
Farm Work Group Notes

Date: July 10, 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, Andrea Schmitt, Rosalinda Guillen, Mike Gempler, Scott Dilley, Mike Youngquist, Kirk Mayer, Jon Wyss, Victoria Breckwich, plus Michelle Besso (non-voting, sitting in for Jorge Valenzuela)

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**

Follow Up on Former Discussion – Annual AG Report

Alberto Isiordia from ESD provided an update on the ESD Annual Agriculture Report (discussed in first meeting, June 5). The report will continue with some paring down of content, including segments most valued to customers – primarily the first three chapters that are the same each year. For reference, the topic for chapter four was H-2A and for chapter five was irrigation. **Group agreed there is value in a periodic report besides, or in addition to, a conference call.**

Handout #1: Facilitator Cathy Hoover passed around some questions to assist with discussions for the day, to help members define problems and scope.

The members next began discussion of the three discussion topics agreed to for the day's agenda: wage complaints, sexual harassment and complaints, and health and safety/pesticides.

Wage Complaints

Industry advocates asked to hear a description on how to satisfy a complaint on wages not paid. Labor advocates agree that **L&I has improved the way wages are reported and follow-through with complaints.** If retaliation is found though, L&I has no civil regulatory authority; under the law, it is a matter for law enforcement as a verified incident is punishable as a gross misdemeanor. Police must get involved and labor advocates observe that that never happens; prosecutors don't have resources to pursue these cases and don't file cases. L&I investigates every complaint, but company-wide investigations are rare. It takes 10 days to decide a complaint – if an employee is not made whole, then there are more steps to take. Industry advocates asked if the current law is working. Labor advocates say they often hear about employer retaliation and employees are afraid to file a complaint.

Mike Gempler asked how filing a wrongful discharge works with a wage complaint. Michelle Besso and Andrea Schmitt both explained. The Supreme Court is trying to narrow it. They said the Court views its role under the law as vindicating the public policy, but making workers whole.

Rosalinda Guillén asked how an agency enforces a multiple violator and if employers comply. L&I replied that they only conduct one company-wide audit per year. They have the authority but not the time and funding. They

must focus energies on the 3,500-4,000 complaints they get each year, which they are required by law to investigate (company audits are discretionary and subject to available resources under the law). Prior to 2006, before the Wage Payment Act (WPA), L&I was able to do more company-wide audits. After the law change, L&I has no discretion about which complaints it must investigate. On wage claims, there is no penalty – unless the complaint goes through the citation process. The Wage Payment Act was a negotiated law that everyone agreed to, and there are no problems with it with lack of consequences.

Labor advocates asked whether industry advocates can influence their counterparts to be accountable for paying wages properly. Industry advocates do not perceive this as prevalent of a problem as labor advocates do. They observe most growers have computerized operations with scanners. They perceive growers as seeking to pay workers properly; they just have documentation different than the worker remembers. For example, Jon Wyss's group has a three-ticket system that has to match up. The system prints three copies of the same receipt/ticket – one for the worker, one for the crew boss, and one for the employer. There is a three-part check, and it is in the computer so mistakes don't happen. Growers have to look out for forged bin tickets. For example, a group of pickers may share their number so it spikes for one worker and next day switch to spike the count of another worker. If a person makes a complaint, then it's resolved, no problem.

Uriel Iniguez pointed out that if members of this work group are having trouble understanding the process, what can a farmworker be expected to understand? Plus, the complaint process takes at least 60 days which may be too long to provide relief to someone moving around with the crops.

Labor advocates state this problem has been ongoing, and agencies are not able to respond quickly enough, or adequately, and there is still retaliation. Michelle Besso has handled many such cases, in which the grower was found liable and observes that some farms who don't follow the rules can make the industry look bad.

Handout #2: Employment Standards – Closed Complaints. Tisa Soeteber from L&I explained the data and provided short presentation:

L&I cannot match wage complaints with future retaliation complaints investigate retaliation, since there is no remedy and no authority for L&I to investigate retaliation complaints. Industry advocates asked how many wage complaints result in retaliation. They want to know how big the problem is, since it seems like it may be no larger of a problem than in any other industry.

Alicia Cardenas-Short explained that Employment Security (ESD) audits when L&I audits. If retaliation is the cause for a job loss, ESD records it. There would be administrative records on the unemployment insurance claim. Tisa Soeteber from L&I has asked to start collecting numbers but not okayed by program manager yet. (Others said it may not help to have data because the worker doesn't file the complaint or apply for unemployment benefits, and many times there's no proof of the retaliation.) **Group agreed don't change the laws and handcuff those that do it right – the law needs to single out the ones doing it wrong.**

Members seek to come back in October to discuss administrative solutions on wage systems. Alicia Cardenas-Short and Judy Johnson explained how ESD wage records work (wages reported several months later). Tomas Madrigal from audience suggested third parties to review growers' books and look for abuse patterns and trends. Wayne Clifford from audience has data too. **Get spreadsheets of data and put into system (who?).**

Cathy Hoover heard a best practice of growers using computerized systems. A no receipt system is difficult prove. L&I says the bin ticket shows wages, but there is no proof for berry picking, as piece work amount is

divided by minimum wage to come up with the hours worked. Labor advocates were concerned technology isn't working right and piece rate is complicated, as the piece rate changes from harvest to pruning and over seasons.

