

**MINUTES
MIGRANT AND SEASONAL FARMWORKERS BOARD MEETING**

November 9, 2005

The Migrant and Seasonal Farmworkers Board meeting was held at 10:00 a.m. at the Department of Housing and Community Development.

The following Board members were present: Kenneth Annis, Chairman, Mario Moreno, Vice-Chairman; Richard Cagan, Sharon Saldarriaga, Alisha Herrick; J. M. Scott; Veronica Donahue; and Christian Schweiger. The following Board members were absent: Hart Hudson; Thomas Kellum; Adrian Reddington; Kelly Robinson; Tupper Dorsey; Richard Hall; and Elisia Almendarez-Moore. Virginia Employment Commission staff present were: Dolores Esser, Commissioner; Jack Turner, Monitor Advocate; Michelle Castellow, Rural Services Manager; Joyce Fogg, Public Relations Manager; Evelyn Lewis, Administrative Staff Assistant. The following guests and speakers were present: The Honorable Robert S. Bloxom, Secretary of Agriculture and Forestry; Jim Mooney and Bruce Clark, U. S. Department of Labor; Jill Borak, Central Virginia Legal Aid Society; Tim Freilich, Virginia Justice Center for Farm and Immigrant Workers; Nikki Nicholau, Department of Housing and Community Development; and Gary Hagy, Virginia Department of Health.

CALL TO ORDER

The Chairman called the meeting to order at 10:05 a.m.

Chairman Annis extended condolences to Joyce Fogg on the bereavement of her husband, and asked that prayers be extended on her behalf.

Chairman Annis introduced Secretary Bloxom and extended welcome greetings to him and all the guests and board members.

APPROVAL OF AGENDA

With the Report of the Policy Committee added to the agenda, on motion duly made by Mr. Moreno and seconded by Mr. Schweiger, the agenda was approved by a unanimous vote.

APPROVAL OF MINUTES

On motion duly made by Mr. Moreno and seconded by Mr. Scott the minutes of the April 21, 2005 meeting were approved.

PRESENTATIONS

Challenges Facing Migrant Workers in Virginia

Tim Freilich, Managing Attorney with the Virginia Justice Center for Farm and Immigrant Workers, gave a presentation on Challenges Facing Migrant Workers in Virginia. He stated that they are a legal aide society working statewide supporting low wage immigrant workers in their efforts to find fair treatment in the workplace. After graduating from law school, he spent a couple of years working with migrant farmworkers out of their office in Charlottesville. He spent the last few years working with low wage immigrants in Northern Virginia. He recently returned to the Charlottesville Office to work and focus on migrant farmworkers in Virginia.

He reviewed the Interagency Report and the MSFW Board Report from 2004 to see how this Board viewed the challenges that the migrant and seasonal farmworkers are facing. He stated that if you read the report you would come away with the feeling that the migrant and seasonal farmworkers had it pretty good with a wide variety of services available to them; however, he found the report lacked any urgency with the changing realities that migrant and seasonal farmworkers are facing in Virginia on a daily basis. The report appreciates the recognition of the need for comprehensive immigration reform on the federal level. He stated that he feels that the challenges that the migrant and seasonal farmworkers are facing in Virginia are coming more from the state's policies and initiatives as opposed to federal policy. There is a great need for immigration comprehensive reform and this Board should recognize that, and continue pushing for reform on a federal level. He stated that he would urge the Virginia MSFW Board to focus on what is going on in Virginia and how that is impacting migrant and seasonal farmworkers. Mr. Freilich urged the MSFW Board to take on the responsibility of publicly acknowledging the dependence of many agricultural employers in Virginia on an undocumented workforce and pay close attention to initiatives and policies on the state level that are affecting the undocumented population of Virginia. According to the PEW Hispanic Center there are between 200,000 to 250,000 undocumented individuals living in Virginia. According to the 2000 Census, there are about 570,000 foreign born living in Virginia.

