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# Exploitation of Migrants by Crew Leaders: A Proposal for Change

Roberta Getman

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The agricultural industry, because of seasonal nature of crops, is unique in its use of labor. The required labor force fluctuates not only from year to year but from week to week, and day to day. Not as many laborers are required to weed and cultivate as are needed to plant and harvest. Inclement weather reduces the need for workers. The grower in Indiana needs an efficient means for ensuring a supply of labor for each season. Each spring between fifteen and twenty thousand Mexican-Americans come to Indiana to plant, cultivate, and harvest its crops.<sup>1</sup> Traditionally, the work force Indiana draws upon comes from Texas. It is composed largely of Mexican-American laborers who are unskilled, of a different cultural tradition, and who are often unable to communicate in English.<sup>2</sup>

The difficult task of locating and hiring the workers has been delegated by the grower to farm labor contractors, hereafter called crew leaders. Since the grower has traditionally relied on the crew leader for all his contracts with the work force he has developed no other efficient means of ensuring that sufficient numbers of workers will return each season. Crew leaders are given money to recruit workers from Texas in the early spring. In addition to the crew leader's salary the grower frequently provides him with a bonus for each worker he recruits. As a hiring inducement the crew leader loans money, provided by the grower, to pay debts accumulated by migrants during the past winter. The crew leader records this loan to be repaid with interest by the migrant from his family's weekly wage. The crew leader's responsibilities to the grower and to the migrants include bargaining with workers over terms and conditions of employment, discovering and disclosing the kind of living accommodations, and arranging transportation and meals for the workers and their families.

For a variety of reasons migrant workers are likely to be dependent on the crew leader. The workers frequently speak no English and their

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language is not understood by their employers or by the community. In addition, they are often illiterate. Few outsiders come in contact with the migrants since they are culturally and physically isolated from the communities they service. Their living quarters while in Indiana are located close to the fields. Despite their isolation the migrants have not formed a cohesive organization to deal with their problems. They are unwilling to deal with bureaucracy even in their own language.<sup>3</sup> They appear to be resistant to attempts to involve them in even the most superficial of organizations such as Camp Councils<sup>4</sup> (suggested by the agencies dealing with migrants) whose purpose it is to set up a labor camp governing unit.

The migrants are further dependent on the crew leader because of their lack of mobility. They are at the mercy of the weather and should the crops fail, their lack of training for any work other than unskilled labor, renders them incapable of obtaining other steady employment. A rainy summer may leave them stranded in the labor camp far from their permanent homes without funds to move their families to a more promising location. Upon arrival at the work camp the crew leader is responsible for assigning quarters. Should the camp be in poor condition or should there be any blatant health violations the responsibility may fall on him for correcting the situation. Since the crew leader is usually the only person in the camp with a car and knowledge of the community, the migrant is dependent on the crew leader for transportation to the grocery or the doctor. If, due to weather conditions, or crop failure, the migrant is unable to work, community and state agencies must be appealed to for emergency food relief. The migrant needs the crew leader to alert the proper agencies and interpret his needs to these officials.

The grower makes demands upon the crew leader beyond that of recruitment, transportation and camp management. He delegates to the crew leader the responsibility of keeping records and paying wages. It is the crew leader who calculates the hours worked and the compensation due and who makes deductions for social security and debts. The grower normally is not in the fields with the workers. Since working hours depend on the weather and are not fixed, the grower is not in a position to keep records of time worked. The grower pays the entire camp's wage to the crew leader who is in the fields and who then disburses it in accordance with his records.<sup>5</sup> The family as a unit, rather than the individual workers, receives a lump sum minus deductions. This lump sum is customarily given to the father.

The crew leader may also institute a "bonus" system." A certain amount per worker is withheld from the weekly pay as a "bonus" to be given the family at the close of the season. Neither the crew leader nor

the grower adds anything to the "bonus." The word "bonus" is a euphemism for the deduction which does not give the migrant an additional benefit as the word implies. It serves only to augment the crew leader's power by giving him another means of control.

In return for the assumption of these supervisory and record-keeping roles, the crew leader deducts a certain amount from each worker's salary for himself. These amounts are in accordance with prior personal agreement made with the family and subject only to his own review.

