

BIENNIAL REPORT

**VIRGINIA MIGRANT AND SEASONAL
FARMWORKERS BOARD**

**TO
THE GOVERNOR
AND GENERAL ASSEMBLY**

2000

**VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY
13 SOUTH THIRTEENTH STREET
RICHMOND, VA 23219**

June 1, 2001

The Honorable James S. Gilmore, III
Governor of Virginia
State Capitol
Richmond, Virginia 23219

Dear Governor Gilmore:

I am pleased to present the 1998-2000 Biennial Report of the Migrant and Seasonal Farmworkers Board.

The members of the Board appreciate the opportunity to serve the Commonwealth's migrant and seasonal farmworker population and its agricultural industry.

Sincerely,

Kenneth E. Annis
Chairman

BOARD MEMBERSHIP

Kenneth E. Annis, Chairman
Exmore, Virginia

Kevin L. Drumheller, Vice-Chairman
Lovingston, Virginia

Richard D. Cagan
Hadensville, Virginia

Carlos H. Padilla
Springfield, Virginia

Philip B. Glaize, Jr.
Winchester, Virginia

John J. Richardson
Keeling, Virginia

R. Hart Hudson
South Hill, Virginia

Joseph P. Robinson
Winchester, Virginia

Joe L. Leigh
Halifax, Virginia

Marisa R. Sanchez
Mappsville, Virginia

Julia E. Major
Painter, Virginia

Deborah S. Snarr
Woodstock, Virginia

Valerio Montalvo
Cape Charles, Virginia

Jeffrey D. Brown, Commissioner
Patti C. Bell, Board Staff Director
Virginia Department of Labor and Industry

INTRODUCTION

This is the 2000 Biennial Report of the Virginia Migrant and Seasonal Farmworkers Board. The Board was established by the Legislature in 1978 and, in 1987, the Legislature transferred staff support to the Department of Labor and Industry. This report provides a summary of issues addressed and activities conducted by the Board during 1998-2000.

The Board serves as an advisory body to the Governor, General Assembly and service deliverers on matters relating to the migrant and seasonal farmworker (MSFW) population in Virginia and provides a forum for the sharing of information and concerns. The Board, comprised of 15 members appointed by the Governor and approved by the General Assembly, includes representatives from the grower community, migrant and seasonal farmworkers, the general public, and public and private agencies.

RESPONSIBILITIES OF THE BOARD

The Board is empowered with the authority to request and receive information, assistance and cooperation from public or private agencies, boards or individuals; to disseminate information; to request, receive and enter into agreements associated with grants or funding to further its purposes; and to establish citizen panels.

Delegated to the Board are four primary responsibilities:

1. Provision of the coordination and evaluation of state and federal services and, to the degree feasible, other governmental, public and private agency services to migrant and seasonal farmworkers within the Commonwealth.
2. Identification and evaluation of the needs of migrant and seasonal farmworkers, as well as the needs of their employers.
3. Scrutiny of the problems of the target population, provision of background information, and recommendation of options for solutions. These remedies, along with an assessment of their potential impact, are to be forwarded to the General Assembly, governmental, and public and private agencies.
4. Encouragement and fostering of the development of area migrant and seasonal farmworker councils to seek problem resolution and communication at the local level.

In performance of its duties, the Board held four meetings in FY 1998-99: September 23, 1998; December 2, 1998; March 17, 1999; and June 16, 1999. In FY 99-00, three meetings were held: September 22, 1999; January 19, 2000; and April 19, 2000.

This Biennial Report provides a summary of migrant and seasonal farm labor issues addressed and activities conducted by the Board.

ISSUES AND ACTIVITIES

Presentations and Reports to the Board

- \$ The Chairman of the Virginia Workers' Compensation Commission presented an overview of the workers' compensation system and discussed the Board's interest in pursuing legislation to provide workers' compensation coverage to farmworkers, regardless of legal status, as the sole remedy for injuries. A representative of the Virginia Trial Lawyers Association also discussed this issue with the Board.

- \$ The Assistant Commissioner of the Virginia Employment Commission (VEC) and the agency's One-Stop Project Director presented updates on Workforce Investment Act (WIA) activities. The Board asked the VEC to guide it in ensuring the needs of MSFWs were represented as WIA was planned and implemented throughout the state. The VEC fostered MSFW representation in areas with large grower and worker populations, and the Board encouraged service providers to work with the VEC to incorporate MSFW services into the one-stop system.

