

## ***FOOD PRICES SOAR AS FARMWORKERS SUFFER: AGRIBUSINESS, GOVERNMENT and the DENIAL OF FARM LABOR RIGHTS***

by John Leschak

**H**ave you ever taken a moment to wonder where the food you eat comes from? More and more of us, squeezed by sharply rising food and fuel prices this past year, have been forced to do just that. In the U.S., food inflation is at the highest level in decades, over the past year the price of milk has risen 17; rice, pasta, and bread have risen over 12 percent; and eggs have risen by 25 percent. Globally, food prices have skyrocketed, particularly for staple foods like rice, bread, and tortillas. United Nations (UN) figures show that in 2007 the price of grain rose by 42 percent, and dairy products rose by 80 percent. Inflation has accelerated so far this year – from June 2007 to June 2008, wheat prices increased by 130 percent, rice prices by 74 percent.<sup>1</sup>

The rapid rise in prices has caused food crises in 37 countries, according to the UN's Food and Agriculture Organization.<sup>2</sup> Meanwhile, agribusiness is reaping huge profits. Global grain producer Cargill has harvested an 86 percent rise in profits – from \$553 million to \$1.030 billion; multinational agro-chemical corporation Monsanto has achieved record sales of its herbicides and genetically modified (GMO) seeds, and its profits have nearly doubled to \$2.22 billion; and Archer Daniels Midland (ADM), one of the world's largest agricultural processors of soy, corn and wheat, increased its profits 16-fold from \$21 million to \$341 million.<sup>3</sup> And even though farm income in the U.S. is projected to reach a record \$92.3 billion this year, the 2008 U.S. Farm Bill provides approximately \$13 billion in federal subsidies to agribusiness.<sup>4</sup>

Little if any of these profits and subsidies have trickled down to the farm laborers on whose backs we depend for our food. In New York State, over 21,000 men, women and *children* were employed on farms in New York.<sup>5</sup> A 2007 study of farmworkers in the Hudson Valley area found that farmworkers earn an average of \$6,643 a year.<sup>6</sup> These poverty-level wages are the norm nationwide. According to the Migrant Center, "Half of all farmworkers earn less than \$7,500 per year and half of all farmworker families earn less than \$10,000 per year, far below the 2002 U.S. poverty level of \$18,100 for a family of four."<sup>7</sup>

Farmworkers not only receive very low wages, but they also work in extremely dangerous conditions. According to statistics from the New York Center for Agricultural Medicine and Health, from 1996 to 2000, an average of 34 farmworkers died each year in New York.<sup>8</sup> New York's agriculture sector has the second highest percentage of work-related fatalities (18.8 percent of all work-related deaths), next to construction (20.9 percent of all deaths).<sup>9</sup> Nationwide, the fatality rate for young agricultural workers is 12 per 100,000 workers according to the National Traumatic Occupational Fatalities database and 16.6 according to the Census of Fatal Occupational Injuries.<sup>10</sup> Both of these rates greatly exceed New York's average worker-fatality rate of 3.3 per 100,000 workers.<sup>11</sup>

The high-fatality rate among farm laborers is partly due to the unique dangers of agricultural work, such as exposure to pesticides and airborne germs from concentrated animal feeding operations, as well as working with heavy machinery like tractors. However, the high death rate is also caused by the general lack of a safe

working environment. As will be discussed below, agribusiness regularly circumvents the health and safety regulations on farm work – with disastrous consequences for farmworkers.

As farmworkers suffer, Cargill, Monsanto, Novartis/ADM, and the eight other agribusiness companies that account for over 60 percent of the retail purchases of food in the U.S.,<sup>12</sup> are reaping huge profits. But they are not the only ones contributing to the exploitation of farmworkers. The average consumer unknowingly perpetuates this system every time she buys a sandwich at fast-food chains like Subway.

Anyone who has ever been to a fast-food chain has probably eaten Florida-grown tomatoes. These have lately been the focus of the most-publicized recent case of farmworker abuse. National fast-food chains like Sub-Way buy the majority of their tomatoes from Immokalee, Florida.<sup>13</sup> These food chains make hundreds of millions of dollars in profit, but the farmworkers who pick the tomatoes are paid sweatshop wage: only 40 to 45 cents for every 32-pound bucket of tomatoes that they pick. At this “piece rate” a farm worker must pick over two tons of tomatoes to make \$50 in a day.<sup>14</sup> Corporate food chains are directly involved in setting these low wage rates. These chains are able to use their buying power to demand ever-lower prices from their tomato suppliers, which in turn puts downward pressure on farmworker wages.

Some farmworkers have organized to fight for improved wage and working conditions. One of the most ambitious of the farmworkers’ campaigns is led by the Coalition of Immokalee Workers (CIW), based in Florida. CIW has organized nationwide consumer boycotts to pressure food chains into adopting codes of conduct that mandate respect for farmworkers’ rights. These boycotts have successfully led Taco Bell, McDonalds, and most recently Burger King, to adopt such corporate codes.<sup>15</sup>

Similar struggles have occurred all over the country. In North Carolina, the Farm Labor Organizing Committee (FLOC) waged a boycott against Mt. Olive Pickle Company from 1998 to 2004, resulting in a labor agreement covering 8,000 farmworkers on 1,050 farms in North Carolina and guaranteeing farmworkers’ right to negotiate their working conditions with farmers.<sup>16</sup> In California, the United Farm Workers (UFW) led a boycott against Gallo Winery in 2005, resulting in a labor agreement providing higher wages and health care benefits to farmworkers.<sup>17</sup>

However, these struggles have been going on for decades, with little improvement in most farm laborers working conditions. One of the main barriers to progress is a dual legal system – one system with extensive legal rights and protections, available to most workers in the U.S., and another system with only a few rights that are rarely enforced. The latter is the sole domain of farmworkers, domestic workers and several other professions “exempted” from the coverage of federal and state labor laws. A number of scholars have examined the exclusion of farmworkers under American labor laws. In this regard, I have especially relied on the work of Gregg Schell and Daniel Rothenberg. What distinguishes my work from theirs is my additional analysis of the political economy of agribusiness, the potential solutions for protecting farm laborers’ rights, the reasons why national legal reform is not enough, and my suggestions on an effective alternative for the protection of both farmworkers and consumers.

## **From Small Farmers to Farmworkers**

Americans used to have a much more intimate relationship to their food and its production. One hundred years ago, a large proportion of Americans were self-sufficient small farmers. In 1910, there were still over 6.4 million farms in the U.S. Since then, however, agriculture has been transformed from a system of many small farmers producing a diverse array of commodities “to a system in which a handful of very large-scale, specialized producers now account for the bulk of sales.”<sup>18</sup> As of 2006, there were 2.1 million farms in the U.S, and a mere 8 percent of these farms account for 72 percent of agricultural sales and employ three out of four farm workers!<sup>19</sup> This 8 percent consists of giant farms owned by huge corporations like ADM and Cargill.

Farming has been taken over by a small number of huge corporations, displacing millions of small farmers. As small farmers have left the fields, farmworkers have entered them. The demand for farmworkers is the result of the modernization of agriculture, and the supply of farmworkers is the result of globalization.

