
Farm Work Group Notes

Date: June 5, 2014
Time: 8:30 a.m. to 4:30 p.m.
Location: 400 E University Way, Ellensburg, WA 98926

Appointed Members Present: Teresa Mosqueda, Nina Martinez, Jorge Valenzuela, Andrea Schmitt, Rosalinda Guillen, Mike Gempler, Scott Dilley, Mike Youngquist, Kirk Mayer, Jon Wyss

Agency Ex-Officio Members Present: Uriel Iniguez (CHA), Ignacio Marquez (WSDA), Mona Johnson (DOH), Lisa Heaton (LNI), Alberto Isiordia (ESD)

***Bolded text indicates points of mutual agreement**

***Red text indicates action item**

Introductions and Statements

Work Group Members and Agency Ex-Officio Members introduced themselves. Work Group Members discussed their motivations for coming to the table and highlighted issues most important to them and their constituents. Many of these issues were included in the meeting handout, *Combined Problem Statements*.

Below are issues identified as important to both labor advocates and growers:

- Reduce workplace injuries, including strategies to encourage workers to embrace safety policies in place for their protection;
- Increased statewide training;
- Stable workforce; make jobs more attractive to domestic workers; reduce turnover;
- Adequate quantity/quality housing for workers;
- Provide a system to receive/address complaints that workers feel comfortable using. This could lead to characterization of complaints and pathways to resolution;
- Working together to support immigration reform; and
- Improve policy and communications between state agencies; consistency in application of laws/rules.

There was agreement that the scope of the group would not be limited to government related solutions, and would also include those in an outside/broader context, such as solutions that both growers and advocates could implement. They agreed to follow-through with commitments and affirmed their desire to work together to present real solutions and change in the community and workplace.

Agency Presentations

Employment Security Department (ESD)

Presentation by Alberto Isiordia gave an overview of ESD's three primary roles in agricultural services:

- 1) Agricultural services program
 - Outreach to employers and farmworkers
 - Handle and refer complaints to enforcement agencies
- 2) H-2A program
 - Reviewed employer requirements and process
 - Presented Washington H-2A data
 - ESD receives some complaints; limited enforcement options by federal law; discontinue recruitment and other ESD services when there is a violation of law (this authority last exercised in 2006)
- 3) Labor market information
 - Monthly agricultural employment and earnings surveys
 - Annual report on agricultural industry

ESD is reviewing the process of disclosing job orders, and is presently considering broadly sharing a redacted H-2A application on the H-2A jobs site once an application is submitted. **ESD agreed to provide more information before the next meeting in July about this topic (Cathy Hoover).**

ESD highlighted that outreach visits are not regulatory; the intent is outreach. Activities include ensuring workers know about resources available, providing pamphlets, engaging in conversations, providing business cards, asking if there are any issues we can provide assistance with. To employers, ESD provides technical assistance; asks if referrals are going well, and seeks input on areas ESD can improve.

Members asked if ESD had data on the number of outreach visits to H-2A workplaces; ESD confirmed that data is available at the end of the year. ESD outreach staff is not H-2A specific, but ESD has made a commitment to visit each H-2A employer once per H-2A contract. Members would like ESD to increase staffing, to reflect rise in guest workers in WA.

ESD emphasized that H-2A visits are not mandatory and there is no funding for dedicated H-2A outreach. USDOL funds ESD to conduct outreach activities to all employers, and ESD recognizing that it already has existing local staff, expects staff to conduct H-2A visits in the way they do other employer visits to meet the need.

Lack of dedicated funding for H-2A outreach was a shared concern for both advocates and growers.

ESD has discontinued the Labor Market and Performance Analysis (LMPA) monthly agricultural survey due to budget constraints. Not federally required; federal funds don't pay for the full cost of ESD services. **Check for Mike Gempler if this was the ETA223 report (Alberto).**

ESD is reviewing the annual comprehensive survey on labor and employment and working with the Washington State Department of Agriculture (WSDA) and other agencies to leverage resources to continue providing. **Members want to know the timeframe about these decisions.**

Both advocates and growers were concerned about the potential loss of valuable data in the annual survey. Both agreed to lobby and do what they can to retain the report. ESD to let members know what to do to make a case to ESD before outsourcing or limiting reports. Best way to give feedback to ESD is direct comments to Commissioner Dale Peinecke, he welcomes feedback. Members want ESD to provide more information about budgeting for surveys. They believe it should be base-level funding.

Members would like to see characteristics/count for last few years of complaints to look at and determine where there are barriers; why there are barriers; identify specific cases, and develop plans to address. (Alberto can offer limited information).