- \$ Virginia Justice Center for Farm and Immigrant Workers and Virginia Farmworkers Legal Assistance Project representatives participated in several meetings to discuss activities and legal concerns. Among these were Immigration and Naturalization Service (INS) enforcement updates, workers' compensation, instances of grower non-compliance with MSFW regulatory requirements and lack of enforcement of MSFW-related standards in Southwest Virginia, housing needs, labor camp access for service providers, observations regarding forestry workers' living and working conditions, and the need for state agencies and others to communicate with workers in languages they understand.

- \$ The Northeast Region Agricultural Coordinator, Wage and Hour Division, U.S. Department of Labor, reviewed a pilot alternative dispute resolution (ADR) program used to resolve routine labor camp, field sanitation and Migrant and Seasonal Agricultural Worker Protection Act (MSPA) violations involving civil money penalties. The Board adopted the ADR process for resolution of Virginia Wage and Hour cases.

- \$ The VEC Rural Services Supervisor presented information regarding the

job order system's scope and requirements as they relate to forestry workers, who are covered by MSPA. Wage and Hour officials outlined outreach and investigation plans for the forestry industry. The Board agreed to continue dialogue with the VEC, Wage and Hour and the Virginia Department of Forestry about H-2B forestry workers.

\$ The Richmond District Director of the Wage and Hour Division, U.S. Department of Labor, presented an overview of his agency's efforts to protect migrant workers, enforce federal minimum wage and overtime laws, and educate employers about the importance of complying with laws and regulations. He agreed to gather information from other Wage and Hour offices that serve Virginia to facilitate the Board's consideration of the ADR program.

\$ A Migrant Education representative described the Northern Neck Migrant Education Program, which serves 110 children and their families. An estimated 300-400 migrant and seasonal farmworkers live and work in the Northern Neck area.

\$ The Director of Migrant Head Start, Virginia Council of Churches, presented an activity report. The Virginia program serves more than 300 children at four sites. One of the organization's objectives is to establish a center in the Northern Neck area to serve approximately 50 children.

\$ A representative of Eastern Shore Rural Health described health care services to farmworkers and the successful integration of migrant and seasonal farmworkers into the community health care system at all sites.

\$ The State Monitor Advocate presented the VEC's Plans for Agricultural Services for 1999 and 2000.

\$ Department of Labor and Industry staff provided inspection activity reports and findings relative to MSFW conditions in Southwest Virginia. The Commissioner of Labor and Industry discussed plans to establish an inspector position in either the Southwest or Valley Region to serve as lead inspector for enforcing the agency's MSFW-related standards.

\$ The Director of the Division of Food and Environmental Services, Virginia Department of Health, presented a briefing on Southwest Virginia migrant labor camp inspections. He discussed plans for a partnership between the Departments of Labor and Industry and Health to improve inspection activities.

- \$ A Virginia Department of Agriculture and Consumer Services Environmental Program Analyst presented a federal Pesticide Worker Protection Standard program report.
- \$ A NCALL Housing Development Specialist delivered the organization's 1999 annual report, presented updates on the construction of the MSFW apartment complex in Eastville, and discussed NCALL's interest in working with interested agencies and councils to develop farmworker housing in other parts of the state. He agreed to meet with Southwest Virginia representatives to explore housing development in that area.
- \$ Telamon representatives attended several meetings and kept the Board informed about the organization's activities.
- \$ A VEC Farm Placement Specialist discussed services provided to Northern Neck area farmworkers.
- \$ Virginia Department of Health representatives presented an update on Virginia's tuberculosis (TB) control program.
- \$ The Executive Director of the Maryland Commission on Migratory and Seasonal Farm Labor presented a report on that state's migrant and seasonal farmworker activities.
- \$ A member of the United Methodist Church Mission and Ministry Team described the Church's statewide Spanish-speaking ministry.
- \$ A Community Tax Law Project representative discussed the organization's work to provide legal assistance to low-income Virginia taxpayers. She reviewed tax-related issues faced by and benefits, including bilingual assistance, available to migrant workers.
- \$ A Shenandoah County Migrant Education representative reviewed the Latin American Community Outreach Services Council's efforts to serve farmworkers and Latino poultry processors, many of whom were former seasonal farmworkers. The Board invited the Council to consider joining its local area council network.
- \$ Accomack and Westmoreland County Extension Agents presented overviews of agricultural activities and conditions in those areas of the state.