Messaging for Wage & Other Complaints

Labor advocates asked how the group could address the fear of retaliation and build a culture of trust. Labor advocates observe that they interact with workers who report that they are fearful of all layers of management, including owners, and most fearful of the foreman.

Scott Dilley suggested that there are many opportunities for state agencies and others to offer training on a host of topics, including sexual harassment training, to growers and supervisors. He described the [Retro](#) program as an education tool for farmers, and when more problems are identified in certain areas, then Retro can go out and teach their members. Retro works because it's industry expertise working together with L&I. Growers are more inclined to attend training from industry experts, as opposed to the Legal Services groups which sue them; they feel they can talk more openly about addressing problems with Grower's League members. If a legal advocate who sues them is in attendance, it can stifle free discussion. Scott suggested that there are several sources for growers to receive education, training, opportunities, and monthly updates. Farm Bureau, Growers League, and other organizations offer those types of services, and growers should avail themselves of those resources.

Labor advocates want to talk about combining communication of employment standards with safety at the next meeting. L&I indicated they could do webinars, and Scott Dilley has lists of prepared presentations that he can send out. Labor advocates say it's valuable for a worker to see the foreman and employer hearing the same information presented at same time, in the same way. Big training meetings may not be feasible as they are time intensive. **All agreed the group should brainstorm best practices.** Suggestions: Meetings about safety; scholarships to empower employees so they understand why a grower does this or that; and hands-on pesticides training.

Employers seek more intense dialogue with the farmworkers. Orienting employees is one thing, but at that time employees are eager to go to work out in the fields. Even if their focus is on getting to work, sending them away with resource handouts could be helpful and foster the employee's relationship with the farm. **One handout could be about wages, such as, "If you believe you have a discrepancy, come and see us. We treat people fairly and will deal with it."** Make it as a company policy. But at the same time, the relationship is a two-way street and employees need to know there are consequences for improper or erroneous time reporting. Labor advocates agree this idea is headed in the right direction but requiring a signature could be perceived as threatening. Other members suggested posting the messaging. A concern was raised that an employer could get in trouble for not having paperwork during an audit or discovery, when they were already doing verbal messaging.

Labor advocates think paperwork would help to relieve rumors and rebrand what farmers stand for. If a farmer needs 30 new workers in a pinch, they can complete paperwork on the hood of a truck so they can get in 3 hours labor that day. Growers can be flexible about where training and messaging occurs. The idea is that if employees receive the message and observe that they are treated well, they will come back.

One member observed that he believes employers need to better understand the cultures of Oaxacans and Mixtecas and some issues of distrust and discrimination among some members in these groups. Supervisors need to be aware of historical, cultural issues and trained in HR to handle any such situations. Owners,

supervisors, and farmworkers must have respect for each other for complaints to be brought forward and resolved. Ideally, growers should handle complaints in the field when they arise, as dealing with an agency is time intensive and industry advocates perceive agencies to be in the ‘gotcha business.’

All agreed that raising the standards for the industry and conveying the message that, “We expect this in WA State, we will not look away,” is a good first step toward singling out non-compliant growers. Industry advocates cautioned that training all the way down the line is met with resistance sometimes, but raising expectations is important. **Industry advocates and labor advocates seek to develop a joint campaign and foster collaboration to promote an environment of anti-retaliation: “If you continue doing this you will be let go. That is the standard.”**

Brainstorming message delivery:

- Many employees have trouble reading and writing
- Many rely on short, brief, in-person meetings to convey information
- Send messages as many ways as possible, such as radio, paper, meetings, etc.
- Not tied directly to agriculture – this message is pertinent for all industries
- Stay positive
- Message: Our growers and our workers are supported.
- Social compliance policy audits. Look at Costco code of conduct - relationship with their suppliers.
- Message: We treat our workers right. We want WA to be the best AG in the nation, come here to work.
- Use radio. Foremen, farmworkers, and neighbors all hear it.
- Lisa Heaton: L&I has Public Service Announcement spots – could get signed up.
- Do something between the employer and individual employee.
- Be allies in the campaign.
- Do community education for prevention.
- Victoria Breckwich has done Workers’ Rights & Sexual Harassment messaging.
- There are canned pieces already prepared that growers can use.
- A slogan/brand/logo – this is a ‘thing.’
- Mutual, group public campaign project.
- Scott Dilley says the word ‘retaliation’ is a no-starter.
- Tell people what to do, not what not to do.