Mr. Freilich distributed a General Assembly Report. The major pieces of legislation that passed and impacts the minority workers are:

- House Bill 1798 and Senate Bill 1143. These bills pertain to the eligibility of certain aliens for state and local public benefits. They go into effect January 1, 2006. The law requires applicants for benefits under certain programs to prove their legal presence in the United States. The law applies only to Chapter 10 of Title 32.1 (Medicaid), and to state and local public assistance programs in Subtitle II of Title 63.2 (including auxiliary grants and state paid TANF). The law does not cover programs listed in 8 U.S.C. § 1621. Persons under 19 are exempted from proving legal presence until they turn 19. All others, including citizens, will have to provide affirmative proof of legal presence to be eligible for benefits under these programs. A verified social security number, or documents similar to those required by DMV, will be considered sufficient proof of legal presence.

Mr. Freilich stated that one of the arguments is that “undocumented workers do not pay taxes.” This is not accurate. If undocumented workers are assigned the numbers of 000-00-0000 on their pay stubs, their wages go into the Earnings Suspense File of the Social Security Administration. The 000 assigned numbers are used when the name and social security numbers do not match up. Undocumented workers have paid \$462.8 billion into this fund, and more than likely, they will not receive any of this money back.

- House Bill 2420. This bill creates a Latino Advisory Board to advise the Governor regarding the development of economic, professional, cultural, educational, and government links between the Commonwealth of Virginia, the Latino community in Virginia, and Latin America.

The major pieces of legislation that did not pass are:

- House Bill 1625. This bill would have prohibited issuance of driver’s licenses and learner’s permits to persons incapable of communicating using the English language. Prohibition would have applied to both original issues and renewals of licenses and learner’s permits.
- House Bill 1837. This bill would have made it easier for a law-enforcement officer to arrest an “illegal alien” by eliminating the requirement that the officer confirm, prior to such arrest, whether the alien had previously been deported or left the United States after the conviction of a felony. This bill would have also eased the requirements of House Bill 570 and Senate Bill 493.
- House Bill 1643. This bill would have required a person detained by a law-enforcement officer for questioning to identify himself, and give a reasonably credible account of the lawfulness of his conduct and purposes, or be guilty of a Class 1 misdemeanor.
- Senate Bill 1207. This bill would have allowed a law enforcement officer to detain any person whom the officer encountered under circumstances which reasonably indicated that the person had committed, was committing, or was about to commit a crime. The detained person would have been required to identify his or herself or be guilty of obstruction of justice.
- House Bill 2056. This bill, as introduced, would have denied worker’s compensation benefits to persons who were “illegal aliens” at the time of a workplace injury or death and also sought to prevent them from filing claims in court to recover damages for such injuries or death.

The major pieces of legislation that are likely to be introduced in the 2006 General Assembly Session will include all the above bills that were not enacted in the 2005 Session and also the following:

- A bill requiring that worker centers (and perhaps other service providers) that receive state or local funds verify the lawful presence of anyone applying for services.

- A bill fining employers \$5,000 for each worker hired despite knowing that the individual employed lacks work authorization.

In summary, Mr. Freilich feels that the migrant seasonal farmworkers are not doing well in Virginia, and the report should reflect that. They have a lot of challenges. The MSFW Board and agricultural employers of Virginia should acknowledge their dependence on an undocumented workforce or else the employers as well as the workers will continue to suffer. He suggested that the MSFW Board and the agricultural employers of Virginia should continue to work for comprehensive immigration reform on the federal level. Engage Virginia's elected officials.

Virginia Farmworkers Legal Assistance Project

Jill Borak, Staff Attorney with the Virginia Farmworkers Legal Assistance Project of the Central Virginia Legal Aid Society, gave a report. The Virginia Farmworkers Legal Assistance Project is a federally funded legal services organization. It offers legal assistance and education to farmworkers throughout the Commonwealth of Virginia. The goals of the program are to help farmworkers anticipate and prevent legal problems related to their jobs. They try to inform farmworkers of their options when problems do arise, and provide legal assistance and advice to the farmworkers. They assist with housing, questions regarding taxes, unpaid wages, and on-the-job injuries. Their program staff conducts significant client outreach from May through November. They visit farm labor camps and other sites throughout Virginia.