The crew leader's records comprise all deductions including those made for transportation, personal services, and loans.<sup>4</sup> The worker usually accepts the crew leader's calculations. Refutation would require access to records, storage space for records (impossible in the usual living accommodations provided migrants) and a knowledge of book-keeping.

At the present time the need for the services provided by the crew leader for both migrant and employer is undeniable. The grower in Indiana cannot function without him and the migrant would neither know of available jobs nor be able to arrange transportation to those jobs without the crew leader. The present crew leader role of paymaster, however, increases the vulnerability of the migrant. The lack of any effective regulation of the crew leader's activities encourages exploitation in recruitment, management, and treatment of migrants.

In 1951 a Presidential Commission<sup>8</sup> reported that the labor-contractor system of employing laborers often results in such abuses as misrepresentation of terms and conditions of work, charging excessive fees for services, and abandonment of families in areas where no work is available.

In 1963 a federal act, the Farm Labor Contractor Registration Act of 1963, 7 U.S.C. §2041 et seq., was enacted. It became effective January 1, 1965. Its purpose was to reduce the vulnerability of the migrant in relation to the crew leader. The Act was not meant, however, to control abuses connected with wage distribution and it has no impact in that area. Under the Act crew leaders must be registered. The Act imposes certain requirements for registration. These include: a personal sworn statement containing information concerning his own conduct and method of operation;<sup>9</sup> proof of financial responsibility<sup>10</sup> or the existence of a public liability policy of insurance; and a set of his fingerprints.

The statute attempts to further protect migrants by requiring crew leaders to disclose information to the worker concerning wages, conditions of employment, transportation, housing, insurance and charges for services of the crew leader, at the time of recruitment.

The abuses which led to the enactment of the Farm Labor Contractor Registration Act of 1963 have not been significantly abated by the Act. Crew leaders are well aware that the Act is ineffective due to lack of enforcement.<sup>11</sup> Department of Labor officials must rely on complaints from migrants or from agencies working with migrants. Thus those who are most vulnerable to retaliation have the burden of enforcing the Act. Employers are well aware of the enforcement limitations and take little responsibility for inducing compliance. Crew leaders themselves are reluctant to register and respond only after prodding from agencies interested in the welfare of migrants. Between 8,000 and 12,000 crew leaders have never registered.<sup>12</sup> Of those who do apply few, if any, are denied a certificate.<sup>13</sup> Penalties for non-compliance are seldom imposed.<sup>14</sup> Detection of non-registered farm labor contractors is again dependent upon the migrants themselves or agencies working with them. By the time they are discovered, crew leaders may have moved on to other states.

Another significant factor in non-compliance is that employers, agencies and crew leaders are aware that many migrants are in the country illegally. The employer is not held legally responsible for knowing if his employees are citizens.<sup>15</sup> He is also not eager to endanger a source of cheap labor. The crew leader who is held responsible for knowing the migrant's status, and who may transport illegals, risks discovery if he registers.

Unfortunately, agencies such as the Associated Migrant Opportunity Service<sup>16</sup> have not come to grips with whether their job is to protect migrants who are citizens or whether it is to protect all migrants. The agencies are not labor organizations and though they recognize the problems created for citizen migrants by illegal migrants they do not wish to make distinctions that may cause hardship to significant percentages of the people they serve. This ambivalence interferes with their effectiveness in enforcing the Act since enforcement may, in some circumstances, endanger illegal migrants. The threats made by crew leaders to employ the law for collection purposes further intimidate and may lead to acquiescence on the part of the migrant who is in a poor position to demand compliance with the law. His precarious financial state is too dependent on the crew leader for him to risk losing his job, his "bonus," his living quarters and his transportation without good evidence that his demands will not be met with such retaliation.