According to Census Bureau estimates from households questioned in the Current Population Survey (CPS), there were 1.01 million farmworkers in the U.S. in 2006.<sup>20</sup> However, counting farmworkers is difficult due to the seasonal nature of the work and the high turn-over rate.<sup>21</sup> A more realistic estimate is given by employer records collected by the Census of Agriculture. This counted 3,036,470 farmworkers in the U.S. in 2002.<sup>22</sup> Small farms relied primarily on family members or residents of the local community, but as farms industrialized and become large-scale commercial enterprises, the need for laborers consequently increased. Therefore, the “pressing need for large numbers of temporary laborers is a function of the industrialization of agricultural production.”<sup>23</sup>

Over 80 percent of these workers are migrants, and many of them came from small Mexican farms.<sup>24</sup> According to the 2007 Hudson Valley study, 99 percent of New York’s farmworkers are foreign-born and 63 percent are from Mexico.<sup>25</sup> Small farmers in Mexico, like small farmers in America, have been displaced by big agribusiness. However, their displacement was also facilitated by trade policies under the North American Free Trade Agreement (NAFTA). Since 1994, when NAFTA opened the Mexican grain market to U.S. imports, Mexico has become the third-largest recipient of U.S. agricultural exports.<sup>26</sup> Between 1999 and 2004, “over 1.3 million small farmers in Mexico were pushed into bankruptcy by cheap American grain imports.”<sup>27</sup> Most of these imports were produced by large farms subsidized by the U.S. government.<sup>28</sup> Unable to compete with highly subsidized U.S. imports, many campesinos have left agriculture and migrated north. In this context, farmworkers can be seen “as refugees from small farms in other parts of the same global system.”<sup>29</sup>

Three-fifths of these farm workers are very poor, earning less than \$10,000 annually.<sup>30</sup> According to the 2007 Hudson Valley study, the average hourly wage of farmworkers in New York is \$6.92, and they often work 10 to 12 hours with no overtime pay, no health insurance, no sick days and no benefits whatsoever.<sup>31</sup> These facts were confirmed in a 2001 report by the U.S. Department of Labor that described farm workers as “a labor force in significant economic distress.”<sup>32</sup> In the most extreme cases, farm workers are held against their will and forced to work for little or no pay. Since 1997, Federal Civil Rights officials have prosecuted several cases of modern-day slavery in several states involving thousands of farm workers.

The consolidation, concentration and globalization of agriculture has distanced food production from food consumption. Most U.S. consumers today are far removed from the reality of modern agribusiness since finding fresh fruits and vegetables is as easy as going to the grocery store – even if food inflation has made it tougher to afford the food on display there. This abundance also “makes it all too easy to forget that our food is cultivated, harvested, and packaged by farm workers who labor for less pay, fewer benefits, and under more dangerous conditions than workers in almost any other sector of the U.S. economy.”<sup>33</sup>

The exploitation of farmworkers is made possible partly by the lack of sufficient legal protection. This lack of protection is a legacy of the early twentieth century, when all agricultural workers were excluded from the federal labor laws created under the New Deal. State law, like federal law, has excluded farmworkers. For example, New York’s laws deny farmworkers workers’ compensation coverage, the right to a day off each week and the right to time-and-a-half overtime pay for every hour worked above 40 hours.<sup>34</sup>

## **A History of Exclusion**

Throughout American history, farmworkers have been excluded from the growing legal protections given to other workers. According to longtime Migrant Legal Services attorney Greg Schell:

*Virtually every labor protective standard passed on both a federal and state level prior to 1960 excluded agricultural workers. As the lot of industrial workers consistently improved, the earnings of agricultural workers lagged further and further behind.*<sup>35</sup>

Farmworkers were explicitly excluded from the coverage of the National Labor Relations Act, the Social Security Act, and the Fair Labor Standards Act. Furthermore, the Occupational Safety and Health Administration refused to issue health and sanitary standards to regulate agricultural work.

In 1935, Congress passed the National Labor Relations Act (NLRA). The NLRA was the most comprehensive labor law in the U.S. to date. It guaranteed covered workers the right to organize and join unions, to engage in collective bargaining, and to strike. It also prohibited employers from engaging in five categories of unfair labor practices. Among those unfair labor practices was firing workers for union activities. Under the NLRA, workers fired for engaging in unionism are entitled to reinstatement and backpay. But, because farm laborers are excluded from the NLRA, they do not have the right to form or join unions, and they can be fired if they try to unionize.<sup>36</sup> Although a few states have passed state laws giving farmworkers rights similar to those created by the NLRA, in most areas of the US farmworkers who take collective action against their employers have no legal protection against retaliation by their employers.<sup>37</sup>

In 1935, Congress also passed the Social Security Act, which provided income benefits for retirement, disability, survivorship, and death, as well as a system of unemployment insurance. Farm laborers were also exempted from the Social Security Act.<sup>38</sup> Although the Act was amended in 1978 to include certain farmworkers under the unemployment compensation program, today farm laborers still have difficulty qualifying for and receiving benefits because of the migratory nature of their work, and as a result “less than a third of farmworkers even apply for unemployment benefits.”<sup>39</sup>

The Fair Labor Standards Act of 1938 (FLSA) established a national minimum wage, and guaranteed overtime pay. When the FLSA was first enacted, farmworkers, among other professions, were completely “exempted” from it. Although the FLSA was amended in 1966 to include farmworkers under the law’s minimum wage provisions, the amendment contained numerous loopholes. First, a farmer does not need to pay his workers the minimum wage if the farm did not use more than five hundred “man-days” of labor in at least one calendar quarter of the prior year.<sup>40</sup> Approximately one third of the nation’s farms fall under this loophole because the FLSA measures “man-days” based on calendar quarters, and harvest seasons often straddle two quarters.<sup>41</sup> Second, a farmer does not need to pay his workers the minimum wage if they are engaged in “an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment.”<sup>42</sup> Many farmworkers, including tomato pickers in Immokalee, Florida, are paid a piece rate. This loophole essentially allows farmers to pay their workers sweatshop wages if there is a history of paying workers sweatshop wages! Furthermore, under the 1966 amendment, all farm laborers are still exempt from the FLSA’s overtime provisions.<sup>43</sup>

Other than the FLSA’s guarantee of payment of the federal minimum wage, those employed as agricultural workers in the U.S. had no formal labor rights – no right to join a union, no right to engage in collective bargaining or strike, no right to social security benefits or pension benefits, and no protection of a just cause standard (in other words, they could be fired at the employer’s will)! There were also no safety or sanitary standards regulating the agricultural workplace.

Workplace safety and sanitation is essential to the well being of workers. In recognition of the importance of a safe and healthy workplace, Congress passed the Occupational Safety and Health Act in 1971, which created the Occupational Safety and Health Administration (OSHA) within the Dept. of Labor (DOL). Although OSHA issued detailed regulations for hundreds of industries, the DOL refused to issue specific standards for most agricultural jobs. OSHA’s failure to issue any health or safety standards had a harsh impact

on farmworkers because of the brutality of their working conditions. Most growers refused to provide clean drinking water or sanitary outhouses and farmworkers were frequently sprayed with toxic pesticides like DDT because “no regulations required employers to apply such insecticides safely.”<sup>44</sup> In the early 1970s, farmworker advocates formally requested OSHA to issue regulations for agriculture. When OSHA refused, a coalition of farmworker organizations sued OSHA in federal court. In 1987, after eleven years of litigation, OSHA finally issued health and safety standards requiring agricultural employers to provide their workers with clean drinking water, and toilets and other basic sanitation facilities.<sup>45</sup>

However, unsanitary and unsafe conditions have persisted. Although the OSHA standards require employers to provide farmworkers with clean drinking water, toilets and hand-washing facilities, growers frequently circumvent the law – at the cost of worker’s lives! This past May, Maria Isabel Vasquez Jimenez, died from dehydration while picking grapes at a vineyard in San Joaquin, California. Maria’s employer, Merced Farm Labor, was issued three citations in 2006 for violating OSHA standards and was fined \$2,250, but by the time of Maria’s death Merced still had not paid these fines.<sup>46</sup>

Maria’s tragic fate is all too common among farmworkers. DOL data shows that “agricultural work consistently ranks among the more hazardous occupations in the U.S. for the incidence of fatalities, injuries, and illnesses.”<sup>47</sup> Under the FLSA, employment in jobs that are “particularly hazardous” is prohibited for children under the age of eighteen.<sup>48</sup> It is obvious that agriculture is particularly hazardous work. However, Maria was only 17 when she died. Because farmworkers are excluded from the FLSA, there are different standards for child labor in agriculture. The minimum age standards for agricultural employment allow youths ages 16 and older to work in “any farm job at any time.”<sup>49</sup> Furthermore, children as young as twelve may work “in non-hazardous jobs on the farm” if they receive parental permission or work alongside their parents. Over 90,000 of the over 3 million farm laborers in the U.S. are between the ages of 13 and 17.<sup>50</sup> Although estimates of the number of young farm laborers who are killed by work-related injuries varies considerably, it is agreed that agriculture has the biggest number of young worker fatalities.<sup>51</sup>

