



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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The Honorable James C. Cleveland
House of Representatives

Dear Mr. Cleveland:

You expressed an interest in the results of our review, undertaken at the request of former Congressman Louis C. Wyman, on how the Department of Labor certified foreign workers for New Hampshire's 1974 apple harvest.

We examined whether Labor certified foreign workers soon enough in 1974 and whether growers were required to accept unskilled domestic migrant crews, with serious adverse effects on the harvest.

SCOPE OF REVIEW

We reviewed Federal legislation pertaining to the admission of aliens for temporary agricultural work and examined Labor's regulations, policies, and practices for administering the foreign worker certification program. We interviewed officials and reviewed certification procedures at the New Hampshire Department of Employment Security in Concord and at district offices in Concord, Dover, Keene, Laconia, Manchester, Nashua, and Portsmouth. We held discussions with officials of the Employment and Training Administration in Washington, D.C., the New England Apple Council, and Labor's regional office in Boston, Massachusetts. We also interviewed 15 New Hampshire orchard owners/growers; 7 hired foreign workers, and 8 hired only domestic workers for the 1974 harvest.

SUMMARY

An employer's petition for foreign workers must be accompanied by the Secretary of Labor's certification that qualified persons in the United States are not available and that all reasonable efforts have been made to attract and retain domestic workers. Labor's regulations require the employer's request for a certification to be in writing and to describe all efforts made to obtain domestic workers. Before certification, the State employment service must submit a detailed report to Labor concerning labor availability and employer/State agency recruiting efforts.

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Three of the seven growers that hired foreign workers did not advertise for domestic workers. The State employment security agency did not give Labor the information required for its certification decision nor make reasonable efforts to place domestic workers. Due to concern about high unemployment, Labor delayed its 1974 certification and required the State agency to make additional efforts to employ domestic workers. Later, in order to avoid crop losses, Labor certified foreign workers without assurance that reasonable efforts had been made to recruit domestic workers.

We discussed these matters with both Labor and State agency officials and suggested that grower harvest plans and improvements in domestic recruiting could help avoid these problems. As a result, certain measures have been taken or planned to improve certification.

Growers employing foreign workers paid less money for each bushel picked than growers employing only domestic workers. This may have adversely affected growers' efforts to hire domestic workers.

In one instance some domestic contract workers did not report to work, and the grower complained about being required to accept unskilled domestic crews. However, most growers (1) said no special skills were required of apple pickers and (2) attributed their 1974 crop losses to an early New Hampshire frost rather than to a lack of qualified pickers.

BACKGROUND

Under the Immigration and Nationality Act (8 U.S.C. 1184), nonimmigrant aliens may be admitted to the United States to serve as temporary laborers, if unemployed persons capable of performing such labor cannot be found in the United States. Foreign workers may be admitted if the Attorney General determines that the requirements of the act are satisfied.

This determination has been delegated to the Immigration and Naturalization Service. Its regulations require that an employer's petition for foreign workers be accompanied by the Secretary of Labor's certification that (1) qualified persons in the United States are not available, and (2) admitting foreign workers will not adversely affect domestic workers' wages and working conditions.

To certify a request, the Secretary must follow certain Labor regulations, which state in part that:

"(c) Request for certification shall be in writing and describe all efforts made by the employer to obtain U.S. workers to fill the employer's need.

"(d) * * * request for certification shall be forwarded by the local office of the State employment service to the appropriate Regional Manpower Administrator of the Manpower Administration together with information which indicates the extent to which the requirements set forth in this section have been met and a detailed report of labor availability, recruitment efforts undertaken by and on behalf of those requesting the use of foreign workers, and any other information required by the Manpower Administration. * * *

"(1) * * * employment of such workers will not adversely affect the wages and working conditions of domestic workers similarly employed."

The act and subsequent Immigration and Naturalization Service and Labor regulations make it clear that temporary foreign workers can be admitted to the United States only when U.S. workers are not available.

DELAY IN FOREIGN WORKER CERTIFICATION

In harvesting the 1974 apple crop, New Hampshire's growers relied on foreign workers from the British West Indies, local full- or part-time workers, and local or interstate contract workers. Growers requesting foreign workers estimated the harvest would begin about September 9 and end about October 31, 1974. Growers' records showed that most certified foreign workers arrived between September 16 and 27, 1974.