The migrant has little or no bargaining power. The crew leader may fire any worker whom he finds unsatisfactory.<sup>17</sup> Since there is no labor organization there is no review of his decisions and no appeal except on a personal basis. The consequences of being fired have other

ramifications. The family loses its housing, its transportation, and its bonus. If camp conditions are substandard or work conditions not as promised, the migrant is not in a position to look for another job. Because of long distances involved a crew leader quickly discovers a worker's attempts to find other employment. The response may be to fire the worker and black-list him with other crew leaders. The crew leader has many weapons with which to keep the migrant at his job despite existing conditions.<sup>18</sup>

The problem then, is to reduce the exploitation of the migrant worker without destroying the positive aspects of the crew leader system. Exploitation in Indiana can be minimized by state legislation aimed at reducing the possibility of crew leader misuse of financial power over the migrant. One way to minimize this misuse of power would be to require growers to pay their workers individually and directly by check as is done in other industries. Another way would be to require that the employee's pay records be kept separate from the crew leader's personal debt records. The employer should not act as a collection agency for the crew leader. With legislation controlling these abuses the crew leader will still play a significant role in the agricultural industry. However, the migrant will not be in the inferior bargaining position which has contributed to his current poverty status. His wages will be his to apportion as he sees fit and he will be more capable of keeping records of debts owed the crew leader for his services, if these debts are not confused with other required deductions. The crew leader will still be in a position to bargain with both migrant and employer. There will be no decrease in the need for his services. The separation of debt and compensation records is essential if the migrant is to gain any control over his financial future. The payment of each worker's wages to him or her directly with the required list of deductions is crucial to reducing exploitation. The following Bill for the Indiana Legislature is an attempt to accomplish these objectives.

**A Bill**  
**to Regulate the Methods of Payment**  
**of Wages to Migrants and Farmworkers**

§1 *Statement of Purpose:* To reduce the possibility of exploitation of migrants and farm workers by irresponsible farm labor contractors who may misuse their financial power over such workers.

§2 Definitions

(a) *Migrant worker:* An individual whose primary employment is in agriculture or in an agriculture-related industry on a

seasonal or other temporary basis, who is involved in planting, raising, cultivating, fertilizing, weeding, harvesting, processing, or packaging any agricultural product, and whose permanent home is not in Indiana.

- (b) *Seasonal Farm Worker*: An individual whose primary employment is in agriculture or is agriculture-related and whose legal residence is in Indiana.
- (c) *Employer*: An Employer is a grower, farmer, processor, canner, factory-owner and/or one who employs migrants. This definition excludes crew leaders, farm labor contractors or recruiters or any person who recruits, solicits, hires, furnishes transportation or transports migrant workers.
- (d) *Farm Labor Contractor*: Any person who for payment, wages, salary, fee or other consideration either for himself or on behalf of another person recruits, solicits, hires, furnishes transportation or transports ten or more migrant workers (excluding members of his own family) at any one time in any calendar year for purposes of interstate employment in agriculture or agriculture-related industry.
- (e) *Interstate employment*: Employment in any service or activity when such service or activity is performed by an individual worker who has been transported from one State to another or from any place outside of a State to any place within a State.

3. Any employer who employs ten or more migrant workers or seasonal farm workers must pay each worker directly on an individual basis by means of a weekly check. Such pay check shall include that worker's total earnings for the previous week minus only the following deductions herinafter specified. The employer shall make deductions required by Social Security, any worker authorized group insurance plan, federal and state taxes, and dues payable to a recognized labor organization. No other deductions except as provided by federal or state law shall be made by the employer or anyone acting on his behalf.

4. The employer shall keep full and accurate records on bilingual (Spanish/English) forms provided by the Office of Commissioner of Labor, which will include total hours worked, piece rate records, total wages, and individual and total deductions for the week. Workers shall have the right upon reasonable notice to the employer to examine records which apply to worker's compensation.