Farmworkers have an extremely high fatality rate because, despite the OSHA standards, they continue to face severe occupational hazards such as pesticide exposure. “The EPA estimates that farmworkers suffer as many as 300,000 acute illnesses and injuries from pesticide exposure each year.”<sup>52</sup>

“When you are poisoned by pesticides, it makes you angry,” said Jose Mendoza, a farm labor contractor in Florida. “You think, ‘Why didn’t they tell me they had just sprayed the field?’” In 1989, Mendoza’s crew of farmworkers was involved in one of the most severe incidents of pesticide exposure in recent history, resulting in 85 workers being sent to the hospital. According to Mendoza:

*The doctor in the clinic said that the workers were poisoned by a very strong pesticide. He gave the order that everybody should get out of the fields ... [But, the boss] said he would fire those who refused to return, and people were afraid of losing their jobs. Of the 85 workers who were affected, there were many who kept on working even though they were sick.*<sup>53</sup>

Mendoza was not intimidated by the boss’s threats, and he took medical leave. “At first, we were receiving workers’ compensation. Then the insurance company sent us to one of their doctors who said that we were fine,” Mendoza said, “but the other doctor [at the clinic] knew we were still sick.”<sup>54</sup> Mendoza was actually pretty lucky because in many states workers’ compensation is not available to farmworkers. “There is no federal workers’ compensation law applicable to most employees, and accordingly, workers’ compensation is peculiarly a matter of state law.”<sup>55</sup> Currently,

*“Only eleven states provide farmworkers with the same workers’ compensation coverage as other workers. In twenty five other states, farmworkers have limited coverage, and in fourteen states, agricultural employers are not required to provide workplace insurance for their laborers.”*<sup>56</sup>

New York is among the 25 states that provide limited coverage to farmworkers. Under the current law, a farmer is not required to provide workers’ compensation to a farm laborer if the farmer either did not employ

that laborer during the previous year – automatically excluding new hires from any coverage – or he paid a total of less than \$12,000 to all laborers employed during the prior year.<sup>57</sup> The New York Assembly has repeatedly passed a bill that would equalize workers' compensation coverage between agricultural laborers and most other workers, but it has always died in the New York Senate.<sup>58</sup> The question is: why are so many politicians steadfastly opposed to extending any legal protections to farmworkers?

### **Reasons for Exclusion**

It is unclear exactly why Congress decided to “exempt” farmworkers from the labor laws of the New Deal. Very little attention was given to the matter during Congressional debates. Some scholars have argued that these agricultural exemptions were prompted by racial concerns.<sup>59</sup> During the 1930s and 1940s, most farmworkers in the rural South were African American. Fearing that such legislation would disrupt Jim Crow laws, most Southerners in Congress opposed any legislation on behalf of farmworkers, and FDR had to exclude farmworkers to get the needed votes for his New Deal initiatives.

Racism certainly played a role in the exclusion, but the more fundamental motive was *classism*. As W.E.B. Du Bois concluded, racism serves an economic function – maintaining a constant supply of low-wage labor.<sup>60</sup> Martin Luther King Jr. agreed with Du Bois. “Depressed living standards for Negroes,” King wrote in 1966, “are a structural part of the economic system ... Certain industries ... are based upon a supply of low-paid, under skilled and immobile nonwhite labor.”<sup>61</sup> That statement is perhaps nowhere more true than with southern agriculture, which relied on black slavery and, after the slaves were freed, on black sharecroppers and tenant farmers. Today, virtually the entire agricultural labor force is non-white. However, as both Du Bois and King recognized, racial identities obscure people's true interests, which are based on class. White folks often pick fruits and vegetables in the same fields with Latinos, and both are being exploited for agribusiness profits.

Exclusion from the New Deal was intended to crush the developing farmworker movement, which was multi-racial and multi-ethnic. Throughout 1933 and 1934, Bindlestiffs and Oakies (white farm laborers), as well as Blacks, Latinos, Filipinos, and Japanese engaged in 49 different walkouts, involving almost 70,000 farm and cannery workers. In 1933, over 12,000 cotton-pickers went on strike in San Joaquin, California to protest low wages. While similar actions by urban factory workers, led by the new CIO, succeeded in gaining political and economic rights, the efforts to unionize farm workers were crushed. Agribusiness defeated the farmworkers through armed violence carried out by vigilante groups with the help of state and local police.<sup>62</sup> The “fundamental role played by private and state repression in turning field workers into the New Deal's pariahs” was apparent in such tragedies as the 1936 lettuce lockout in California, when the Associated Farmers used chemical weapons on the Vegetable Packers Association, a union of white farmworkers.<sup>63</sup>

Although farmer vigilantism has stopped, agricultural workers remain excluded from labor standards. Their continued exclusion is the result of the disproportionate political power of agribusiness in the U.S. Agribusiness has been a profound influence on American policies for over half a century. In the 1930's, they pushed Congress to exclude farmworkers from the New Deal. During World War II, pressure from agricultural interests lead the federal government to create the “Bracero” program, which imported millions of Mexican men between 1942 and 1964 to work on American farms. In the 1980s, during the Uruguay Round of global agricultural negotiations, “the former executive of Cargill, Daniel Amstutz, drafted most of the proposal from the United States.”<sup>64</sup> Agribusiness' influence reached new heights in the 1990's through the “revolving door” of government officials and corporate executives. Ann Veneman and Allen Johnson, both former agribusiness executives, were appointed by President Clinton as USDA Secretary and Chief Agricultural Negotiator at the Office of the US Trade Representative, respectively.<sup>65</sup> President Clinton also appointed several former Monsanto employees to high-ranking positions in the Food and Drug Administration (FDA), where they helped obtain FDA approval of Monsanto's recombinant bovine growth hormone (rBGH) despite its serious dangers to human health.<sup>66</sup> President Bush continued this trend by appointing a former Monsanto official as deputy administrator of the Environmental Protection Agency (EPA).<sup>67</sup>

Agribusiness has used its political clout to defeat several bills that would have given farmworkers labor rights. Although some laws regulating the treatment of farmworkers have been passed, the farm lobby has made sure that these regulations are not enforced.

## **Why recent laws have failed**

Since the 1960s, several laws were passed that aimed to protect farmworkers through regulation. In 1963, Congress passed the Farm Labor Contractor Registration Act, and in 1983 they passed the Migrant and Seasonal Agricultural Worker Protection Act. During the 1960s, the federal government also created four programs to provide social services to migrant farmworkers: Migrant Health, Migrant Education, Migrant Head Start, and the migrant provisions of the Job Training Partnership Act (JTPA).<sup>68</sup>

However, despite these regulations and social programs, farmworkers continue to be exploited and abused. According to Mark Schacht, former legislative director of the Migrant Legal Action Program, “the situation is not much better now than it was in the 1960s.”<sup>69</sup> There are several reasons for the failure of these ameliorative measures, including: inadequate resources, lobbying by agricultural interests, and farm laborers’ continuing exclusion from the NLRA.