To obtain data required for Labor's interstate clearance system, the State employment security agency began the 1974 certification process in early June by contacting growers who used foreign workers in 1973. The interstate clearance system is used when a State employment security agency,

anticipating a specific occupational shortage, requests other State employment security agencies to help it recruit workers. According to Labor and State agency regulations, local workers and then other U.S. workers must be employed before foreign workers.

The State agency sent 17 grower requests for a total of 404 workers to Labor on June 28, 1974. Foreign worker certification was requested by August 15 to assure foreign worker availability in time to harvest the crop.

On July 2, 1974, Labor instructed the agency to use the interstate clearance system in an effort to obtain domestic workers. Clearance orders were to be sent to the New England States as well as to Louisiana, Ohio, Puerto Rico, and Texas. Labor indicated that extending interstate clearance orders outside New England was partially in response to the decision of the District Court for the District of Columbia 1/ ordering various policies to protect domestic migrant farm laborers.

On July 16, 1974, Labor further advised the State agency to expand local recruiting by requiring growers to show that all reasonable means were being used to fill their labor needs from the domestic work force. Labor specified that growers advertise and be available at local State agency offices to interview applicants. Labor also stressed that the State agency use news releases and posters, contact community agencies, and take any other action to effectively recruit local workers. Labor officials said they did this due to high domestic unemployment.

Although still uncertain about the availability of domestic workers, Labor certified 150 foreign workers to 15 growers on August 29, 1974, to avoid possible crop losses. Labor did not certify two grower requests, because workers from Texas and Louisiana were available. Also, 2 growers subsequently canceled their requests for a total of 16 workers because local workers were hired. On September 5, 1974, another 150 foreign workers were certified to 13 of the 15 growers. On September 11 and 17, 1974, Labor certified 15 and 34 foreign workers, respectively, to the 2 growers whose certifications were initially withheld because (1) part of the Texas crew did not arrive and (2) a decision of the United States District Court for the District of

1/NAACP, Western Region v. Brennan, 360 F. Supp. 1006 (1973).

New Hampshire 1/ favored one of the growers. The court required the Secretary of Labor to make available to the grower an equitable number of foreign workers in relation to the other growers employing foreign workers. On December 19, 1974, the district court decision was reversed by the United States Circuit Court of Appeals. 2/ Labor certified 349 of the 388 foreign workers requested by the 15 growers.

GROWERS' DOMESTIC RECRUITING EFFORTS

We interviewed seven growers who hired foreign workers to determine the extent of their domestic recruiting efforts. Although each grower placed job orders with the State employment agency, three did not advertise for domestic workers. Two advertised for several days in local newspapers, and another advertised for 10 days in two local newspapers. These growers could not document how many domestic workers responded to their advertisements.

The seventh grower placed a large classified advertisement and installed a special telephone to handle job inquiries. He said about 350 persons responded, of which 85 were hired. Although only 21 worked more than 1 week, local domestic workers picked about 11,100 bushels of a total of about 82,800 bushels. This grower also hired domestic migrant crews who picked about 30,900 bushels. As a result of his recruiting efforts, foreign workers picked only 49 percent of his 1974 crop; whereas foreign workers picked 99 percent of the crop of one grower who did not advertise or otherwise try to hire domestic workers.

The eight growers who hired only domestic workers did not advertise, and only one used the State employment agency as a source of applicants. These growers harvested their crops primarily with local help and/or other domestic workers who had picked for them before.

Bushel pay rate may not be adequate

Apple pickers are paid a certain amount for each bushel picked or paid the minimum hourly rate required by what is known as the adverse effect rate. 3/ Labor regulations

1/Elton Orchards, Inc. v. Brennan, 382 F. Supp. 1049 (1974).

2/508 F. 2d 493 (1st Circ. 1974).

3/The hourly rate determined by Labor to be necessary to prevent an adverse effect on the wages of U.S. agricultural workers.

require that an employee not be paid less than the adverse effect rate. Labor regulations also state that if both U.S. and foreign workers are doing the same tasks, wage rates that favor one group and discriminate against another may not be paid.

From 1970 to 1973 the adverse effect rate in New Hampshire increased from \$1.87 to \$2.32 an hour, while the rate paid for one bushel remained at 30 cents. Thus, to equal the adverse effect rate, a worker had to increase the average number of bushels picked an hour from six (\$1.80) to almost eight (\$2.40). In response to Labor's encouragement in 1974, growers requesting foreign workers increased the rate offered for a bushel to 33 cents. However, the eight growers who hired only domestic workers paid from 35 to 50 cents a bushel.

