

MINUTES
MIGRANT AND SEASONAL FARMWORKERS BOARD MEETING

February 15, 2006

The Migrant and Seasonal Farmworkers Board Meeting was held at the Virginia Housing Development Authority in Richmond.

The following Board Members were present: Kenneth Annis, Chairman; Mario Moreno, Vice-Chairman; Elisia Almendarez-Moore; Dannah Card; Veronica Donahue; Tupper Dorsey; Sharon Saldarriago; Christian Schweiger; J. M. Scott; and Peter Von der Lippe. The following Board Members were absent: Hart Hudson, Thomas Kellum, Adrian Reddington, Kelly Robinson, and Richard Hall. Staff in attendance from the Virginia Employment Commission were: Dolores Esser, Nicholas Kessler, Joyce Fogg, Jack Turner, Michelle Abraham, and Evelyn Lewis. The following guests and speakers were present: Tim Freilich, Virginia Justice Center for Farm and Immigrant Workers; and Sindy Benavides, Deputy Director of Constituent Services and Latino Liaison for the Governor's Office.

Call to Order

Chairman Kenneth Annis called the meeting to order at 10:08 a.m. He extended greetings to the guests, board members, and all those present.

Introduction of New Members

Chairman Annis introduced two new members, Dannah Card and Peter Von der Lippe. He welcomed them to the MSFW Board, and asked each current member to introduce themselves by stating their name and locality.

Approval of Agenda

Chairman Annis moved that the agenda be approved. It was approved by unanimous vote.

Approval of Minutes

Chairman Annis moved that the minutes of November 9, 2005 meeting be approved. The minutes were approved by a unanimous vote.

Other

Chairman Annis stated that any visitors who are present, and would like to participate on the agenda, to please give your name and organization affiliation.

Update on Proposed Federal Agricultural Legislation

Jack Turner, State Monitor Advocate with the Virginia Employment Commission, gave a status update on pending federal legislation affecting farmworkers. Mr. Turner distributed a handout with the five major pieces of agricultural legislation that is pending. He said that in trying to create this packet, there may be references to interest groups with whom the Board may not agree with the philosophy because some of the information contained in the packet was published by one side or the other of the various issues in agriculture. The agriculture legislation that is now out there is very diversified with extremely complex resolutions to potential issues.

The five federal legislations that are pending are:

1. Agricultural Job Opportunities, Benefits, and Security Act of 2005

The last action of this bill was in February and April 2005. This bill is not actively being debated on the floor of Congress. The two components of this bill, Senate Bill 359 and House Resolution 884 have been referred to the Committee on the Judiciary, and the Subcommittee on Immigration, Border Security, and Claims. The United Farmworkers feel that this bill could be attached to a spending bill in the latter part of March. This is a two-part bill that will offer the undocumented workers a way to work lawfully. They will earn a way to work in the U. S. lawfully by completing specified steps outlined in this bill, such as working a certain number of days within the next five years; or having worked a certain number of days for the past five years. There will be some that may be excluded because of statutory reasons such as criminal convictions. They will be able to gain a permanent residency card if they work 360 days in the next six years. The Ag Jobs bill reforms the H2A Program. This is a huge deal because the Virginia Employment Commission has a very active role in assisting growers who cannot find sufficient workers to operate under the H2A Program. Ag Jobs turn the H2A Program into an attestation program where growers promise that they will abide by certain requirements such as housing, transportation, labor laws, etc. They also acknowledge that they may be inspected by the Department of Labor's various compliance efforts. One of the reasons the Ag Jobs bill was proposed is the assumption that the H2A Program does not work, and to the contrary, the H2A Program does work in Virginia.

Currently, the Virginia Delegation has not taken any support on this bill.

Ms. Esser asked if we should get guidance from the Virginia Liaison Office in regard to writing a letter from the MSFW Board to the Congressional Delegation regarding the H2A Program and the Ag Jobs bill.

Chairman Annis and Mr. Freilich stated that the Board is up against the wall on this. There should be an education program that states it's good for the workers and it's good for the employers, but you don't find legislation that states this too often. The Ag Jobs bill is a compromise. It takes into account concerns from both sides regarding how the H2A program may work from the VEC and the employers' points of view, but it doesn't always work from the workers' point of view. One of the reasons the Ag Jobs bill has gotten as far as it has, and

has received so many Senators' signatures is because it offers an earned legalization program where workers who may be undocumented, can now show they have worked a certain number of hours and gradually obtain permanent residence status.

