of the following:

- The first agricultural product of the Eastern Shore was salt.
- In 1620, the Eastern Shore was settled and the crown in the Virginia Company gave head rights of 50 acres for each able bodied man that fought for Virginia. People moved from the Western Shore to the Eastern Shore, and then returned to England, or sent to England a request for their friends to come. Tobacco was the primary agricultural product at that time in the early 1620s and 30s.
- By 1660, the tobacco trade was almost over because of the shallow creeks and inlets that made it difficult to load ships that returned to England.
- From 1660-1710, cattle dominated the agricultural market, and salt, beef, and hides were the primary products. Indentured servants were the source of labor.
- By 1725, the Eastern Shore had become a corn and grain producing area. They were the primary crops. The Eastern Shore grain was shipped by way of the coastal trade from the West Indies to Nova Scotia. There were a lot of small farms. There were slaves on the Eastern Shore until the Civil War. There were also hired hands.
- From 1860-1880, a lot of farms that originally had slaves, the slaves became sharecroppers. There was one family to every 10 to 30 acres. Mules and horses provided the power to do the farming. After the Civil War, there was western settlement and expansion of the railroad lessened dependence on east coast grain including the Eastern Shore.
- By the 1880s, Eastern Shore grain was being undersold in Baltimore by Illinois grain.
- The 1890s to 1927 was referred to as the golden years for the Eastern Shore agriculture. The nation was becoming more prosperous, and there was a transportation revolution going on.

By 1890 steamboat service was shipping produce, and grain was offered on 23 bayside creeks, and 8 seaside creeks. The sharecroppers were able to farm larger farms.

- From 1850 to 1900, the Irish potato production increased from 60,000 bushels to 1,250,000 bushels. Irish potatoes became king.
- In 1900, the labor changed with the steamship service. Most of the laborers came from the cities across the bay on the steamships during the harvest times and some stayed on the Eastern Shore and never returned to the cities.
- In 1884, the railroads made transportation easier and more reliable.
- In 1900 the first grower co-ops in the country began, and the Eastern Shore Produce Exchange was formed. It had two primary objectives: to seek out the markets, and quality control. They had inspectors at every shipping point to make sure quality control was taking place, and ship the primary produce under the red star brand which was highly sought out.
- By 1902, with the investment capital of \$16,000, the Eastern Shore Produce Exchange had a \$1,000,000 in sales. By 1907, they were up to \$2,000,000. By 1915, the Exchange sold over \$10,000,000 worth of produce.
- In 1915, Accomack County had the highest per capita income in the United States. In 1922, Accomack County had the highest value per acre in Virginia and also the highest property taxes. In the late 1920s, 70 percent of homes in Northampton County had indoor plumbing.
- In 1927, a record crop in most potato producing states sent incomes plummeting. In the following year, 1928, due to weather conditions, 11 states harvested potatoes at the same time, and the market broke. By 1929, many farms were out of business. Potatoes and sweet potatoes remained the dominant crops during the depression and war years of the 1930s to 1970s era. During this same time, the number of vegetable processors, especially tomato canneries, was upgraded on the Eastern Shore. The largest of these was G L Webster Company located in Cheriton. Tractors replaced horses and mules. Crews and crew leaders came from Florida and Texas for work in the summer and fall.
- In the 1950s and 1960s nursery operations began. They began their steady climb to prominence, and the poultry industry was beginning to expand with immigration. Even through 1967, 30,000 acres of Irish potatoes and 16,000 acres of sweet potatoes were planted. A shift had begun to occur. Two chicken plants now employ a lot of the local farmworkers that were working on the farms in the 1970s.
- 1970 brought a lot of change. Soybeans and wheat returned as the major crops. Corn has now become another major crop due to droughts and better genetics in the corn. Labor issues prompted many growers to cut down or get out of the vegetable business, and also the lack of consistent and profitable markets. There was only one fresh tomato operation on the Eastern Shore in 1977.
- Plasticulture replaced ground tomatoes. Dripping irrigation was invented or perfected making growing on plastic more efficient. The marketplace demanded a cleaner tomato that could

only be grown on plastic. The trend away from vegetables has been maintained. The majority of land in both counties is in corn, wheat, soybeans, and other seeded crops. Tomatoes have surpassed potatoes in acreage with over 5,000 acres. Potatoes are still important, with 1,500 acres.