5. It shall be the duty of the Commissioner of Labor to enforce and ensure compliance with the provisions of this Act.

6. The Indiana Commissioner of Labor shall assign to a sufficient number of members of his staff, the duty of inspecting farm labor contractor records relating to the purposes of this Act. These inspectors shall investigate all complaints and shall be empowered and required to conduct periodic investigations no less frequently than twice a season upon their own motion to ensure that farm labor contractors and growers are complying with provisions of the Act. These inspectors shall be fluent in both Spanish and English.
7. The Commissioner of Labor shall be empowered to institute or cause to be instituted actions for penalties provided hereunder.
8. The Office of the Indiana Commissioner of Labor shall develop bilingual forms for the farm labor contractor's use in keeping records applicable to the Act, and shall distribute and require their maintenance.
9. The Commissioner of Labor may hold hearings within three weeks of receiving a complaint to satisfy himself as to the facts of any claim. Upon a finding of two violations the farm labor contractor shall be prohibited from operating in Indiana for one full year following the determination of the second violation by the Commissioner of Labor. A determination of violation by the Commission of Labor may be appealed to the District Court in which jurisdiction such violation occurred.
10. The Indiana Commissioner of Labor shall order such remedies as may be appropriate such as cease and desist orders and fines which shall be used to defray the costs of administering the Act. If the funds obtained through fines are not adequate to support the administration of the Act, then the money shall be obtained from general revenues.
11. This Act shall not relieve any farm labor contractor or employer of any Federal or State requirements to keep and maintain adequate records of labor, work done, payments made or amounts withheld.
12. If any provision of this Act, or the application thereof to any person or circumstance shall be held invalid the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.
13. The Commissioner of Labor is authorized to issue such rules and regulations as he determines necessary for the purpose of carrying out the provisions of the Act.

## FOOTNOTES

1. Address by Daniel Tirado, Conference on Migrant Affairs, Oct. 13, 1973, in Bloomington, Indiana; State Field Coordinator, Associated Migrant Opportunity Service.
2. United States Commission on Civil Rights; Indiana State Advisory Committee (May 1967) at 17.
3. *Id.* at 9; Dr. Arthur Rubel, Assoc. Prof. of Sociology; University of Notre Dame.
4. Interview with Veronika Frias, Outreach Worker, Associated Migrant Opportunity Service. "Efforts to involve migrants in Camp Councils have thus far met with little success."
5. *Supra*, note 2 at 220. S. Smith, Regional Representative for the Social Administration District Office for Indiana, Illinois and Wisconsin.
6. An attempt to change the "Bonus" System in the Indiana legislature in 1967 was defeated.
7. *Supra*, note 2 at 233 Judge Alfred J. Hernandez, Pres., League of United Latin American Citizens.
8. President's Commission on Migratory Labor in American Agriculture (1951) at 91.
9. Telephone interview with Eugene Bonfiglio, Dept. of Labor, Washington, D.C., October 15, 1973. "The personal sworn statement concerning the conduct and method of operation is limited to references to the insurance policy."
10. *Supra*, note 10, "Proof of financial responsibility entails the posting of a \$50,000 bond. However, the \$5,000, \$10,000, \$15,000 insurance coverage requirement is well within what most crew leaders can afford; so the posting of the bond is unnecessary."
11. *Supra*, note 10. "Up until Oct. 4 of 1972 there were only five people in the Dept. of Labor responsible for enforcing the Act. Responsibility for enforcement has now been transferred to the Wage and Hour Divisions of the Dept. of Labor. It is hoped that the additional personnel now available will lead to more stringent enforcement."
12. Senate Comm. on Labor and Public Welfare, *The Migratory Farm Labor Problem in the United States*, S. Rep. No. 91-83, 91st Cong., 1st Sess. 51 (1969) at 82.
13. *Commuters, Illegals & American Farmworkers: The Need for a Broader Approach to Domestic Farm Labor Problems* 48 N.Y.U.L. Rev. 439 (1973) at 450.
14. *Supra*, note 10, "Even where complaints have been filed the amount of damages involved is too small to generate litigation from either the Labor Dept. or the Justice Dept."
15. Agriculture Act, 7 U.S.C.A. §1464.
16. "AMOS, Inc. is a federally and privately funded non-profit corporation which administers a state-wide program directed at developing leadership among farm workers." AMOS informational brochure.
17. Hearings on Migrant and Seasonal Farmworker Powerlessness before the Subcommittee on Migratory Labor of the Senate Comm. on Labor and Public Welfare, 91st Cong., 1st and 2nd sess. Part 3B at 934 (1969-1970).
18. DuFresne & McDonnell, *The Migrant Labor Camps: Enclaves of Isolation in Our Midst*, 40 Fordham L. Rev. 280, 282 (1971-1972).