2. The Fair and Secure Immigration Reform

This is a concept that was introduced by President George W. Bush. There is no automatic path to amnesty and citizenship. This concept is expressing the other side of the issue that the Ag Jobs bill is expressing. The last movement on this concept was January 2004. It is not yet a bill.

3. Agricultural Employment and Workforce Protection Act of 2005 – S2087

This bill will amend the Immigration and Nationality Act to provide for the employment of foreign agricultural workers, and for other purposes. Senator Saxby Chambliss is sponsoring this bill. It has been read twice and referred to the Committee on the Judiciary. This bill, along with the others, is becoming narrower in scope.

- It addresses agricultural workforce concerns and illegal immigration issues within the agriculture/agribusiness industry by streamlining and expanding the existing H2A program, providing a one-time transition period for unauthorized workers to obtain legal, temporary nonimmigrant status, and creating a program modeled on the existing H2A program, entitled H2AA program, for agricultural workers and employers within daily commuting distance of the border.
- It addresses border security. This title provides resources and additional authority for the U. S. Government to take control of our borders and enforce immigration laws within the country.
- It will create a “blue-card” for non-immigrant work-related status. The blue-card allows an agricultural employer to petition for two-year blue card status for out-of-status workers who have been employed in agriculture for 1,600 hours in 2005 and who have been deemed eligible by DHS screening and background checks.

4. Temporary Agricultural Labor Reform Act of 2005 – House Resolution 3857

Congressman Bob Goodlatte introduced the Temporary Agricultural Labor Reform Act of 2005 on September 22, 2005. This bill is similar to the bill he introduced in the last Congress. Congressman Goodlatte chairs the House Agriculture Committee and serves on the House Judiciary Committee, which has jurisdiction of immigration issues.

This bill would make significant changes to the H2A temporary foreign agricultural worker program, which permits employers to hire non-immigrant guestworkers to fill agricultural jobs that last no longer than ten months. The most important changes include:

- Employers’ application procedure – The program’s application process would be streamlined to become a labor attestation program, rather than the current “labor certification” program and would shift review from the Department of Labor to the Department of Homeland Security. Under this bill, employers simply promise to comply with certain minimal job terms and other requirements. The Department of Homeland Security would have seven days to approve the employer’s petition for foreign workers, and could reject it only if it were incomplete or obviously inaccurate.
- Wages – Currently, H2A employers must pay workers the highest of three wage rates: the state or federal minimum wage, the Adverse Effect Wage Rate, or the local prevailing wage. The Adverse Effect Wage Rate was created under the Bracero program as a necessary protection against the depression in prevailing wages that result from guestworker programs. This bill would slash the H2A program’s already inadequate wage rates by abolishing the AEWR. A special prevailing wage would apply and it could be determined by the employers’ own prevailing wage survey. Farmworkers, both domestic and foreign, would lose tens of millions of dollars in wages.
- Transfer of H2A Workers – This would allow employers to easily transfer H2A workers to another employer without giving guestworkers the right to switch employers.
- Employee Housing – Currently, H2A employers must provide free housing to non-local U. S. and foreign workers, but under this bill employers could choose to provide a monetary housing allowance if the state’s Governor has certified that there is sufficient farmworker housing available in that area.
- Transportation Allowance – Currently, employers must reimburse workers for their transportation costs to and from their place of recruitment. This bill would limit reimbursement by allowing employers to pay for travel costs to and from the place where the worker was approved to enter the U. S., which could be a U. S. consulate hundreds of miles from the worker’s home.
- Contract Violations – Currently, if an employer violates the H2A law or the required job terms, the Department of Labor may seek remedies through administrative procedures or in federal court. This bill would restrict the Department of Labor’s authority to sue in federal court, and would limit the amount of civil money penalties it could impose on a guilty employer.
- Expansion of Special Rules for Certain Industries – This bill would add goat herders and dairy workers to the special rule allowing the Department of Labor to exempt sheepherders from H2A labor protections.
- Legal Services – Currently, H2A workers are eligible for assistance from the federally-funded legal-aid programs regarding their employment. This bill would severely restrict H2A workers’ access to legal services by prohibiting legal assistance unless the H2A guestworker is present in the U. S. at the time the legal assistance is provided; by preventing such programs from bringing a civil action for damages without first making a

request for mediation at least 90 days prior to bringing the action; and by prohibiting legal services lawyers from entering upon the property of H2A employers unless they have pre-arranged appointment with specific H2A workers.