There was no federal labor law designed specifically to protect farm workers until 1963, when Congress passed the Farm Labor Contractor Registration Act (FLCRA). The FLCRA applied only to “farm labor contractors;” not to the growers or farmers who owned the land. The DOL has defined “farm labor contractor” (FLC – also known as a “crew leader”) as someone who, for money or other payment, “recruits, solicits, hires, employs, furnishes or transports migrant and/or seasonal agricultural workers or, provides housing to migrant agricultural workers.”<sup>70</sup> The requirements imposed on FLCs by the FLCRA were minimal. Crew leaders only needed to obtain a certificate of registration from the DOL; disclose to workers, in writing, all information regarding wages, hours, workers compensation, and other working conditions; keep basic payroll records; and give workers written statements of all earnings and deductions on payday. However, despite the simplicity of the requirements, very few crew leaders complied with the FLCRA. A 1973 congressional report found that 73 percent of crew leaders regularly violated the act’s requirements.<sup>71</sup>

In 1983, Congress replaced the FLCRA with the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). The MSPA has several significant differences from the FLCRA. First, under the FLCRA, only farm labor contractors were responsible for following federal guidelines, but under the MSPA, all “agricultural employers” are also responsible. Second, under the FLCRA, farmworker housing only needed to comply with federal standards if it was provided by FLCs, but under the MSPA, federal housing standards apply to virtually all farmworker housing, whether provided by a FLC, farmer, or private landlord. And third, the MSPA also requires persons who transport farmworkers to provide insurance roughly equivalent to that carried by bus lines and other common carriers.<sup>72</sup>

The DOL is responsible for enforcing the MSPA. However, since 1983, the DOL has done very little to put the MSPA into action. Like the FLCRA before it, the MSPA is ignored by most farmers with impunity. According to Jim Handleman, a farm labor specialist at the DOL, “At least 50% of crewleaders and farmers are in serious noncompliance with the law.”<sup>73</sup> There are several reasons for this sad state of affairs.

First, the DOL has never been given adequate resources to respond to farmworkers’ needs. “We don’t have what it would take to really do the job,” said Saul Sugarman, an attorney with the DOL. “We use the equivalent of 27 full-time employees to ensure compliance nationwide. It’s a pittance.”<sup>74</sup>

Second, even if the DOL had sufficient resources, they likely would still have insufficient political will. According to Schell, the DOL has never engaged in sustained enforcement against farmers because of the

political power of the farm lobby.

*Whenever there is an investigation or the suggestion of a substantial penalty, growers contact their congressman, senator or governor, who then leans on the [DOL] ... The [DOL], like all federal agencies, responds to political pressure.<sup>75</sup>*

Sugarman, who has worked at the DOL since 1962, corroborated Schell's claim. In the 1970s, Sugarman prepared a report on the working conditions of migrant farmworkers in Florida's sugar industry. Sugarman's report revealed that big sugar companies were cheating tens of thousands of farmworkers out of their wages every year. However, after members of the sugar industry objected to the report, the DOL asked Sugarman to retract it and when he refused to do so they sent another investigator to Florida who prepared a new report which concluded that there were no labor violations.<sup>76</sup>

Third, neither the MSPA nor the FLSA included farm laborers in the NLRA. Thus, to this day, farmworkers are still excluded from NLRB-sanctioned unionization and collective bargaining. Because the DOL has neither the resources nor the political will to protect farm laborers' rights, it is up to the workers themselves to do so. Collective action and self organization is the real solution to the growing inequality between farmers and farmworkers – a fact which many agricultural laborers are aware of. “We need the union for job security, a grievance procedure, seniority, respect, not just higher wages,” Arnulfo Ramirez, a longtime Washington apple picker, told Human Rights Watch.<sup>77</sup>

The NLRA declares a national policy of “full freedom of association” and protects workers’ “right to self-organization, to form, join or assist labor organizations, to bargain collectively” and it makes it unlawful for employers to “interfere with, restrain or coerce” workers in the exercise of these rights.<sup>78</sup> Without these protections, employers can fire any farmworker for union activity. Regelio Alvarez, another Washington apple picker, was fired when he tried to start a union with the United Farm Workers (UFW). “When [the farmers] found out I was bringing people to UFW meetings, they fired me,” Alvarez said. Farmworkers who are fired for union activity are also blacklisted. Samuel Vallejo, an apple picker since 1983, was fired in 1993 when his employers learned that he had contacted the UFW. “The company spread my name around with other big companies not to get hired,” Vallejo said.<sup>79</sup>

Freedom of association and the right to organize and bargain collectively are essential means for farm laborers to confront their low wages, unsanitary workplaces, lack of medical care, and other abusive conditions. Therefore, some members of Congress have proposed including farmworkers under the NLRA with the same rights and protections as other covered workers.<sup>80</sup>

## **NLRA Coverage Is Not Enough**

Although Congress should bring agricultural workers and other “exempted” professions under NLRA coverage, such a statutory reform would not be enough to end the abuse of farmworkers for several reasons.

First, the NLRA has many flaws, and because of these shortcomings the reality of NLRA enforcement falls far short of its goals of promoting unionism and protecting workers' rights. Although firing a worker for organizing is prohibited by the NLRA, reprisals against union supporters are common, particularly work-place closures.<sup>81</sup> The prevalence of workers' rights abuse results from National Labor Relations Board (NLRB) court procedures and weak remedies for NLRA violations. Under NLRB procedures, an employer can undertake a “technical refusal to bargain” to get judicial review of an NLRB decision recognizing a union.<sup>82</sup> A “technical refusal” can lead to a case that often takes *years* for the NLRB to resolve, and workers cannot engage in collective bargaining until the case is decided! Employers also have incentives to drag out unfair labor practice cases brought against them. This situation is exacerbated by weak remedies. After years of litigation, all a worker can usually expect is a reinstatement order and a modest back-pay award. Simply amending the NLRA

to include farmworkers will just apply this flawed system to agriculture.

Second, any attempt to protect farmworkers' rights will require changes in immigration law, as well as labor law. According to NAWS, 53 percent of farmworkers nationwide are undocumented immigrants, and in New York, about 71 percent are undocumented.<sup>83</sup> Although the NLRA covers workers' defined as "employees" regardless of their immigration status,<sup>84</sup> the U.S. Supreme Court ruled in *Hoffman Plastics v. NLRB* that undocumented workers cannot receive the remedy of back pay for NLRA violations.<sup>85</sup> Other remedies, such as "cease and desist" orders, are still available to undocumented workers. But, since *Hoffman*, employers have made claims that undocumented workers are unprotected by any labor laws.<sup>86</sup> Thus, immigrant workers have been deterred from filing unfair labor practice charges by fears that their immigration status will be challenged.

Immigration status is a problem for farmers as well as farmworkers. According to Peter Gregg, a spokesperson for the New York Apple Association, which represents over 670 apple growers in the state, Immigration and Customs Enforcement (ICE) raids have devastated many farms. "A lot of growers lost numerous workers at the peak of the harvest. They had to scramble to try to find someone else," Gregg said. "In a lot of cases, there were apples left hanging on the trees."<sup>87</sup> Thus, immigration reform is in the best interest of both farmers and farmworkers. However, there has not been any major reform relating to immigrant farmworkers since 1986 when the federal government passed the Immigration Reform and Control Act (IRCA). Under IRCA's "Special Agricultural Worker" (SAW) program, any immigrant who worked 90 days in agriculture during the previous year could receive legal residence. Of the 2.8 million immigrants granted amnesty by IRCA, over 1 million were undocumented farmworkers legalized through the SAW program.<sup>88</sup> Recently, several attempts have been made to enact similar reform – AgJOBS in 2006-07 and the Emergency Agricultural Relief Act in 2008 – but none have succeeded.<sup>89</sup> Without such reform, amending the NLRA to include farmworkers will be meaningless.

Third, including farmworkers under the NLRA may actually deter collective action by subjecting farm laborers to the NLRA's anti-union provisions. Because farm laborers are exempted from the NLRA, they are also exempted from subsequent amendments to the NLRA - the Labor-Management Relations Act of 1947 (also known as the Taft-Hartley Act) and the Labor-Management Reporting and Disclosure Act of 1959 (also known as the Landrum-Griffin Act). These amendments banned sit-down strikes, mass pickets, sympathy strikes, secondary boycotts and other effective labor tactics. Exemption from these anti-union restrictions is a benefit to farm laborers because they are "not prevented from voluntarily organizing and being voluntarily recognized. In fact, unions – and powerful ones – existed long before the passage of the NLRA."<sup>90</sup>

Fourth, the rights of those workers who are already covered under NLRA are being undermined by changes wrought by neoliberal globalization. The increased mobility of capital has destabilized national systems of labor regulation by allowing corporations to relocate production in low-wage, non-unionized countries. Furthermore, industrial jobs lost to outsourcing have largely been replaced with jobs in the service sector and the contingent nature of many service jobs places them outside the auspices of the NLRA.

