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## Farm Work Group Notes

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**Date:** July 9, 2014  
**Time:** 9:00 a.m. to 5:00 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

**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**

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### Discussion – Adding 2 adjunct members and substituting a member

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Jorge Valenzuela could not attend. All members present agreed a substitute could have a voice but not a vote, as voting members are required to be specifically appointed by the Governor under the proviso. Members decided to invite Michele Besso of the Northwest Justice Project to attend the second day.

The first order of business was to discuss the potential to add a member who specifically works as a farmworker, as well as another grower member for balance. The proviso limits the voting members to 10, and would limit addition of additional members to “ad hoc” membership; proviso could pay for travel costs as administrative costs for the group, but does not provide flexibility to having voting members above 10 official members.

Some opposed the change; others said the added voice, even in a non-voting capacity, would be helpful. Labor advocates were concerned about the negative message sent to farmworkers by not having a farmworker as a voting member. Industry advocates believed that the public participation and comment during meetings was an appropriate time to receive input from farmworkers who wish to attend, and their labor advocates are capable of representing farmworker interests.

Labor advocates continued to express concern about official farmworker representation. Two options were presented: 1. An official member could step down and a farmworker be appointed, or 2. each side could add an adjunct member.

Members adjusted the meeting process to take public comments at the June 5 meeting. Some constituents were comfortable with that process while others preferred to have a farmworker on the Work Group.

Suggestions:

- Add an agenda item to hear farmworker inputs. We already schedule time for public comment. Could add agenda item for workers to talk and answer questions, representing different areas/industries.
- Ask each member to consider if they can represent the interests of their constituents. If not, a member could step down, and the governor could make an alternate appointment.

One group recommended voting to add adjunct(s). Another group was most comfortable with keeping membership structure the same and asking the Governor for an alternative appointment. **In an official vote of 5 to 4, members decided not to add ad hoc members at this time. The group can revisit the issue later.**

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### Discussion Topics for Today

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The next order of business was for members to decide upon the agenda and discussion topics for the day. Members reviewed a handout listing of scope and goals for the group they compiled jointly. Members were asked to consider concentrating on administrative changes within the influence of the group. **Group decided to bypass setting a formal agenda and began with H-2A.**

#### **H-2A – Labor Supply and Guaranteed Working Conditions:**

Members discussed the causes and effects of the supply of local labor and reasons why industry advocates turn to H-2A farmworkers, such as the guarantee of legally authorized workers to harvest crops on time. US Department of Labor (USDOL) estimates that approximately 50% of the agricultural workforce in the US is not authorized to do so. Members discussed the steps of the H-2A process, the recruitment requirements of the program, the protections for domestic workers, the program's higher wage rate (AEWR) for foreign workers and corresponding domestic workers, the increasingly broken cycle for migrant farm workers across the West, and the fact that the federal government has ramped up enforcement efforts (such as ICE audits) over the past decade or so. These topics demonstrate the complexity, cost, and sideboards of H-2A, as well as the necessity of using the program.

Advocate members asked how industry advocates could improve wages and make jobs easier for women farmworkers, since there is such a high percentage of women in the workforce. Members discussed how farm workers can be stigmatized, which affects the supply of willing workers. Industry advocates discussed attempts to build relationships in their communities through orientations and demonstrations, which has helped for some crops, but not for all. For example, some harvests are more difficult and hours are long, and for others, the harvest schedule conflicts with the academic year, which affects participation by high school students. These outreach campaigns were limited in their success. Members mentioned that automation improves labor efficiency, reduces fatigue, opens the door for more women employees, improves safety and requires fewer employees and improves chances for a timely harvest.

Housing remains an issue; industry advocates believe the biggest assist to the development of farm worker housing is by empowering growers/employers to provide housing through programs such as the defunct "Infrastructure Loan Program", low cost technical assistance programs and programs to assist in the development of seasonal community based farmworker housing. Farmers find it difficult to get banks to finance housing and USDA money cannot be used for infrastructure. Group members suggested writing to the U.S. Secretary of Agriculture to request a change of the rules that govern housing improvement funding to allow flexibility for infrastructure (group members were going to locate the letter from Governor Snyder of Michigan on this topic).