- Emergency Grants to Employers – This bill directs the U. S. Secretary of Agriculture to make grants to employers to help them pay return transportation costs of workers if the season ends prematurely due to a natural disaster.

5. The Feinstein Amendments to AgJobs – Senate Numbers 435, 526, 531-535

Senator Diane Feinstein developed amendments to the Ag Jobs bill. The last activity was October 18, 2005. Her amendments would severely restrict the coverage of the earned legalization program, unfairly eliminating from the program thousands of farmworkers. The amendments also would contravene the goal of stabilizing the farm labor force. The Ag Jobs compromise represents a balanced, sensible approach after years of conflict and hard-fought negotiations. These amendments would disrupt this balance to the detriment of workers, the agricultural industry, and overall policy objectives. An example of conflicting change is that under the Ag Jobs bill, an undocumented worker could apply for temporary resident status and would need to show, among other things, that he or she performed at least 100 work days of agricultural employment in the U. S. in a recent 12-month period. Senator Feinstein’s amendment, by contrast, would require proof of 100 work days in each of three prior years. The proposal is counterproductive and unrealistic.

Fruit Growers News

Mr. Turner distributed a copy of the “Fruit Growers News” newsletter, and reported that he thought the newsletter was a good summary of the various complex interests affecting federal legislation on agriculture. A quote from the newsletter entitled “The Big Picture” stated *three bills hardly capture the complexity of the immigration reform debate, or the concerns many Americans have about border security, terrorism, drugs, gangs, and the like.* Mr. Turner sums it up as *“the diversity of our country’s agriculture is difficult to fit under one umbrella legislatively.”*

Mr. Moreno extended accolades to Mr. Turner for doing a great job in putting together and presenting the report on federal agricultural legislation.

Mr. Schweiger made a motion to write a letter to the Congressional Delegation from the MSFW Board disseminating from the Virginia Employment Commission in support of the concept of the Ags Job bill or similar legislation. The approval to write this letter must be obtained from the Governor’s Office. A draft letter will be completed and brought back to the Board before finalizing and emailed to the Congressional Delegation. The motion was seconded and passed.

Chairman Annis introduced Sindy M. Benavides, the Governor’s Latino Liaison and Deputy Director of Constituent Services. One of her roles is to attend meetings such as that of the Migrant and Seasonal Farmworkers Board to see what the Boards are doing to promote the legalized Latino workforce.

Update on Proposed State Legislation

Tim Freilich, Managing Attorney with the Virginia Justice Center for Farm and Immigrant Workers, gave an update on the proposed state legislation. He commended the Board for taking a stand with the decision to send a letter to the Congressional Delegation regarding the Ag Jobs bill.

Mr. Freilich distributed a handout containing several bills affecting the agriculture workers population. He urged the Board to draft a letter to the Virginia General Assembly stating that the agriculture employers of Virginia need to have a legalized workforce to ensure that the workers continue coming to Virginia, and those that are here have a status or position that benefits everyone.

There have been dramatic changes in some of the bills. Some bills are no longer being considered this year. They are:

- **House Bill 287** – Pertains to access to driver's license bill.
- **House Bill 1051** – Prohibits public funding to employment service centers in Virginia. This bill was carried over to 2007.
- **Senate Joint Resolution 46** – A Joint Legislative Audit and Review Commission (JLARC) study to study the impact of non-documented immigrants who are unlawful in the United States and reside in Virginia on the state's economy and government services and resources. This bill was carried over to 2007.

Other bills that affect the worker community and agriculture industry are:

- **House Bill 262** – Ban on enrollment to higher education in Virginia.
- **House Bill 487** – Governor enter into an agreement with Homeland Security to have the State Police begin enforcing immigration law.
- **House Bill 593** – Establishes the *English is a Second Language Grant Program*. This bill would create a grant program in school divisions where at least 25 percent of the school population receives English as a second language instruction to help the school district bear that additional cost.
- **House Bill 1046** – Juveniles; reporting alleged illegal alien delinquents to Immigrations and Customs Enforcement Agency. Juveniles who are picked up by a juvenile intake officer and the intake officer would determine that the youths are undocumented or not lawfully present in Virginia; he would refer them to Immigrations and Customs Enforcement.
- **House Bill 1048** – Document verification for employment penalty. Requires employers to obtain employment eligibility verification documentation as specified in Form I-9 indicating that a prospective employee is legally eligible for employment in the United States.
- **House Bill 1050** – In-state tuition; anyone who is not lawfully present in the United States would not be eligible for in-state tuition.
- **House Bill 1067** – Relates to the document verification issue.
- **House Bill 1460** – Street gangs; specifically targets people that are convicted of youth gang crimes.