STATE EMPLOYMENT SECURITY AGENCY ACTIVITIES

The New Hampshire agency did not obtain or give Labor the required reports on grower recruiting efforts nor monitor these efforts. The agency requested Labor's certification based only on growers' statements on the numbers of foreign workers desired and did not make reasonable efforts to place local workers.

In its certification request to Labor, the agency stated:

"You can be assured that in the event a supply of domestic workers becomes available when apple picking begins, we will take the necessary action and withdraw our requests."

State agency officials said they instructed growers to advertise, and assumed they did so, but did not know what efforts were made. The State agency issued news releases concerning job openings, but officials said they did not advertise because funds were not available.

State agency job referral procedures included placing signup sheets in various locations visited by the public. The sheets requested name, address, telephone number, and whether interested persons had their own transportation. Officials said that when growers requested workers, they called persons on the signup sheets and told them to report to the grower for interviews. Agency staff did not interview job applicants and apparently did not screen

signup sheets when making referrals. At one State agency office, of 33 persons referred to growers from signup sheets, 31 did not report for interviews. Of the 31 not reporting for interviews, 23 indicated they did not have transportation.

Officials in four of the seven State agency district offices said they did not use job applications on file as a possible referral source.

Most growers we interviewed who placed job orders with the State agency did so in early August 1974. However, the agency generally did not make referrals until September. In most cases the referrals were made after foreign workers had already arrived. For example, at one district office a grower requesting foreign workers filed a job order on August 9, 1974, for 60 apple pickers. The State agency made no domestic worker referrals until September 20, 3 days after foreign workers had arrived, and then only referred two applicants to the grower. Between September 27 and October 2, 1974, seven additional referrals were made. The grower hired two of the nine referrals.

According to a State agency official, local employment service offices did not attempt to fill job orders until they received followup calls from employers requesting referrals, because as the harvest grew nearer employers knew more precisely when workers would be needed.

CROP LOSSES

Growers at 10 of the 15 orchards we visited stated they had crop losses or damages totaling about 71,000 bushels, or 8 percent, of a total crop yield of 907,000 bushels in 1974. Four orchards did not hire foreign workers and attributed their losses to frost. Of the six orchards hiring foreign workers, four cited frost as the cause of losses and two said, although frost was a factor, the primary cause was a lack of pickers.

Growers hiring foreign workers generally estimated their harvests would end about October 31, 1974--the earliest estimate was October 26 and the latest November 9. A damaging frost occurred on October 18, 1974--8 days before the earliest estimate of harvest completion.

OTHER MATTERS

Several growers indicated to Congressman Wyman that (1) growers had to accept unskilled domestic workers and (2) in some cases domestic contract workers did not appear for work.

Most growers said apple pickers need no special skills but must be physically capable of moving ladders and climbing ladders while carrying a bucket of apples and must be motivated.

In only one instance, domestic contract workers did not report for work. Using the interstate clearance system to obtain workers, a grower contracted with a crew leader who claimed to have 30 workers available from Texas. The New Hampshire State agency told the grower that the crew leader was reputable and could be expected to provide the 30 workers. However, the crew arrived with only 18 workers. The grower also complained about the efficiency of the Texas workers, attributing their poor performance primarily to their poor job attitudes.

IMPROVEMENTS BEING MADE

To help alleviate the problem encountered in 1974, we suggested that growers submit to the State agency their harvest plans and their plans for recruiting domestic workers, to support their requests for certifications. We also suggested that the agency make a greater effort to recruit available domestic workers. Both Labor and the agency took or planned certain measures to improve the certification procedures for the 1975 apple harvest.

Labor's regional office sent a letter, dated June 5, 1975, to all State employment security agencies in New England stating that requests for foreign worker certifications must be accompanied by (1) documentation showing the basis for the number of workers requested and (2) domestic worker recruiting plans. Labor officials said they planned to monitor the recruiting efforts of both the New Hampshire State agency and the growers.

On June 16, 1975, the State agency gave the regional office its recruitment plan for 1975. The plan included procedures for

--requesting recruiting plans from growers,

- monitoring growers' efforts,
- placing job orders in its system in July,
- interviewing applicants,
- searching job applications on file,
- placing recruiting posters in all local State agency offices and in public areas, and
- hiring temporary interviewers.

The State agency will require growers wanting assistance in obtaining local, interstate, or foreign workers to

- submit harvest and recruitment plans to support their requests,
- participate in interviewing State agency applicants, and
- maintain records concerning disposition of State agency referrals or other job applicants.