Through their outreach programs, some of the most common problems they have heard from farmworkers are:

- Growers who are not complying with the federal worker protection standard. The federal worker protection standard offers minimum protection for agricultural workers who work with, apply, or are exposed to pesticides. The basic requirement is for pesticide safety training, providing protective equipment when workers are coming into contact with pesticides, the requirement intervals of when a worker can enter a field after the spraying of pesticides, decontamination supplies, and the provision of emergency medical assistance. These requirements are very basic. These standards have been criticized for not offering enough protection for workers.
- Transportation expenses. Many of their programs' clients are participants under the H2A worker program. They have heard from a lot of H2A program workers who state that their employers have not paid for their transportation expenses. Under the H2A program, employers are required to reimburse workers for their travel expenses to and from their home countries, as well as paying for minimal amounts of food during the trip. When a worker reaches the middle of his contract, he has the right to be reimbursed by his employer for his travel expenses to the United States, and at the end of his contract, the employer is supposed to reimburse the worker for return travel to his home country. Many H2A workers were not paid at the halfway point of their contract, and had serious doubt if they would be paid at the end of their contract.

- Housing conditions. In particular, deplorable conditions were witnessed from the Eastern Shore Region. There was overcrowded housing; inadequate sanitation; exposure to the elements such as broken windows, lack of air conditioning or fans during the summer months, and vermin infestation.

Gary Hagy with the Virginia Department of Health stated that in some cases there might be housing camps that open up in which a permit has not been issued. VDH makes sure that these camps are inspected and meet the requirements. He asked the Virginia Farmworkers Legal Assistance Project representative to let VDH know if a housing camp problem exists that may not be known by VDH.

A Compliance Partnership Agreement

Jim Mooney, Regional Agriculture Coordinator with the U. S. Department of Labor, discussed a compliance partnership agreement. Mr. Mooney also introduced Bruce Clark, the District Director located in Richmond. Mr. Mooney stated that Wage and Hour is an enforcement agency that enforces about 60 different federal labor laws. Four of them protect migrant and seasonal farmworkers. One of the laws is the Fair Labor Standards Act, which is the minimum wage and overtime child labor law of 1938. Another is the Migrant Seasonal Agricultural Worker Protection Act, passed in 1983. The third was inherited from OSHA in 1986, which is the Field Sanitations and Temporary Labor Camp Provision. The fourth is H2A. Employment and Training (ETA) approves the contracts for farmers; however, the Wage and Hour district offices make enforcement.

In fiscal years 2003 and 2004, the compliance rate harbored around 50 percent. They have found that regardless of whether a little enforcement or a tremendous amount of enforcement is done, the compliance rate has been flatlined. The gravity of the types of violations has been lessened; there seems to still be violations wherever they go. The plans for the Richmond District Office in the coming year are to visit 28 farmers in their territories.

The kinds of problematic violations that they saw this year were disclosure requirements; no valid driver's license or an expired Mexican license; vehicles with no insurance; housing labor camps; overcrowding; rodents; no first aid kits; and a significant number of civil money penalties.