## **Conclusion**

American agribusiness is exploiting both farmworkers and consumers by pitting them against one another. Most farmworkers make less than \$7 an hour for hard manual labor in dangerous conditions, without overtime pay, or eligibility for workman's compensation when injured. At the same time, consumers are being gouged by rapidly rising food prices. Agribusiness argues that improving the wages and working conditions of farm laborers will cause food prices to rise even more. But agriculture is not a zero-sum game. It is possible to improve the situation of farmworkers without harming consumers. This possibility is apparent in the record-high profits of agribusiness. Although the cost of food inputs like fuel and fertilizer have gone up, price inflation is also largely the result of unregulated speculation. After the mortgage crisis, investors started putting more money into

farmland – in effect creating a “food bubble.” However, there is a major difference between the food crisis and the housing crisis. “When a housing bubble inflates till it pops, people lose their homes. But when a food bubble grows till it bursts, people starve.”<sup>91</sup>

Change is needed to protect both farmworkers and consumers. Reforming our labor and immigration laws is a step in the right direction. Likewise, major improvements in enforcement of current wage, hour and worker safety protections is urgently needed. But even these essential measures would probably be insufficient counterweights to the disproportionate political power of agribusiness. The balance of power can be altered in favor of workers and consumers through internationally guided economic sanctions. The U.S. government can be sanctioned by the World Trade Organization (WTO) for its favoritism toward agribusiness,<sup>92</sup> and by the International Labour Office (ILO) for allowing agri-business to violate international labor rights.<sup>93</sup>

Another grass-roots option that could aid these international sanctions is a consumer boycott of agricultural corporations that abuse farmworkers. Boycotting agribusiness does not require anyone to go on a hunger-strike. Rather, instead of going to supermarket and fast-food chains, you could patronize local agriculture and community gardens that respect workers’ rights. Small farms are actually a growing part of the civic economy of many cities. For example, in New York City, there are about one thousand community gardens that produce fresh fruits, vegetables, and other products.<sup>94</sup> Buying fair-trade products is another alternative.<sup>95</sup> Or, if both of these options are out of your price range, anyone with a backyard can try growing some produce in their own garden.

Consumer boycotts are often criticized for the short-term threat they may pose to the jobs of farm laborers at targeted companies. However, such impacts may be reduced the more that consumer boycotts are coordinated with stepped up pressure on both food retailers and agribusiness by unions, human rights groups, politicians and other allies. Big supermarket and fast-food chains get their food from factory farms that rely on large numbers of migrant workers. By boycotting these food chains, you can break the chains of agribusiness tyranny, thus helping to lower food prices and protect farmworkers’ rights.

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## NOTES

<sup>1</sup> Sharon Smith, “Let them eat ethanol: The revolt over rising food prices,” *International Socialist Review*, Issue 59 (June 2008).

<sup>2</sup> Geoffrey Lean, “Multinationals make billions in profit out of growing global food crisis,” *Independent.co.uk* (May 4, 2008).

<sup>3</sup> Lean, Id.; also see John Nicols, “The World Food Crisis,” *The Nation* (May 12, 2008).

<sup>4</sup> Lauren Etter and Greg Hitt, “Farm Lobby Beats Back Assault on Subsidies,” *Wall Street Journal* (March 27, 2008): A1, A12.

<sup>5</sup> N.Y. State Dept. of Labor. “NAICS Based Industry Employment and Wages: NAICS Industry = Crop Production.” Retrieved July 22, 2008. <http://www.labor.state.ny.us/workforceindustrydata/apps.asp?reg=nys&app=ins>.

<sup>6</sup> Margaret Gray and Emma Kreyche, *The Hudson Valley Farmworker Report: Understanding the Needs and Aspirations of a Voiceless Population*, Bard College Migrant Labor Project, New York (2007). Retrieved July 24, 2008. <http://events.adelphi.edu/news/farmworkers/farmworker.report.pdf>.

<sup>7</sup> Geneseo Migrant Center, “Farmworker Facts.” Retrieved July 21, 2008. <http://www.migrant.net/migrant/farmworker.htm>.

<sup>8</sup> New York Center for Agricultural Medicine and Health, “Agricultural Injury Surveillance I: Farm Fatality Statistics – 1996-2000.” Retrieved July 23, 2008. [http://www.nycamh.com/research/res\\_projects/entry\\_detail.asp?entryid=3](http://www.nycamh.com/research/res_projects/entry_detail.asp?entryid=3). From 1996-2000, a total of 171 people in New York were reported killed as a result of agriculture-related injuries.

<sup>9</sup> New York State Dept. of Health, “New York State Census of Fatal Occupation Injuries: 1992-2000.” Retrieved July 23, 2008. <http://www.health.state.ny.us/environmental/investigations/cfoi/cfoi.pdf>.