- **House Joint Resolution 63** – Establishes a joint subcommittee to study immigration issues in the Commonwealth.
- **Senate Bill 677** – In-state tuition rates; prohibited for certain individuals.

Vice Chair Moreno thanked Mr. Freilich for his presentation.

A motion was made by Mr. Dorsey that the MSFW Board write a letter stating it recommends that it is not necessary to have a state law on House Bill 1048 and 1067 regarding document verification for employment penalty, as there is federal law already in place. The letter would emphasize that the Board supports the I-9 verification. The motion was seconded by Mr. Schweiger and passed unanimously. Commissioner Esser will contact the Office of the Secretary of Commerce and Trade to obtain approval from the Governor's Office to write the letter on behalf of the MSFW Board.

A motion was made by Ms. Saldarriaga for the Board to draft a letter that would oppose House Bill 487 in which the Department of State Police would enter into an agreement with federal Immigration and Customs Enforcement that would allow them to enforce civil immigration laws. The motion was seconded and passed; however, not unanimously.

Housing of Farm Workers

Chairman Annis reported that in 2005 the Department of Health had to cut funds which included cutting inspections for housing of immigrants. There is a concern for housing for H2A workers. A lot of things have gone by the wayside and many growers are paying large civil money penalties to the U. S. Department of Labor Wage and Hour Enforcement because their housing camps were not inspected. There were major problems on the Eastern Shore in 2005.

Mr. Turner stated that the problems on the Eastern Shore did not have anything to do with the H2A Program. There are regulations that the VEC follows.

The Health Department Regulations have been in revision for several years, and have now been published.

Mr. Moreno suggested that someone attend a MSFW Board meeting and give a report regarding the farm worker housing. Ms. Esser suggested someone from the Policy Council come and speak to the Board.

Old Business

None to report.

New Business

Ms. Saldarriaga gave an update on the new housing project located in Northern Neck. After a year of delays, construction on the Parker Farm's project has begun. Because of the delays, the grower decided not to go with the straw bail, but will instead use the cement block in order to

meet the completion deadline by May or early June. The Ingleside project is still on target for straw bail construction. Everything has been submitted to State Home Funds for an additional \$300,000 that was earmarked for this project.

Ms. Esser reported that the Policy Council was started by the Virginia Department of Labor and Industry and different state agencies that were affected by the Migrant and Seasonal Farmworkers Board. A meeting has not been held in quite a while due to limited agenda items. After the General Assembly adjourns, Ms. Esser feels that a meeting should be held, and the MSFW Board will be notified of the Policy Council meeting date.

When Mr. Cagan attended the November 9, 2005 MSFW Board meeting, prior to his departure, he provided a list of topics in which he felt the Board should discuss in 2006. The issues were: Heat Stroke; Continuous concerns throughout the state regarding the lack of services from language and cultural services from the Department of Mental Health, Mental Retardation, and Substance Abuse Services; Unlicensed drivers; Minimum wage exclusion for farmworkers; and New bills for the 2006 General Assembly Session.

Ms. Esser stated that any of these topics the Board would like to discuss at the next meeting would be welcomed. The Board decided to discuss the topics of Heat Stroke at the next Board meeting. The topic regarding the continuous concerns throughout the state regarding the lack of services from language and cultural services from DMHMRSAS, will be discussed at the Policy Council meeting. The topics regarding unlicensed drivers and minimum wage exclusion for farmworkers will be discussed at a future meeting this year.

Ms. Esser suggested that the Board try and schedule at least three future meeting dates. The dates were: May 17 and August 23 in Richmond, and October 18 in Charlottesville.

Items of Interest from the Board Members

Ms. Donahue reported that the Latino Board is now a permanent Board. There are 21 members. When a committee meeting is being held, it must be in the form of a public hearing. The next Latino Board meeting will be held on Friday, February 24. Ms. Donahue welcomed the MSFW Board members to attend, and stated that she is the channel person between the two Boards.

Adjournment

There being no further business, a motion was made by Chairman Annis to adjourn. It was seconded, and passed unanimously. The meeting adjourned at 1:12 p.m.