Additional enforcement is not really the answer. The answer is with education and outreach. Wage and Hour are meeting with growers on an individual basis and with groups. The biggest tool developed is the partnership agreement. On September 30, the U. S. Department of Labor – Wage and Hour Division signed a compliance partnership agreement with the Association of the Virginia Potato and Vegetable Growers Association. Mr. Mooney has been named the liaison for this Association. This partnership has worked very well. The downside is that the growers have hesitancy because they fear more enforcement from Wage and Hour, or the growers have a fear that you don't want to be too chummy with the government for fear of IRS audits. The upside is very positive. It cements the relationship with the growers. Hour and Wage attend the growers' quarterly and annual meetings and the growers informally talk about questions they

may have. Wage and Hour also attend the agricultural shows, and they can share with the growers a list of foreign labor contractors that have violations so that the growers won't form relationships with those contractors, and they can also share with the growers the list of foreign labor contractors that have a good history with Hour and Wage. Mr. Mooney further stated that one of the things that he is hoping that these partnerships will do is improve the camps.

Mr. Mooney passed around a handout to show what the actual agreement looks like. He is looking forward to more of these partnerships. It is on the drawing board to have a partnership with the Apple Growers Association.

OLD BUSINESS

Mr. Cagan stated that the Department of Medical Assistance Services (DMAS) has had two to three meetings on the Medicaid reciprocity issue. They are moving forward with the internal staff briefing paper that will come to the Director of DMAS. At this point, he is cautiously optimistic that there will be some recommendations that will make it easier for migrant families who are Medicaid eligible to have some type of care when they come to Virginia.

In the April 21 minutes it was stated that the MSFW Board was going to have some type of communication with the Latino Advisory Committee. A letter has gone to the Chairman of the Latino Advisory Committee and to the staff person.

NEW BUSINESS

Mr. Cagan stated that for the record, he wanted to list several agenda items for the Board to discuss in 2006:

1. Heat Stroke. OSHA has no regulations that govern the situation where workers are at risk for heat stroke or heat exhaustion. If OSHA does not provide any guidance, then the MSFW Board should talk with Commissioner Davenport of the Virginia Department of Labor; and the Board should discuss how to try to provide some guidance from the Health Department and the Extension Service. There is a helpful flyer on the OSHA website that is written in English and Spanish.
2. 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 (DMHMRSAS). The Board has had no involvement with that agency throughout the years. Increasingly, there are issues with alcohol, drugs, and domestic violence. Mr. Cagan suggested that the Board invite appropriate staff from DMHMRSAS and people from the field to a meeting to address concerns on these issues.
3. Unlicensed drivers.
4. Minimum wage exclusion for farmworkers.

5. Another item of interest would be new bills for the 2006 General Assembly Session. The VEC will keep the Board informed on pending legislation. Commissioner Esser stated that an alternative would be to have a Board meeting around the date of the General Assembly Crossover.

ITEMS OF INTEREST FROM COMMISSIONER DOLORES ESSER

Commissioner Esser reported that four VEC offices have been closed, and there will be additional office closings. 50 positions have not been filled and some of those are farm placement specialists. 200 part-time employees have been laid off. The VEC is totally funded by federal funds, and it is from the funds, the FUTA tax that employers pay. At this time, Virginia ranks 51 out of 52 jurisdictions in the country in the percentage of money that the employers pay and what is returned to the state. Commissioner Esser went to Washington, DC and met with the legislative aides of the Congressional Delegation. As the twelfth largest state, Virginia ranks 51st. Virginia is getting \$.32 back for every dollar that the employer pays. The average in the United States is \$.53. This is because it is a formula deal and is based on the prior year's allocation. Commissioner Esser stated that as an employer, you should let Senators Allen and Warner and the Congressional Delegate know of these issues, as it has been brought to their attention by the VEC.

Commissioner Esser and Chairman Annis presented a certificate of appreciation to Mr. Cagan who is departing from the MSFW Board because he is relocating to Kansas.

PUBLIC COMMENT

Gary Hagy with the Department of Health reported that the VDH Regulations have been posted in the Virginia Register with an effective date of January 1, 2006.

ITEMS OF INTEREST FROM THE BOARD

There are two workers on the Eastern Shore who are certified to provide training on pesticide safety.

The date and location of the next meeting will be held around General Assembly legislation crossover in Richmond.

ADJOURNMENT

There being no further business, the meeting adjourned.