- <sup>10</sup> David Hard, Ph.D., John Myers, M.S.F., Karl Snyder, Ph.D., Virgil Casini, B.S., Linda Morton, M.S., Rosemary Cianfrocco and Judy Fields. "Young Workers at Risk When Working in Agricultural Production." National Institute for Occupational Safety and Health, Division of Safety Research. Retrieved July 22, 2008, <http://www.cdc.gov/NIOSH/childag/youngagworkersfinal.html>.
- <sup>11</sup> U.S. Dept. of Labor, Bureau of Labor Statistics, "New York (including New York City): Work-Related Fatality Numbers and Rates." Retrieved July 23, 2008. <http://www.bls.gov/opub/cforchartbook/pdf/nycfoi.pdf>.
- <sup>12</sup> Lyson, Thomas. *Civic Agriculture: Reconnecting Farm, Food, and Community*. (Medford, Mass.: Tufts University Press, 2004, pp. 49-50. In 2001, over 60 percent of the American food market was controlled by ten companies: Nestle, Kraft Foods, ConAgra, PepsiCo, Unilever, ADM, Cargill, Coca Cola, Diageo, and Mars. Only two these companies are not American: Nestle (based in Switzerland), and Diageo (based in the UK). Monsanto is not an agricultural corporation per se. Rather, they are an "agro-chemical" company specializing in the sale of seeds and fertilizers – over which they have an effective monopoly. "Monsanto has bought up the seed business of corporations such as Cargill, Agracetus, Calgene, Asgrow Seed, Delta and Pine Land, Holden, Unilever, and Sementes Agroceles." Shiva, Vandhava. *Stolen Harvest: The Hijacking of the Global Food Supply* (Cambridge, MA: South End Press, 2000, p. 29).
- <sup>13</sup> Tracy Miguel, "Coalition of Immokalee Workers Brings its demands to Chipolte, Subway and Whole Foods," *Naples News* (July 25, 2008).
- <sup>14</sup> See John Bowe, "Nobodies: Does slavery exist in America?," *The New Yorker* (April 21 & 28, 2003): 106; also see Andrew Cockburn, "21<sup>st</sup> Century SLAVES," *National Geographic* (Sept. 2003): 18, and Leonard Doyle, "Slave labour that shames America," *Independent.co.uk* (Dec. 17, 2007).
- <sup>15</sup> See Andrew Martin, "Burger King Grants Raise to Pickers," *New York Times* (May 24, 2008).
- <sup>16</sup> Farm Labor Organizing Committee (FLOC), "FLOC Timeline," Retrieved July 23, 2008. <http://www.floc.com/floc%20timeline.htm>.
- <sup>17</sup> United Farm Workers (UFW), "Victories," Retrieved July 23, 2008. [http://www.ufw.org/\\_board.php?b\\_code=org\\_vic](http://www.ufw.org/_board.php?b_code=org_vic).
- <sup>18</sup> Lyson, p. 31.
- <sup>19</sup> *Ibid*, p. 34; also see U.S. Census Bureau, "Table 802. Farms – Numbers and Acreage: 1990 to 2006." Retrieved July 23, 2008. <http://www.census.gov/compendia/statab/tables/08s0802.pdf>; and U.S. Dept. of Agriculture, National Agricultural Statistics Service, "Table 3. Economic Class of Farms by Market Value of Agricultural Products Sold and Government Payments: 2002." Retrieved July 23, 2008. [http://www.agcensus.usda.gov/Publications/2002/Volume\\_1,\\_Chapter\\_1\\_US/st99\\_1\\_003\\_003.pdf](http://www.agcensus.usda.gov/Publications/2002/Volume_1,_Chapter_1_US/st99_1_003_003.pdf).
- <sup>20</sup> William Kandel, "A Profile of Hired Farmworkers, A 2008 Update," U.S. Dept. of Agriculture (USDA), Economic Research Report No. 60 (July 2008). Retrieved July 24, 2008. <http://www.ers.usda.gov/Publications/ERR60/ERR60.pdf>.
- <sup>21</sup> For a discussion of the problems associated with counting farmworkers see Kala Mehta, *Findings from the National Agricultural Workers Survey (NAWS) 1997-1998: A Demographic and Employment Profile of United States Farmworkers*. (Washington, DC: U.S. Dept. of Labor, 2000).
- <sup>22</sup> According to the Census, there were only 927,708 hired farm workers working 150 days or more (see [http://www.agcensus.usda.gov/Publications/2002/Ag\\_Atlas\\_Maps/Operators/pdf/02-M075-RGBDot1-largetext.pdf](http://www.agcensus.usda.gov/Publications/2002/Ag_Atlas_Maps/Operators/pdf/02-M075-RGBDot1-largetext.pdf)) whereas there were 2,108,762 hired farm workers working less than 150 days (see [http://www.agcensus.usda.gov/Publications/2002/Ag\\_Atlas\\_Maps/Operators/pdf/02-M074-RGBDot1-largetext.pdf](http://www.agcensus.usda.gov/Publications/2002/Ag_Atlas_Maps/Operators/pdf/02-M074-RGBDot1-largetext.pdf)).
- <sup>23</sup> Rothenberg, Daniel. *With These Hands: The Hidden World of Migrant Farmworkers Today*. (Berkeley, CA: University of California Press, 2000, p. 12-13).
- <sup>24</sup> The 80 percent figure comes from the National Agricultural Worker Survey (NAWS). However, according to USDA statistics, only about a third of all farmworkers are migrants. The discrepancy between these two data sets results from differences in survey methodology. The USDA statistics are based on data from the CPS which is collected monthly from households over a 16-month period. This limits CPS data collection to more established residents (i.e. those who not only own a home but live there for 16 consecutive months). In contrast, NAWS data is collected at the worksite. This method is more likely to include people who have less stable living arrangements or who tend to avoid participation in formal data collection efforts (See Mehta, *Supra*, Note 21). Because many farmworkers move from state to state over the course of the harvesting season, following the crops, the NAWS data provides a more accurate picture than the USDA statistics.
- <sup>25</sup> Gray and Kreyche, *The Hudson Valley Farmworker Report*, *Supra*, Note 6.
- <sup>26</sup> U.S. Dept. of Agriculture. "The Benefits of NAFTA for U.S. Agriculture." Retrieved June 25, 2008. <http://www.fas.usda.gov/itp/Policy/NAFTA%20Presentation.ppt>.
- <sup>27</sup> Chacon and Davis, p. 121.
- <sup>28</sup> While NAFTA required elimination of domestic subsidies relied upon by small producers, it permitted government support to large producers to continue. "The 10% of U.S. farms that are "large" farms (defined as those with gross sales in excess of \$250,000) now produce two-thirds of all agricultural goods on only 32% of agricultural land. These large farms also receive the lion's share of U.S. government farm subsidies; by 2002, the top 10% of subsidy recipients collected 65% of total payments, a share worth \$7.8 billion." See Public Citizen, "The Ten Year Track Record of the North American Free Trade Agreement: U.S., Mexican and Canadian Farmers and Agriculture." Retrieved July 24, 2008. [http://www.citizen.org/documents/NAFTA\\_10\\_ag.pdf](http://www.citizen.org/documents/NAFTA_10_ag.pdf). Thus, since the passage of NAFTA, U.S. agribusiness has prospered, while nearly 300,000 family farms have gone into bankruptcy. See Public Citizen, "Debunking USTR Claims in Defense of NAFTA: The Real NAFTA Score 2008." Retrieved July 24, 2008. [http://www.citizen.org/documents/NAFTA\\_USTR\\_Debunk\\_web.pdf](http://www.citizen.org/documents/NAFTA_USTR_Debunk_web.pdf).

- <sup>29</sup> Thompson, Charles D. “Layers of Loss: Migrants, Small Farmers, and Agribusiness.” In Charles Thompson and Melinda Wiggins, eds., *The Human Cost of Food: Farmworkers’ Lives, Labor and Advocacy* (Austin, Tex.: University of Texas Press, 2002): 85.
- <sup>30</sup> National Center for Farmworker’s Health. “Facts About Farmworkers.” Retrieved June 12, 2008. <http://www.ncfh.org/docs/fs-Facts%20about%20Farmworkers.pdf>
- <sup>31</sup> Gray and Kreyche, *The Hudson Valley Farmworker Report*, Supra, Note 6.
- <sup>32</sup> U.S. Dept. of Labor. “The Agricultural Labor Market – Status and Recommendations.” Retrieved June 17, 2008. [http://migration.ucdavis.edu/rmn/word-etc/dec\\_2000\\_labor.htm](http://migration.ucdavis.edu/rmn/word-etc/dec_2000_labor.htm).
- <sup>33</sup> Thompson, Charles and Melinda Wiggins, eds., *The Human Cost of Food: Farmworkers’ Lives, Labor and Advocacy*. (Austin, Tex.: University of Texas Press, 2002).
- <sup>34</sup> Steven Greenhouse, “Seeking New State Law for Farm Workers,” *New York Times* (Oct. 28, 1999).
- <sup>35</sup> Schell, Greg. “Farmworker Exceptionalism under the Law: How the Legal System Contributes to Farmworker Poverty and Powerlessness,” In Thompson and Wiggins, eds., *The Human Cost of Food: Farmworkers’ Lives, Labor and Advocacy* (Austin, Tex.: University of Texas Press, 2002): 141.
- <sup>36</sup> Section 2(3) of the NLRA (29 U.S.C. § 152(3)) provides: “The term employee” ... shall not include any individual employed as an agricultural laborer.” Also see Schell, p. 150; and Chacon and Davis, p. 67.
- <sup>37</sup> Laws extending labor rights to farmworkers have been passed in Arizona, California, Idaho and Kansas. See Ariz. Rev. Stat. Ann. Sect. 23-1381-95; Cal. Lab. Code Sect. 1140-1163.3; Idaho Code Sect. 22-4101-13; and Kan. Stat. Ann. Sect. 44-818-30.
- <sup>38</sup> Schell, p. 149.
- <sup>39</sup> Rothenberg, p. 209.
- <sup>40</sup> Fair Labor Standards Act of 1938, 29 U.S.C. § 213(a)(6): “The provisions of sections 206 ... and 207 of this title shall not apply with respect to-- any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any *calendar quarter* during the preceding calendar year, use *more than five hundred man-days* of agricultural labor.” (emphasis added).
- <sup>41</sup> Schell, p. 146.
- <sup>42</sup> Fair Labor Standards Act of 1938, 29 U.S.C. § 213(a)(6): “The provisions of sections 206 ... and 207 of this title shall not apply with respect to-- any employee employed in agriculture ... (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year.”
- <sup>43</sup> FLSA, 29 U.S.C. § 206; also see Schell, p. 147.
- <sup>44</sup> Ortiz, Paul. “From Slavery to Cesar Chavez and Beyond: Farmworker Organizing in the United States,” in Thompson and Wiggins, eds., *The Human Cost of Food: Farmworkers’ Lives, Labor and Advocacy* (Austin, Tex.: University of Texas Press, 2002): 257.
- <sup>45</sup> Schell, p. 150. More information on the OSHA field sanitation standards is available online at <http://www.dol.gov/esa/regs/compliance/whd/whdfs51.pdf>
- <sup>46</sup> Garance Burke, “County officials begin criminal probe into farmworker death,” *Associated Press* (May 29, 2008). And Maria was not the only farmworker who suffered this ghastly demise. Since mid-May at least three other farmworkers have died due to heat and weather conditions. On June 29, Jose Macarena Hernandez (64), died from heat exhaustion while harvesting butternut squash in Santa Maria. On July 8, Abdon Felix Garcia (42), father of three, died after working all day in Arvin, California vineyards. And on July 9, Ramiro Carrillo Rodriguez (48), “died after a day of work in Reedley. He leaves behind two teen-agers, ages (13) and (16).” See American Friends Service Committee, Legislative Link – REST IN PEACE: Farmworkers die in scorching heat, <http://www.afsc.org/ImmigrantsRights/ht/display/ContentDetails/i/18478> (last visited Sept. 1, 2008).
- <sup>47</sup> U.S. Dept. of Agriculture Economic Research Service. “Hired Farmworkers a Major Input For Some U.S. Farm Sectors.” Retrieved June 17, 2008. <http://www.ers.usda.gov/AmberWaves/April08/Features/HiredFarm.htm>.
- <sup>48</sup> FLSA, 29 U.S.C. § 212.
- <sup>49</sup> U.S. Dept. of Labor, Employment Standards Admin., “Fact Sheet #40: Federal Youth Employment Laws in Farm Jobs.” Retrieved July 24, 2008. <http://www.dol.gov/esa/WHD/regs/compliance/whdfs40.pdf>. (emphasis added).
- <sup>50</sup> Rothenberg, p. 7.
- <sup>51</sup> According to the National Institute for Occupational Safety and Health (NIOSH), 907 youth died from farmwork-related accidents between 1995 and 2002. See NIOSH, Dept. of Health and Human Services, “Injuries to Youth on U.S. Farm Operations, 2004.” Retrieved July 23, 2008. <http://www.cdc.gov/niosh/docs/2007-161/>. However, according to Janice Windau and Samuel Meyers in the Monthly Labor Review, only 259 youths died from farmwork-related accidents between 1993 and 2002. See Windau, and Meyers, “Occupational Safety and Health: Occupational Injuries Among Young Workers,” Monthly Labor Review: 11-23 (Oct. 2005). Retrieved July 24. <http://www.bls.gov/opub/mlr/2005/10/art2full.pdf>. This discrepancy results from difference in methodology. NIOSH’s death count is calculated from a death-certificate-based census. “[B]ecause death certificates ask if the injury occurred at work, the death certificate may not be a true measure of work-relatedness for certain causes of death. For instance, a suicide that takes place at work may or may not be associated with work per se.” NIOSH, “Fatal Injuries to Civilian Workers in the United