\$ A Virginia Department of Social Services representative discussed provisions of the Medicaid program. He reported administrative changes and process improvements that would benefit MSFWs as well as the general population.

Area Councils

There are seven migrant and seasonal farmworker area councils in the Commonwealth: the Albemarle Regional Migrant Advisory Council, the Eastern Shore Migrant Farmworkers Service Council, the Harrisonburg Area Hispanic Services Council (Migrant Subcommittee), the Migrant Health Network (Southwest Virginia), the Nelson County Summit, the Rappahannock Migrant and Seasonal Workers Council, and the Winchester Migrant Services Council.

The area farmworker councils meet on a regular basis to share information, coordinate activities and projects, discuss and resolve local problems, and serve as a valuable link between the Board and farmworkers throughout the Commonwealth.

Since its inception in 1998, the Migrant Health Network (MHN) of the Saltville Medical Center has worked to accomplish its outreach goals with a three-pronged approach: outreach to migrant and seasonal farmworkers, outreach to the grower community, and outreach to the medical and general community. The MHN's staff of a bilingual nurse and three seasonal outreach workers collaborates with four community health centers in Southwest Virginia to provide health care for farmworkers. From 1998 through 2000, the MHN enrolled 1,299 farmworkers, provided 8,694 services, taught 78 health education classes to 459 farmworkers, and made 53 community and grower presentations to 1,401 participants.

The MHN has worked to increase its breadth of services for farmworkers. In addition to facilitating access to medical care in its four partner clinics, the MHN also has organized 16 mobile clinics to take health care directly to farmworker camps. The MHN has recently added dental and vision care services.

Community involvement has always been a hallmark of the MHN approach to providing health care to farmworkers. Working closely with community volunteers and agencies, the MHN has received services and donations worth \$91,674 since 1998. Over 100 health care and student volunteers have worked with the program undertaking such projects as writing needs assessments and resource manuals, producing promotional videos and an agency web site, organizing the annual Fiesta Mexicana, and staffing migrant clinics. All of the work of the MHN is overseen by a diverse Advisory Board as well as by a group of farmworkers called the Asesores de la Alianza de Salud. The MHN has also been involved in creating a statewide migrant health coalition of migrant health providers.

Board Actions, Discussions, and Ongoing Projects

- \$ Board members participated in the August 6, 1998 groundbreaking for a Delmarva Rural Ministries/NCALL 34-unit MSFW apartment complex in Eastville. This complex, the first of its kind in Virginia, opened during the summer of 1999.
- \$ The Board corresponded with the Immigration and Naturalization Service (INS) regarding problems reported by growers relative to H-2A work authorizations. The Board Staff Director was designated to serve as liaison with the INS to resolve work authorization problems.
- \$ The Board discussed the need to ensure crew leaders understand all laws, regulations and other matters involved in hiring migrant and seasonal farmworkers. The VEC Rural Services Supervisor surveyed other states' licensing practices, held a conference call with Frederick County Fruit Growers Association and Board members, and reported that educational/informational materials could be developed to educate Virginia crewleaders about appropriate requirements. The Board voted to undertake the crew leader training project.
- \$ The Board adopted a model service provider reporting form and implemented an annual reporting system for Virginia's federally-funded MSFW service providers.
- \$ The Board discussed and received reports on the incidence of communicable diseases. It was agreed the Board, area councils and service providers would continue dialogue, including feedback, on health matters.
- \$ Job order translation requirements and ways to facilitate translations were discussed. U.S. Department of Labor representatives stated their understanding that the requirement to translate contracts and provisions in workers' native languages exists. The agency relies upon the job service system to provide necessary translations.
- \$ The Board notified appropriate agencies of complaints about migrant and seasonal farmworker living and working conditions in Southwest Virginia. The Interagency Migrant Worker Policy Committee developed and carried out an educational/enforcement plan to address the complaints.