Department of Health:

Wayne Clifford, a representative from the pesticide program at the Department of Health (DOH), provided an overview of criteria, techniques and processes for investigating occupational pesticide illnesses. DOH highlighted their use of criteria standardized by the Centers for Disease Control and Prevention (CDC) and National Institute for Occupational Safety and Health (NIOSH). Annually, DOH compiles information they've gathered and look for common factors/contributors to pesticide related illnesses.

DOH investigations are to determine if health is impacted, not if a law was violated, as DOH is not a compliance agency. They have no regulatory authority, but they do collaborate with compliance partners Department of Labor and Industries (LNI) and WSDA.

Members raised the issue that medical personnel need to receive proper training to correctly identify pesticide incidents and conduct proper medical treatment. Other members recalled well-attended existing seminars and manuals created for this purpose that the Pacific Northwest Agricultural Safety and Health (PNASH) could be resurrected. It was also suggested that DOH could potentially conduct outreach to hospitals/clinics and provide clothing bags and instructions. **DOH agreed to speak with investigators to determine if they have encountered hospital personnel not allowing individuals exposed to pesticides into ERs and spraying them with hoses outside. Also, he will follow-up with epidemiologist to answer the question if pesticide exposure is easy to diagnose. (Wayne Clifford)**

Concerns were expressed about collection of grass/leaf samples. Work Group members recommended that if the WSDA is not involved, then DOH should be collecting these samples.

DOH expressed that it would like to do more, but there are three investigators for the state, 2.75 FTEs; with existing budget, logistically difficult to cover the entire state.

Mona Johnson, a DOH representative from their health systems and quality assurance program, discussed DOH responsibilities:

- Assist in the provision of appropriate housing to meet the need and ensure safe and healthy living conditions.
- Conduct training and assistance for growers/operators about construction and standards
- Monitor and inspect MFWH programs for review of state standards.
 - Handout on # housing sites licensed
 - Anecdotally aware that there are unlicensed facilities; don't know how many. Part of DOH's job is to help others become licensed. DOH relies on individuals like Farm Work Group members to give them information about how housing appears and places that are unlicensed. Need to work in partnership with you to understand more.
- DOH heard that members want consistency in LNI and DOH rules. Recognized many Work Group members have been, or are presently, involved in the DOH fee rules process underway, and emphasized that receiving feedback is essential. Once present meetings are concluded, a joint set of rules will be presented for comment again. Agencies want to support consistency needed to the degree able.

Department of Labor and Industries:

Lisa Heaton, an LNI representative from their Limited English Proficiency (LEP) language communication program and the division of occupational safety and health, presented.

Goals are to help ensure safety of workplaces; help injured workers heal and return to work; and make LNI services accessible for workers and employers. LNI has jurisdiction regarding issues relating to the employee/employer relationship. Conducts inspections, incident investigations; on-site consultations for businesses want assessment of their risk analysis assessment of their services. Offers education and grants for offering workplace training/services. LNI oversees regulations designed to ensure workers use protective equipment safely and on their own. Important to create workplace safety culture through outreach and training.

Identified various roles and responsibilities of each agency during investigations. Working together, streamlining resources, clear about which agency takes the lead in each case.

LNI has been partnered with WSDA for 11 years conducting outreach via with the farmworker education program. The program has four trainers, one from LNI and three from WSDA. The two agencies have also collaborated on the worker protection standard training (training pesticide handlers; 2013 - 1200 pesticide handlers). Members mentioned the LNI/WSDA co-sponsored training is a valuable collaboration and effectively evolves with identified needs as they arise.

Work Group Members believe it is overtaxed now, and could use funds to expand.

In many cases LNI finds out issues about pesticides through referrals under MOUs with other agencies or if worker goes to clinic and files report of accident (the report is sent to LNI). Coordinates with LNI and provider, determine probable cause if incident/situation related to workplace injury/illness.

Very few acute cases flagged as pesticide-related resulted in loss of work. If a person were to come in with long-term effects, wouldn't show up in these numbers.

When DOH says positive/probably pesticide related illness, doesn't necessarily mean accepted workers compensation claim. Standards of evidence are different. Different RCWs, at least mirroring federal law.

Victoria Breckwich Vasquez of PNASH observed that no one is technically responsible for providing medical practitioners training. Others typically take responsibility if they feel it's an issue. Pediatric environmental health specialty unit at UW received funding through the CDC, EPA ; there is one person in each region who conducts trainings as requested. Another resource is Migrant Clinicians Network (MCN) that fills gaps in providing training.

LNI, DOH and ESD have an MOU about Temporary Worker Housing. All agencies are operating with limited resources..

DOH allows anonymous complaints. LNI sometimes requires a name depending on the type of complaint and statutory requirements. Safety and health complaints do not require an individual to reveal his/her name. Wage complaints do require a name. Different laws govern.