## Points of agreement on Labor Supply

- Industry advocates and labor advocates share a mutual interest in having a stable, legal, sufficient, and well-trained agriculture workforce in Washington;
- Industry advocates and labor advocates seek ways to maximize the domestic labor supply by making farm work more attractive to the domestic workforce;
- Industry advocates and labor advocates support efforts to improve recruitment of domestic workers who are legally authorized to work in agriculture. Such efforts include making the ESD website more user-friendly;
- Industry advocates and labor advocates support continuing efforts to expand the agricultural workforce beyond traditional sources, such as current industry and state agency efforts to make farm work less physically demanding and to continue to encourage farm safety;
- Industry advocates and labor advocates seek methods to quickly and efficiently – but also sufficiently -- train farm workers. Grower/industry labor advocates provide and/or sponsor employee training, e.g., the WSDA Farmworker Education programs (hands-on handler and train the trainer), as well as Labor and Industries (L&I) consultation;
- Industry advocates and labor advocates believe that more *active*, mutual commitment to a culture of respect for farm work and trust between workers and industry advocates could make farm work more attractive to the domestic workforce (see below – Retaliation and Wage Violations).
- These issues are very complex and long-standing. Thus, members agree that the conversation and ideas expressed are positive, but it will take significantly more time, efforts, and resources to institute long-term change. Additional resources and commitment from all stakeholders, municipalities and community-based organizations could also help.

### **Professionalize the Job – Year Around Employment:**

Members discussed how professionalizing the jobs could take away perceived shame/stigma and foster better treatment in the community. Some members suggested this could be done by keeping the same workers year around and offering better pay. Others observed that only a small percentage of farmwork jobs are year-round and it is very difficult to convince a person to skip around and take temporary jobs year around within other industries and stay in one community. Members discussed following Jamaica’s model, focusing on hiring domestic workers, and asking workers: “What would it take to get you to take/to come back to farm work, in hot and/or cold weather?” Members asked: What could be the agency role on openings and jobseekers, on performance, with contractors or subcontractors, watching out for blackballing, helping the ability for the grower to control their own environment? Could ESD reinstate the interactive WorkSource map they used to provide?

Could farmers recognize professional certification in different careers, such as: Harvester, Pruner, Irrigator, Drivers, Farm Management, etc. and offer a better wage? Members agreed to look at leveraging funds, expand existing training/certification programs and start new ones. Members suggested creating a catalogue existing

programs, such as those offered by some universities, the Farm Bureau, Washington Growers League, and others. Also, suggested recording the types of training the Work Group wants to see (Sexual Harassment, etc.). **Potential administrative aides: catalog of existing programs, interactive WorkSource map online for farmwork.**

Members asked if there are ways to avoid the ARS interstate clearance requirements for housing for local recruitments, since employees aren't eligible for housing if they live within 60 miles. Alberto Isiordia from ESD and grower members explained that clearance orders are complex and the regulations were designed to protect workers because of problems in the 1980s. Housing is an issue, not all locals need housing; growers can't access housing improvement funds if they use H-2A. Competition in the global economy and with other states can impact abilities to implement many of these suggestions. Also the enforcement efforts of Homeland Security Administration (HSA) impact all of this.

#### **WORK GROUP WANTS COPIES OF:**

- 20 CFR 653.501 (Rule regarding Clearance Orders, as an attachment)
- Judge Richey decision
- Link to Go2WorkSource (<https://fortress.wa.gov/esd/worksource/Employment.aspx>)

Juan Aguilar of the Office of Rural Farmworker Housing (ORFH) in Yakima described the ADENTRO Program that makes loans to farmworkers to start a farm business.