States, 1980-1995.” Retrieved July 25, 2008. <http://www.cdc.gov/niosh/docs/2001-129/2001129.html#Methods>. Thus, NIOSH data may overestimate the true number of workplace fatalities. Windau and Meyers, on the other hand, rely not on the NIOSH, but on the Census of Fatal Occupational Injuries (CFOI). The CFOI is a multiple record-based census of occupational fatalities and therefore may exclude alleged “non-work-related” deaths. See David Hard, Ph.D., John Myers, M.S.F., Karl Snyder, Ph.D., Virgil Casini, B.S., Linda Morton, M.S., Rosemary Cianfrocco and Judy Fields, “Young Workers at Risk When Working in Agricultural Production,” *American Journal of Industrial Medicine*, vol. 36 (Oct. 1999): 31-33.

<sup>52</sup> Ahn, Christine. “Migrant Farmworkers: America’s New Plantation Workers.” *Food First Backgrounder*, vol. 10 (Spring 2004): p. 1.

<sup>53</sup> Rothenberg, p. 51-54.

<sup>54</sup> *ibid*, p. 52.

<sup>55</sup> Schell, p. 153.

<sup>56</sup> *ibid*, p. 214.

<sup>57</sup> See N.Y. Workers’ Comp. Law, Sect. 3, Group 14-b. (“Employment as a farm laborer as provided herein. A farmer shall provide coverage under this chapter for all farm laborers employed during any part of the twelve consecutive months beginning April first of any calendar year preceded by a calendar year in which the cash remuneration paid to all farm laborers aggregated twelve hundred dollars or more.”)

<sup>58</sup> The Farmworkers Fair Labor Protection Act (A 7528/ S 3884) was passed by the New York Assembly in 2003, 2004, 2005 and 2006, but it has never passed in the State Senate. A summary of the bill is available here: <http://assembly.state.ny.us/leg/?bn=A07528>.

<sup>59</sup> For example, see Linder, Marc. *Migrant Workers and Minimum Wages: Regulating the Exploitation of Agricultural Labor in the U.S.* (Boulder, Colo.: Westview Press, 1992).

<sup>60</sup> Du Bois, W.E.B. *Black Reconstruction in America: An Essay toward a history of the part which black folk played in the attempt to reconstruct democracy in America, 1860 – 1880* (New York, NY: Meridian Books, 1965).

<sup>61</sup> King, Martin Luther Jr. *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.* James Melville Washington, ed. (CA: Harper, 1986): 559.

<sup>62</sup> Chacon & Davis, pp. 11, 13, 54, 62.

<sup>63</sup> *ibid*, pp. 65, 68.

<sup>64</sup> Byeong-Seon Yoon, “Who Is Threatening Our Dinner Table? The Power of Transnational Agribusiness,” *Monthly Review*. Retrieved July 25, 2008. <http://www.monthlyreview.org/1106yoon.php>. From 1986 to 1994, a global Agreement on Agriculture (AoA) was negotiated as part of the Uruguay Round – which also established the World Trade Organization in 1995. The AoA has four areas: 1.) Increasing market access; 2.) Reducing “trade barriers”; 3.) Dismantling domestic supports; and 4.) Increasing export competition. See World Trade Organization (WTO), “WTO Agreement on Agriculture.” Retrieved June 24, 2008. [http://www.wto.org/english/docs\\_e/legal\\_e/ursum\\_e.htm#aAgreement](http://www.wto.org/english/docs_e/legal_e/ursum_e.htm#aAgreement). Although the AoA was allegedly meant to “level the playing field” between the developed world and the developing world, in fact the agreement has primarily benefited large, industrial agribusiness from Western countries. Developing countries have been forced to eliminate aid to small farmers and open their markets to Western imports. At the same time, although the AoA calls for a reduction of agricultural subsidies, the amount of agricultural subsidies in the 30 most developed countries have *increased* since the WTO was created! Thus, poor farmers in the developing world were faced with an influx of highly subsidized US products. See Debbie Barker, “The Rise and Predictable Fall of Globalized Industrial Agriculture.” Retrieved July 25, 2008. <http://www.ifg.org/pdf/ag%20report.pdf>.

<sup>65</sup> Before becoming secretary of the USDA, Veneman was a director of Calgene (now part of Monsanto), which produced the world’s first genetically altered food, the “Flavr Savr” tomato. See “Ann Veneman Named USDA Secretary,” *The Agribusiness Examiner* (Dec. 21, 2000). Before becoming the Chief Agricultural Negotiator at the UTSR, Johnson was Executive Vice President of the National Oilseed Processors Asc., whose members include ADM, Cargill, ConAgra, Unilever, and many other major transnational factory farming corporations. See Food First/ Institute for Food and Development Policy, “The Revolving Door: Industry and the U.S. Government in Agricultural Trade Negotiations” (Dec. 6, 2002). Also see Tom Abate, “Going Backwards: Clinton Administration Appoints A Former Monsanto Corp. Lobbyist to Represent U.S. Consumers On Genetically Engineered Food Issues,” *San Francisco Chronicle* (July 24, 2000).