Members want clarification as to when a complaint is a health/safety issue or wage issue, particularly in regards to meal and rest breaks. (LNI to provide)

LNI issues farm labor licenses to an insured/bonded person, agency, or subcontractor that recruits employees or hires/solicits/transport ag workers for a fee to perform farm labor activity. Licenses renewed annually. Majority of license holders are re-forestation contractors; ag contractors increasing because ag industries urging farmers to engage in farm labor contractor practices.

Advocates concerned how the farm labor license program is expanding and want more information about fees, complaints received, and oversight responsibilities. (LNI to provide)

Wage complaint: Current process in 3 by letter/phone notified with QA insert what to expect. By 5th day complaint assigned to agent. Verify details, checks phone/address/email, correct name employer. Ask if anything has changed, e.g., got paid yesterday. Worker gets copy of complaint.

LNI to provide list of items/reasons for closure of wage investigations.

Are agencies looking at company-wide investigations used specifically in agriculture after receiving wage complaint? (Agencies to provide)

LNI doesn't have the administrative tools/authority to pursue employers that have retaliated against workers for filing a wage complaint. The department does not have the administrative enforcement authority.

Advocacy Members report that even when an employee reports no water at dairy/farm, they must provide a name of a complainant. Agency goes to investigate, lets the farm know in advance that they're going that day, so for that day they will have water for employees. When reported unsafe tractors/work equipment.

Advocacy Members also report that dairy workers sometimes are paid by the day, and because of the work expected to be completed, the worker may end up working 12-14 hour days at less than minimum wage, often without breaks/lunch. **Advocacy members stated that that is not acceptable and requested that the appropriate enforcement agency be available at the next meeting to address those claims.**

Grower Members were concerned if this was happening, since it's a requirement for businesses to provide proof of actual hours.

It's not easy to enforce if there's no proof; the burden of a regulatory infraction falls upon the State to prove. There is no regulatory requirement to punch in/out. LNI does provide booklets specific to agriculture for workers to document their hours. Employee can keep track of information separate from employer's records.

Government agencies necessarily need proof; they can't substantiate on hearsay. The constitution requires state agencies to extend procedural and substantive due process protections.

A question for the group is how to provide a feasible way for businesses and employers to have this proof. What are objective ways to help both growers and employees enforce their rights? **Both growers and advocates agree there is a legal requirement, and agree that it needs to be complied with.** **Could LNI do emphasis inspections when there is a hot issue? For example, 20% of farms are inspected, so why doesn't that happen in the dairy industry? Advocate Members asked how the group could prevent the need for a receipt, and create a sustainable and respected workplace. Work Group expressed need for more information from LNI for a longer presentation on the issue.**

Department of Agriculture:

Ignacio Marquez summarized WSDA's emphasis on food safety, pesticides, protecting water/plants/animals, and marketing agricultural products and gave an overview of WSDA statutory authorities. WSDA is involved in labor around pesticides.

RCWs talk about pesticide control act, application act, and WACs regarding worker protection standards. Regulate the sale and use of pesticides; investigate complaints related to pesticide misuse; conduct field inspections; conduct technical assistance; license; administer CE program for PE applicators, dealers, consultants- train Spanish speakers.

No pesticide use reporting requirement for WA, but people are required to keep records of pesticide uses, and are required to furnish to DOH, WSDA or LNI upon request. **WSDA will provide pesticide use statistics by type and tonnage use by county and provide to group.**

WSDA investigation response time is within 24 hours. A field investigator is reviewing within 48 hours. 17 staff involved in pesticides program; 14.5 are field investigators doing compliance activities. Three are on the west side and 11.5 are in the east (mostly bilingual, through natural attrition, filling positions with bilingual staff). Managers occasionally pulled in to do investigation work.

WSDA often meets with DOH staff in the field, not quite as often with LNI. Purposeful coordination to bother as little as possible, as they are gathering similar information. LNI has about 300 inspectors, but none are dedicated to pesticides.

2013-2014 investigations are posted to the WSDA website, can view employer name and issue. Discussed penalties matrix; it is situational on who is penalized, the employer or the handler. **Group wants the list of penalties/violations broken down by employee or employer. (WSDA)** Published info on DOH reports website – pesticides incident and reporting tracking report and annual legislative report.

WSDA doesn't have outreach material for Spanish speaking worker, but works with LNI to inform farmworkers who to call in case they've been exposed to pesticides.

Growers and advocates commented that the Farmworker education program (WSDA and LNI) is a great, comprehensive, hands-on course for unlicensed pesticide handlers, but it's at capacity and there is a need for more of it. It's a full-day class, cost is \$25-\$50 per worker, size is limited to 50 people,. Employer/organization that sponsors the class arranges for a site location, does registration and advertising, and provides lunch. WSDA and LNI provide instructors, sprayer, materials, gloves, and experiments. If training were privatized, would probably cost \$200-\$300. Business sponsors often barely break even, but the purpose is to get as many participants trained as possible. 2100 people were put through training in 2013. The worker participation handler training cards issued to participants are good for five years and can be taken to different employers.