#### **Prioritizing Remaining Discussion Topics:**

Each member voted to pick the next three topics for discussion:

1. Retaliation process and enforcement for handling complaints.
2. Issues with sexual harassment & abuse of farmworkers.
3. Health, safety & pesticide use.

The next highest was wages/hours/breaks and enforcement.

#### **Retaliation:**

Members recognize that several state agencies, commissions, community stakeholder groups, mediation programs and legal services etc. actively address problems, accidents, etc. but also recognize that there is no one single place to report problems, accidents, etc. Agency jurisdiction is divided among several agencies. For example, certain divisions of L&I and USDOL investigate wage and hour complaints.. Labor advocate members discussed cases of retaliation they've observed. Retaliation can include firing for complaint of working conditions, wages/hours, safety, employee to employee, employer to employee, or employee to employer retaliation. Some members believe an undocumented worker has a power differential with a documented worker and more employer retaliation (or threat of) against them. They also see discrimination among various ethnic groups and consider it unlikely a worker will take the huge risk in lodging a complaint. Workers see someone who complained not working there anymore. They don't want to be named. They say, "I need to support my family." What is the risk, and how can we get employees to trust that a reporting employee won't experience retaliation.

Suggestions included: Creating a map for safety issues, so people know where to go to submit a complaint; create a system to report issues. Using an ombudsman to address retaliation - makes the victim feel safer and provides a process to follow.

Under the legal regulatory requirements, some complaints can't be anonymous for an agency to investigate. For example, if an employee wants a wage collected on their behalf, they must provide contact information.

An audience member added there is a rise in worker centers in Portland, and workers feel more comfortable. The centers are trained in OSHA rules etc. **Teresa Mosqueda has some other information and examples from other states.** Some members questioned how to move away from a system that relies on complaints or lawsuits that stack up. Coordinate with community partners.

#### Points of agreement on Retaliation and Wage Violations

- Growers, advocates, and state agency personnel agree that state and federal laws are complex, multi-layered, and subject to multiple interpretations, making it difficult to know and understand the law.
- Growers and advocates support agency outreach and on-site efforts to develop good relationships with workers, employers, and advocates that facilitate the development of a good working environment where workers and supervisors feel comfortable bringing issue to the attention of growers, supervisors, and/or the appropriate agency if not handled in a timely manner.
- Growers and advocates support improving communications of employer policies through orientation, safety training, etc. by outlining the procedures for workers to follow if they wish to raise issues.
- Growers and advocates agree that agricultural employees need to feel free to report issues of concern to their employer and/or supervisor.
- Growers and advocates value and encourage both women and men to work in agriculture.
- Growers and advocates support a safe agricultural work environment, through continuing efforts to improve training and the communication of rules and policies.

These issues are very complex and long-standing. Thus, members agree that the public outreach and awareness campaign can be a good start, but it will take significantly more time, efforts, and resources to institute long-term change. Additional resources and commitment from all stakeholders, municipalities and community-based organizations could also help.

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### **Conclusion**

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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.

The Work Group enjoyed the day; it was good although some of it was observed as 'tough'. They adjourned to an in-room social hour.

**In the audience:**

Maggie Leland, L&I Senior Policy Advisor; Tisa Soeteber, L&I Ag Employment Standards; Erica Parkinson, Catholic Charities Housing Services Yakima; Joanne Prado, Dept of Health Epidemiologist; Lindsay Shafar, Counsel to House of Representatives; Trudes Tango, Counsel to House of Representatives; Tomas Madrigal, University of California Santa Barbara; Wayne Clifford, Dept of Health Pesticides Manager; Orlando Cano, House Democratic Caucus and Senior Advisor to Speaker Chopp; Marty Miller, Office of Rural Farmworker Housing; Juan Aguilar, Office of Rural Farmworker Housing; Mayra Rangel, Seattle University.

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**Topics going forward**

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Tabled item: adding adjunct members(s) to the Work Group.