<sup>66</sup> Michael R. Taylor, the FDA’s deputy commissioner for policy, was a former lawyer for the Monsanto for seven years. In 1994, Taylor wrote the FDA’s rBGH labelling guidelines which required that labels on non-rBGH products state that there is no difference between rBGH and the naturally occurring hormone. Furthermore, “Margaret Miller, deputy director of the FDA’s Office of New Animal Drugs was a former Monsanto research scientist who had worked on Monsanto’s rBGH safety studies up until 1989.” See Jennifer Ferrara, “Revolving Doors: Monsanto and the Regulators.” Retrieved July 25, 2008. <http://www.monitor.net/monitor/9904b/monsantofda.html>. Taylor and Miller helped get FDA approval of rBGH, despite evidence that it raises the levels of insulin-like growth factor (IGF-1) which is linked to cancer in humans.

<sup>67</sup> Bush appointed Linda Fisher, former head of governmental affairs at Monsanto, to the second-ranking job at the EPA. See Associated Press, “Bush Picks Industry Insiders to Fill Environmental Posts,” *Wall Street Journal* (May 15, 2001).

<sup>68</sup> Rothenberg, p. 225.

<sup>69</sup> *ibid*, p. 206.

<sup>70</sup> U.S. Dept. of Labor. “Fact Sheet #49: The Migrant and Seasonal Agricultural Worker Protection Act.” Retrieved June 19, 2008. <http://www.dol.gov/esa/regs/compliance/whd/whdfs49.pdf>.

<sup>71</sup> Schell, p. 156.

<sup>72</sup> *ibid.*, p. 159-161.

<sup>73</sup> Rothenberg, p. 237.

<sup>74</sup> *ibid.*, p. 216.

<sup>75</sup> *ibid.*, p. 231.

<sup>76</sup> *ibid.*, p. 215.

<sup>77</sup> Human Rights Watch. "Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards." (New York: NY 2000). Retrieved June 19, 2008. <http://hrw.org/reports/pdfs/u/us/uslbr008.pdf>.

<sup>78</sup> 29 U.S.C. § 151-169.

<sup>79</sup> Human Rights Watch, *supra* Note 77.

<sup>80</sup> For example, during the 92<sup>nd</sup> Congress (1971-72), four bills (H.R. 1410, 5010, 10445, and 3625) were introduced that would have amended the exclusionary definition of "employee" in section 2(3) of the NLRA, and thus vested the National Labor Relations Board (NLRB) with jurisdiction over farmworkers.

<sup>81</sup> Congressional committees and presidential commissions have found that workplace closures, firings, wage and benefit cuts, and other acts of employer-retaliation are common when workers join or form a union. See U.S. Dept. of Labor, U.S. Dept. of Commerce, Commission on the Future of Worker-Management Relations, Fact-Finding Report (May 1994); Subcommittee on Labor Management Relations of the House Sub-committee on Education and Labor, 98<sup>th</sup> Cong., "The Failure of Labor Law: A Betrayal of American Workers" (1984); Subcommittee on Labor-Management Relations of the House Committee on Education and Labor, 96<sup>th</sup> Cong., 2d Sess., "Report on Pressures in Today's Workplace" (1980). In a study on anti-union plant closings, the NAFTA labor commission reviewed 408 federal appeals court and NLRB decisions on full or partial plant closings between 1986 and 1995 and found that employers were guilty of unlawful discrimination in 367 cases. See Secretariat of the Commission for Labor Cooperation, *Plant Closings and Labor Rights* (Dallas, Tex.: Commission for Labor Cooperation, 1997).

<sup>82</sup> Although NLRA § 8(a)(5) makes it an unfair labor practice for an employer to "refuse to bargain collectively with the representatives of employees," orders in a union certification proceeding are not directly reviewable in courts because they are not 'final' orders within the meaning of Labor Code. Therefore, an employer can only obtain judicial review of the Board's certification by refusing to bargain with the certified union and such employer conduct is known as a 'technical refusal to bargain' and does not violate NLRA § 8(a)(5). See *Montebello Rose Co. v. Agricultural Labor Relations Bd.*, 8 ALRB No. 3 (CA 1981).

<sup>83</sup> See Kandel, *Supra*, Note 20, at p. 12; also see Gray and Kreyche, *Supra* Note 6, at pp. 7, 16.

<sup>84</sup> Courts have ruled that undocumented workers in professions covered by the NLRA can vote in NLRB elections and can file unfair labor practice charges if they are discriminated against for union activity. See *Sure-Tan, Inc. v. NLRB*, 467 U.S. 833 (1984); *NLRB v. APRA Fuel Oil Buyers Group*, 134 F.3d 50 (2d Cir. 1997).

<sup>85</sup> *Hoffman Plastics Compound v. NLRB*, 535 U.S. 137 (2002).

<sup>86</sup> National Employment Law Project, "Used and Abused: The Treatment of Undocumented Victims of Labor Law Violations Since Hoffman Plastic Compounds v. NLRB." Retrieved July 26, 2008. <http://www.nelp.org/docUploads/Used%20and%20Abused%20101003.pdf>.

<sup>87</sup> Lisa Foderaro, "Plenty of Apples, But a Possible Shortage of Immigrant Pickers," *New York Times* (Aug. 16, 2007).

<sup>88</sup> See Rothenberg, pp. 141, 236.

<sup>89</sup> For more information about AgJOBS, see [http://www.senate.gov/~craig/tpt\\_agjobs2006.pdf](http://www.senate.gov/~craig/tpt_agjobs2006.pdf). The Emergency Agricultural Relief Act, unlike AgJOBS, did not provide a mechanism for getting permanent legal residency. Instead, it would have only granted temporary, legal immigration status to farmworkers who continued to work in American agriculture. For more information, see [http://feinstein.senate.gov/public/index.cfm?FuseAction=NewsRoom.PressReleases&ContentRecord\\_id=EE2D9AC8-EBDB-0A1C-48C1-484DFC65E9D9](http://feinstein.senate.gov/public/index.cfm?FuseAction=NewsRoom.PressReleases&ContentRecord_id=EE2D9AC8-EBDB-0A1C-48C1-484DFC65E9D9).

<sup>90</sup> "The Future of Organizing Unrecognized Labor," 11 *Verdict* 37 (July 2005).

<sup>91</sup> Gretchen Gordon, "Food Crisis in the Age of Unregulated Global Markets," *Food First / Institute for Food and Development Policy* (April 18, 2008). Retrieved June 19, 2008. <http://www.foodfirst.org/en/node/2099>.

<sup>92</sup> For example, on June 16, 2008, the WTO's trade dispute organ ruled that as much as \$4 billion in annual US subsidies to domestic cotton producers violated global trade rules. Brazil brought the case to the WTO in 2003, when it "informed the WTO that US subsidies to their cotton farmers were adversely affecting Brazil's cotton producers." See Edison DeSouza, "Brazil Ponders on How to Retaliate Against US Cotton Subsidies," *Brazzil Magazine*, June 22, 2008.

<sup>93</sup> Conventions 97 and 143 of the International Labour Organization (ILO) govern the treatment of migratory workers, and they therefore apply to the majority of farmworkers in the U.S. These conventions require that migrant farm laborers have the same labor rights as national workers. However, the U.S. law governing migratory farmworkers, Section H-2A of the 1986 Immigration Reform and Control Act, does not entitle farmworkers to join or form unions, or to engage in collective bargaining or other concerted activities. Therefore, H-2A violates international labor law. The ILO could sanction the US for these violations under Article 33 of the ILO Constitution. Whether Art. 33 authorizes ILO member-states to take economic sanctions against offending countries is open to debate. However, after the ILO issued an Art. 33 resolution against Myanmar, the US launched economic sanctions against Myanmar partly on the basis of the resolution.

<sup>94</sup> See Lyson, p. 26.

<sup>95</sup> “Fair Trade is an organized social movement designed to promote equitable standards of labor, environmental sustainability and social justice and create in a market in which poor farmers in developing countries can sell their agricultural products or artisan handicrafts directly to distributors and earn living wages.” Joleen Ong, “Fair Trade Cooperative Brews Up Support for their Coffee,” *The College of New Jersey – The Signal* (Oct. 11, 2006). This “fair trade” system, linking small-scale producer groups directly with consumers, eliminates profiteering by middlemen, distributors and wholesalers. “The fair trade coffee system alone benefits over 350,000 farmers in 22 countries.” Barker, at 49.