Make the standard for foreman be – “takes care of business and treat workers fairly”. There must be consequences for inappropriate actions. Industry advocates said that they need local groups with a variety of members to resolve situations. Sometimes workers must go through 2-3 tiers of management to get to the owner. Good for the workers and good for the farm to be able to solve things quickly. Labor advocates become tainted when only hear complaints and should come out to the farms to see how well things really work.

L&I FYI: Employers can look up wage payment act violations on www.lni.wa.gov website. The site has the violator’s name, UBI, address. It can return false negatives, as the search function is inflexible without a UBI number. Also, the majority of cases don’t have a final disposition, such as if they settled early or never responded at all. Ray Rivas, Ag Safety L&I Compliance & Outreach, and Gary Smith, Industrial Hygienist at L&I, in the audience that would know about this.

Sexual harassment complaints go through Equal Employment Opportunity Commission (EEOC) and the State Human Rights Commission. L&I Safety & Health only have legal authority to get involved if it is workplace violence. Wrongful discharge goes to Human Rights Commission, too.

Sexual Harassment is defined as “Inappropriate touch or words that are unwanted.” Example: a woman on a poultry farm is harassed, then raped. She didn’t file a police report, then she was terminated. She wanted to file with the Human Rights Commission and L&I, but she was a victim, and it was all too confusing.

Labor advocates want industry advocates to have a zero tolerance policy for sexual harassment. Rosalinda states there is data on fatalities and trauma, and the majority are farmworker women. **Rosalinda will provide the report on Latinas and immigrant women.** Industry advocates brought up that there are levels of harassment. It could take the form of a risqué calendar, or it could be a quid pro quo demand of sexual favors or face termination. There could be a range of consequences.

L&I has Crime Victims Compensation, but it needs to correspond with a workers’ compensation claim. Victims often do not want their file open to the employer. Labor advocates suggested a hotline 800 number for everyone to use, so victim don’t need to contact so many different agencies.

Victoria Breckwich passed out a handout #3 “Quotes Regarding Retaliation...” information that the involved women agreed could be shared with others.

Industry advocates wanted to know the requirements or suggestions for a policy for camps, housing, and other apartments. Harassment may be a criminal matter or it may be alleged. Owner should investigate with an attorney or experienced and qualified investigator. **Suggestion to document growers’ responsibilities and exactly what to do in what order.**

Supervisors receive training every three years on sexual harassment. Mike Gempler worked with an experienced attorney on the curriculum. Nancy Graber or Mike Gempler conduct the training. Other groups also share in Mike’s training. **Glad to share the curriculum, which is presented once a year in a half-dozen locations.** Ignacio Marquez has attended other agricultural supervisory training programs where sexual harassment was mentioned. Pacific Northwest Agricultural Safety and Health (PNASH) is partnering with the Yakima Diocese and seminarians with training; also partnered with other agencies to produce: a radionovela (aired 60x during summer), informational wallet cards, a play at the Yakima Fiesta de Salud, and a training video script (seeking funding to produce and distribute). Labor advocates suggested having an orientation policy as part of the sexual harassment training. To be conducted sometime after the first several days.

Mike Gempler works with the small farms. Best timing is between pruning and thinning.

Kirk Mayer said it’s tough to fire a supervisor for respirator violation or similar, especially with the current labor shortages. He clarified that if it is sexual harassment, it wouldn’t be tough to fire the person. Rosalinda Guillén said that’s what women workers need to hear – that it is not tolerated. The foremen and the community need to hear it too. Mike Gempler suggested it be on the grower channels and on the worker radio call-in shows. Rosalinda Guillén thinks it needs to be more targeted to women. Message: **“We support respect in the workplace and zero tolerance”.** Probably should get professional messaging advice.

Teresa Mosqueda reminded members the goal is “To make the AG job more attractive to the domestic worker.”

Jon Wyss doesn't want the grower identified individually in an ad. Wayne Clifford in audience suggested using message of "Safe workplace certified" farms.

Health & Safety – Pesticides

Short discussion by DOH. There are times when a person is too toxic to be allowed into the hospital, and other times hospitals have mobile units to handle. Normally it is one individual worker with pesticide exposure throughout a workday, then they walk into hospital after work. There are different protocols depending on the location/exposure/etc. The training workers receive is to douse themselves with water and take off clothes. Joanne Prado said hospitals have language translators. The message on the radio: "If you see or smell something, get out". The farmworkers need to hear this message from the supervisor or owner and have their support. The worker's prime motivation is not to get fired. They may not know what is expected.

Work group members asked how they could improve communication, so workers and neighbors are notified when an immediately adjacent field is spraying. A work standard Mike Gempler is working on right now is a 'work protection buffer' - Mike Youngquist doesn't like this proposed standard, and thinks it is destructive economically. Scott Dillely said conditions change, including crafting a notification method.