CONCLUSIONS

The Department of Labor delayed the certification of foreign workers for the 1974 apple harvest because it was concerned that due to high unemployment qualified domestic workers might be available. Federal regulations clearly state that temporary foreign workers be admitted to the United States only when domestic workers are not available. The New Hampshire employment agency did not give Labor the required information concerning either worker availability or recruitment efforts of the State agency or of growers who requested foreign workers. Although still uncertain about the availability of domestic workers, Labor began certifying foreign workers to avoid seriously disrupting the harvest.

Three growers requesting foreign workers did not advertise for domestic workers, and the State employment agency did not make reasonable efforts to recruit domestic workers. The State agency did not interview job applicants

or screen applicant signup sheets. Also, the State agency generally did not make referrals to growers until after foreign workers had arrived in New Hampshire.

Certain measures were taken or planned to improve the certification process for the 1975 harvest. Although we did not review the certification procedures followed for the 1975 harvest, properly implementing these measures should help avoid the problems encountered in 1974.

Growers employing foreign workers paid less money for each bushel picked than growers who hired only domestic workers. These lower rates may adversely affect growers' ability to hire domestic workers.

RECOMMENDATION TO THE SECRETARY OF LABOR

We recommend that the Secretary determine, in the certification process, whether bushel pay rates offered by growers requesting foreign workers are adequate to attract domestic workers.

AGENCY COMMENTS

Labor agreed that the requests for certification were not supported by adequate documentation and said that, as the harvest progressed, it required the State agency to take affirmative action to support the decision the Secretary would make concerning the availability of U.S. workers. Labor also commented that:

- It issued partial certifications that permitted additional time to further explore the availability of domestic workers.
- Two Federal representatives monitored the local offices and employers' actions during the harvesting period.
- It considered all information available at the time of certification.

Labor said it intensified its technical assistance and monitoring efforts in 1975 and, compared with 1974, the program greatly improved. Labor attributed much of the improvement to the presence of monitors. Labor cited several improvements:

- Although the crop production in New Hampshire increased by 5 percent in 1975, the number of workers approved by the national office for certification decreased by 22 percent. In 1974, 372 domestic workers were employed in the apple harvest as contrasted with 958 employed in 1975.
- In 1975, Federal monitors visited each grower and concerned local office to assure that they advertised for domestic workers. Grower harvest plans were required of every grower requesting foreign workers, and data from the plans was analyzed before certification.
- The State agency provided sufficient information for Labor to make an informed decision and developed a recruitment plan that included file searches and referral verifications.
- The State agency somewhat improved its efforts to place domestic workers. Labor attributed this largely to an aggressive Federal presence and to additional Federal funds used by the State agency to hire 3 full-time persons to work exclusively on the apple harvest recruitment.
- Information received from Federal monitors suggested that the State agency interviewed job applicants, screened signup sheets when making referrals, and used job applications as referral sources.
- In 1975, Labor agreed to a proposal requiring certification by August 1, provided all necessary documentation and procedures were followed. The August 1 certification was conditioned upon a continuing offer of employment to available domestic workers and assurances that no qualified domestic worker would be denied employment or housing during any time foreign workers were employed.

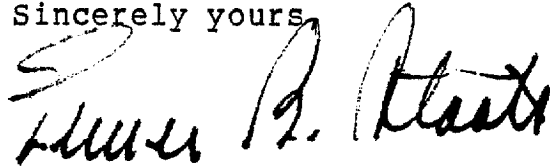
In commenting on the lower bushel rates paid by growers employing foreign workers, Labor said New Hampshire growers had to pay rates consistent with the prevailing rate from the then current prevailing wage survey. Labor said the problem we cited was not limited to New Hampshire and thought the New England apple industry has been so heavily dominated by foreign workers that the prevailing wage survey results are distorted.

Labor commented that it does not set bushel rates but that such rates should be designed to produce the hourly adverse effect rate. It said further investigation into this may be required, and it is considering alternative methods to determine the adverse effect rates in 1976.

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As agreed with your office, copies of this report are being sent to the Secretary of Labor, the House and Senate Committees on Government Operations, and the House and Senate Committees on Appropriations. This distribution will set in motion section 236 of the Legislative Reorganization Act of 1970 which requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the House and Senate Committees on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

Sincerely yours,



Comptroller General
of the United States