State law required WSDA advisory board on pesticides; state law expired, but director felt important to keep board. Continuing. Composed of applicators, employers, agencies (ESD, WSDA, LNI, commerce, CHA, DOH), had a farmworker but found it difficult to consistently attend. Not required to have a farmworker in attendance; reached out to labor advocate community. WSDA hosts conference calls as a venue, topics of discussion include: labor supply; agency agriculture responsibilities; current events; what issues to focus on and how to address, etc. Representatives include growers, industry associations, labor and community individuals; federal and state government agencies, other key partners.

Top six issues for 2014: H-2A; housing; retaliation in workplace; farm labor contractors; wages, and rest periods. Group also mentioned discrimination, sexual assault, and minors in workplace, but limited to six at this time to be manageable.

Joint-agency outreach presentations arranged at employer sites. Arrange group of employers to provide info about jobs in area. Positive feedback. Additional efforts in progress:

- Housing related forums
- Orientations with LNI, ESD, DOL
- Working with Mexican consulate offices; interested in working with agencies and other nonprofit organizations.
- Evaluating how to bring Human Rights Commission, as complaints received by LNI often fall under their jurisdiction.

Advocate Members expressed concern that WSDA was only objectively supporting growers and didn't see how the agency worked to support workers. WSDA responded that it works to ensure the ag industry is sustainable, and supports both growers and workers.

Advocate Members also expressed concern with lack of Spanish language resources for someone to make a complaint with WSDA about being exposed to pesticides. The agency has had bilingual pesticide inspectors and enforcement employees for years, and because of the sharing between agencies, a worker can call any of the three agencies and LNI has a Limited English Proficiency process in place, so agencies do work together to address.

Because of resources, WSDA doesn't have an 800 number in Spanish, but they do provide the LNI number. If LNI received something for another agency, it would refer to the appropriate agency of jurisdiction.

All agreed there should be a shift, and when people think about agriculture, they think WSDA. Individuals should start with WSDA, we should be the agency that says they don't have authority, but let me connect you to the right place.

Advocate Members would like alternatives to pesticides highlighted, in light of the growing visibility to organic farming. Grower Members commented that organic tree fruit is only 6% of total WA production, and demand only slightly exceeds production, but it's small. Also, organic doesn't mean pesticides aren't used. Organic tree fruit grower sprays 10-25% more often than conventional tree fruit grower.

Grower Members wanted Advocate Members to understand that WSDA farmworker division are perceived by growers to be strong farmworker advocates. They conduct farmworker education and are viewed as erring on the side of the worker. Many started as farmworkers, are spouses farmworkers; develop classes in Spanish; there is a strong presence of Spanish language/pro-worker activities within WSDA. If it's a matter of connecting 800 to one of their cellphones, the people/resources are there within the department.

Advocate Members said that their perception differs. WSDA assured Advocate Members that their service limitations are caused by lack of resources. WSDA coordinates with other agencies because of their commitment. The more information that advocates and others can disseminate about the program, the better. Even if you tell someone to just call Ignacio Marquez, he will ensure LNI looks into it.

Commission on Hispanic Affairs:

Uriel Iniguez from CHA provided background on CHA, which originally was created to discuss farmworker issues and later expanded to include other issues such as higher education, early learning, health, and financial issues. CHA works closely with LNI (farmworkers and medical) and WSDA. Part of CHA’s role is to advise state and local agencies on how they can improve services in their own communities. If laws aren’t being followed, there must be further investigation. Goal is to ensure that complainants have confidence in the grievance system and assurance that their grievances will be addressed.

Conclusion

Reminder that all official business needs to be conducted at an open public meeting.

Majority of the group agreed to add Pacific Northwest Agricultural Safety and Health center at the University of Washington (PNASH) as an agency ex-officio member. Two members (John Wyss and Scott Dille) voted against the proposal, noting that PNASH staff could attend and present when requested, and did not need to be agency ex-officio members to do so. PNASH is an ag safety and health research lab at the UW, focused on improved occupational health and reduced injury in ag workplaces. It is a non-partisan, federally funded university research. Researches issues such as pesticide, drift, sexual harassment, ergonomic issues, and asthma in children in ag families and communities.

Work Group Members agreed that agency presentations were valuable, but for future meetings, only need them for specific questions to be addressed and if members agree that the information is needed from a particular agency on a particular topic. Agencies agreed they see themselves the same way, as just resources.

Work Group Member Summary of Recommendations

Suggestion to agencies, whoever they are, to find a way to continue to fund the annual report.

Topics going forward

Group will email their top issues to address to facilitator for discussion at next meeting.