- \$ The Board voted to recommend that the General Assembly enact emergency legislation to provide workers' compensation coverage to farmworkers, regardless of legal status, which would benefit both growers and workers. Legislation providing workers' compensation coverage to workers, regardless of legal status, was enacted by the 2000 General Assembly.
- \$ The Board voted to adopt an alternative dispute resolution process for resolution of Virginia Wage and Hour cases.
- \$ The Board helped the U.S. Department of Labor's Wage and Hour Richmond District Office disseminate new "farmworker rights" cards and agricultural child labor literature. The materials were shared with the Board's area councils, Migrant Education, and Migrant Head Start.
- \$ The Board wrote to the U.S. Department of Labor to express concerns about its new allocation formula for MSFW programs. The new formula resulted in a significant reduction in funding for Telamon.
- \$ The Board wrote to commend Blue Ridge Public Television and Greg Gilbert for sponsoring and producing a "Hand Changes" documentary on the history and evolution of migrant labor on Virginia's Eastern Shore.
- \$ An amendment to the Board's by-laws was adopted to allow the Board Chairman to serve more than two terms in that capacity.

Miscellaneous

- \$ In keeping with its wish to view local farm activity and hear area concerns at least once a year, the Board held meetings in Oak Grove, Williamsburg and Melfa, in addition to its meetings in Richmond. The Oak Grove meeting included a tour of the Northern Neck Farmers Market, a farm and labor camp. The Williamsburg meeting was held in conjunction with a U.S. Department of Labor Region III Annual Farmworker Conference. The meeting in Melfa included a tour of the MSFW apartment complex in Eastville.
- \$ Opportunities for public comment were provided at each Board meeting.

CONCLUSIONS AND RECOMMENDATIONS

The Board, as well as the Interagency Migrant Worker Policy Committee, has been increasingly challenged to handle the wide range of issues relative to farmworkers. There are continued, growing similarities in the needs and concerns of migrant and seasonal farmworkers, H-2A farmworkers, and H-2B (non-agricultural, although may be agricultural-related) workers. Immigration-related issues such as program access, translation/interpretation services, safety, health, welfare, housing, employment, transportation and education transcend farmworkers and continue to expand, as does Virginia's immigrant population.

The Board and staff wish to thank the numerous state, federal and private agencies for their assistance, cooperation and dedication in identifying problems and addressing the needs of the Commonwealth's migrant and seasonal farmworkers. Through continued coordination and communication, it is the Board's ongoing objective to contribute to the enhancement of the Commonwealth's agricultural economy.

Based on its ongoing meetings, site visits, public comments, and area council reports, the Board makes the following recommendations to the Governor and General Assembly:

1. There have been several agricultural child labor-related injuries reported throughout the nation. It is recommended that the Governor and General Assembly commission a study to determine the extent and impact of agricultural child labor injuries in the Commonwealth. It is further recommended that \$5,000 be appropriated for the study, and that it include, but not be limited to, the number of children working in agricultural occupations, information on the number and types of agricultural child labor injuries, an examination of the causes of agricultural child labor-related accidents, illnesses and fatalities in Virginia and neighboring states, the incidence of injuries suffered by children working in agriculture compared to other industries, and suggested strategies to prevent and reduce the risk of agricultural child labor-related injuries.
2. A federal executive order and policy directive governing access to federally-funded program services, including those administered by state agencies, for persons with "Limited English Proficiency" (LEP) were reviewed by the MSFW Board and Interagency Migrant Worker Policy Committee. These orders are presently in abeyance at the federal level. The Board reviewed the orders because some program access problems have been reported. The Board believes the need for LEP program access will increase as Virginia's immigrant population continues to grow. It is recommended that state agencies be encouraged to provide reasonable program access and translation services to farmworkers and other LEP persons seeking government services in the Commonwealth.

3. The need to construct and improve migrant and seasonal farmworker housing throughout the Commonwealth has been documented in recent statewide housing and economic impact studies, as well as reports from areas experiencing agricultural growth, such as the Northern Neck. It is recommended that funds be appropriated to the Virginia Department of Housing and Community Development to administer a low-interest loan program for construction and rehabilitation of migrant and seasonal farmworker housing.

4. It is recommended that the Migrant Education Program appropriation to the Virginia Department of Education be increased by \$150,000. This program has been annually funded at \$300,000 since 1986; however, the number of children and families served has doubled since that time.