- Cheriton, Virginia located in Northampton County was the home of the G L Webster Company, the largest trucking farming operations in the world in the 1930s. Now, Cheriton is home to C & E Farms, the largest greenbean processor in the country, and the home to Cherrystone Apple Farms.
- The one thing that has been consistent in over 400 years of history on the Eastern Shore, agriculture has changed.

Old Business

There was no old business to report.

New Business

Discussions were held on the selection of the next meeting date. The next meeting date would be Wednesday, October 21, 2009.

Joyce Fogg reported that there were two vacancies on the MSFW Board. The Secretary of the Commonwealth's Office has asked for areas in which the Board would like to have someone selected, and we have responded that we would like to have growers or crew leaders as stated in the legislation. Ms. Fogg informed the Board that if they know of anyone who is interested in applying for a position on the MSFW Board, to send their resume to her, and she will ensure it is received by the Office of the Secretary of the Commonwealth.

Items of Interest from VEC Commissioner Dolores Esser

Commissioner Esser provided an update on the Unemployment Insurance (UI) changes. There was a new change that became effective May 1, 2009. Virginia had three consecutive months of an unemployment rate over 6 percent; therefore, Extended Benefits (EB) became effective. EB is paid totally by the federal government. The problem is that with a 30-year old system, the agency had trouble programming it; therefore, funds have not been dispersed to the claimants.

The stimulus money for reemployment efforts mandated to work for unemployment insurance claimants is to help them to get a job. There is not enough room for the staff, so the VEC has asked the Division of Real Estate for 15 additional temporary office locations around the state.

The economists are predicting that the state of Virginia will see a turnaround in 2010.

Items of Interest from the MSFW Board Members

On Tuesday, July 21, the MSFW Board was provided with tours of the VEC Eastern Shore Office, the East Coast Field Tomato Harvest Operation, and the East Coast Labor Camp. Two other tours are scheduled for this afternoon to the Eastern Shore Farmers' Market and the Pacific

Tomato Growers' Grape Tomato Packing Shed. Chairman Annis reported that the events in which the Board had participated in so far were well received by all in attendance, and was one of the best the Board has participated in. He suggested that a "thank-you" letter be written regarding the tours.

Chairman Annis also suggested that a "thank-you" letter or "certificate of appreciation" be completed for Jack Turner, retired VEC Monitor Advocate/Rural Services Manager, for the service he provided to the MSFW Board.

In conclusion of his comments, Chairman Annis stated that Virginia now has some of the best labor housing on the East Coast.

Public Comments

Rev. Carmen L. Colona, Coordinator for the Hispanic Ministry of Virginia's Eastern Shore associated with the United Methodist Church, reported that she is a retired pastor and she continues to do faith missionary through the United Methodist Church.

She started a food bank that feeds 1,100 to 1,400 people (300-400 families) a month. They also provide backpacks to the school children, child car seats, baby clothes for the pregnant women, transportation, contact information for legal assistance, birth control information, hygiene information, prayer, and baptism. Whatever is needed, she tries to accommodate. Over the last few years, she has noticed men and women with chemical burns to their arms. There have also been more birth abnormalities and low birth weights.

Rev. Colona has been working on a case for the past two years in which a father abducted his infant child from the mother and took the infant to Mexico City. The child was left in Mexico City to grow up with the grandmother. This occurred six years ago. The child is now eight years old. The mother is desperately seeking help to try to get her child back. Rev. Colona asked the Board if they had any contacts to provide to her for assistance to the mother.

In conclusion, she passed out brochures on the Hispanic Ministry.

Adjournment

There being no further business to bring before the Board, the Migrant and Seasonal Farmworkers Board meeting adjourned at 11:55 a.m.