Labor advocates asked what system could be implemented right now. Jon Wyss discussed a new notice law: They tested a method – a public records request - who were neighbors and businesses, took three weeks for the CD. An absentee owner out of country. Postings and such, but sometimes there's only a 3-hour window due to weather. etc. You have to go, just do what you can do.

Workers need to know that they should protect themselves and there will be no reprisal. A fear is that they'll get in trouble for stopping work due to exposure. Industry advocates said this should be in the training. Kirk Mayer said the grower doesn't want the worker to be off sick, or the neighbor. Sprayer will view the area but once spraying starts, the farmworker can hear the spraying and must feel free to move out of the area without repercussions. Jon Wyss said we must advise workers multiple times. Applicators feel the same way. Workers think, "I'm told to be here and I'll be here". Dept. of Agriculture (AGR) & Dept. of Health (DOH) do a good job with messaging. But we have the workers' attitudes and fear of potential retaliation for taking protective measures.

The industry advocates conduct pesticide training, except some third party representatives when AmeriCorps did it. The applicator training is good. The training should be really simple – run away, don't touch, etc., it should be only about a quarter of what's required by law (OSHA etc.). Penalties for violations is up to \$7,500, but the average is \$700-900, and different federal AGR aerial violations are followed up on. The applicator can lose their license. We no longer have third party training.

Wayne Clifford from DOH said there are no trends. Standards of proof are different for different agencies and different programs. Labor advocates commented that pesticides are the third/fourth highest priority issue for farmworkers, right behind not having health care. An industry member stated that he understands that there are very few claims for pesticide exposure at low levels and the problem may be overstated. Michelle Besso mentioned a study that concludes there is more autism in children living over several years near fields with pesticides. Rosalinda Guillén said just because there are only a few formal complaints – it is still a huge issue for farmworkers and in their communities. Kirk Mayer reminded us that growers have family homes in the middle of their orchards – it is a concern for growers too.

Mike Gempler commented that in some cases, something like an allergic rash is perceived by the worker to be caused by pesticide exposure. However, he agrees that minimizing pesticide exposure is important, and toward that end, growers have moved to softer applications, targeting the pest's life cycle. They fit applications with the weather and use a narrow window of application. They use different chemicals, and integrated pest management, with more organic, softer controls. Industry advocates see lots of improvement and are interested to know what DOH sees. Take this year's data, slide back two weeks due to this year's unusual spring. Risks are lower with these new methods/materials.

Joanne Prado from DOH said a sentinel system set up by Centers for Disease Control is not always useable. The issue is acute exposure versus chronic low exposure. Latent effects, like when exposure occurred – was it pre-natal, post-natal, or puberty. Joanne supports training done by agencies. Licensed applicators are educated, but the farmworker is not. She hates to say “this causes that”, but every day, she sees bladder cancer, Parkinson's, and other long-term disease from exposure. Information is coming out every day stronger and stronger about the problems.

For their part, labor advocates think there is a severe underreporting of exposure and industry advocates thinks there is over-reporting. Labor advocates suggested providing a number for employers to text to before a spray application. Industry advocates indicated that coverage could be a problem, as cell service in rural areas can be very spotty. **Joanne will bring what DOH has learned about problems to the October meeting.**

Scott Dilley noted that the ag industry pays more into the Model Toxics Control Act (MTCA) fund than they take out. It would be good for additional MTCA funds to be spent on expanding WSDA's Farmworker Education program.

Concluded just after 4:00 p.m. Next Meeting: October 16, 8:30 a.m. to 4:30 p.m. SeaTac

Conclusion

Audience comments and suggestions were taken at the end of morning and afternoon sessions. The Work Group thanked the audience for their attendance and participation.

In the audience:

Tisa Soeteber, L&I Ag Employment Standards; Gary Smith, L&I Industrial Hygienist; Raymundo Rivas, L&I AG Safety; Joanne Prado, Dept of Health Epidemiologist; David Mendoza, Policy Counsel to House Democratic Caucus; Tomas Madrigal, University of California Santa Barbara (UCSB); Wayne Clifford, Dept of Health Pesticides Manager; Mayra Rangel, Seattle University Christian Legal Society (CLS); Trudes Tango, Counsel to House of Representatives; Lindsay Shafar, Counsel to House of Representatives; Anna Green, Catholic Charities Housing Services; Maggie Leland, L&I Senior Policy Advisor

Work Group Member Summary of Recommendations

Group agreed there is value in a periodic report besides, or in addition to, a conference call.

Group agreed don't change the laws and handcuff those that do it right – the law needs to single out the ones doing it wrong.

Group seemed to agree that messaging could be most effective if all could campaign together, champion it together, and foster collaboration.