

Comments Regarding Proposed Changes to New York State Labor Law

“Farmworkers Fair Labor Practices Act (A.1867-b/S.2247-b)”

**Testimony Submitted to the
New York Senate Standing Committee on Agriculture**

by

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Disclosure. Dr. Villarejo served a consultant to California’s Agricultural Labor Relations Board under terms of six different short-term contracts between 1982 and 2006. His consultant services included providing in-service training for field investigators and attorneys, conducting independent investigations pertaining to unresolved ALRB cases, and serving as an expert witness.

California’s Agricultural Labor Relations Act bought labor peace to agriculture

The proposed amendments to New York State Labor Law are likely to reduce the likelihood of harvest time strikes or other labor actions by agriculture workers. The experience of California agriculture indicates that guaranteeing farm laborers the right to form organizations of their choosing tends to reduce, not increase, the threat of concerted action by workers and labor unions.

California’s Agricultural Labor Relations Act was agreed to on June 2, 1975, and implemented during the autumn of 1975. The whole point of the 1975 law was “...to ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations.”¹

Before the ALRA was enacted, California agriculture had been rocked by an unprecedented ten year period (1965-1975) of increasingly bitter labor actions sometimes culminating in hyper-charged confrontations: costly strikes, damaging international boycotts of California grapes and lettuce, bitter lockouts, and an ever-present threat of

¹ Martin PL, *Promise Unfulfilled: Unions, Immigration, and The Farm Workers*, Cornell University Press, Ithaca, 2003, 232 pp.

violence.² The wave of labor actions included California agriculture's first-ever "general strike," aimed not at specific farms or a specific crop industry, but instead welcoming any and all workers who would choose to act. In July and August 1970, throughout the entire Salinas Valley, hundreds of farms were abandoned as thousands of farm laborers either picketed or walked away from the fields to join mass marches.

Importantly, following enactment of the ALRA labor actions immediately became far less prevalent and are rare today – the most recently reported labor action in California agriculture was a one-day spontaneous walkout by several hundred disgruntled non-union workers at a Central Coast strawberry farm during 1995. Both growers and farm union leaders have increasingly come to realize that confrontation and labor actions rarely reach a conclusion that preferentially benefits either party.

Much of the credit for the success of the ALRA in helping to end damaging labor actions in California agriculture can be attributed to regulations promulgated by the Agricultural Labor Relations Board and implemented by its independent General Counsel. These include establishing the right of both growers and labor organizations to seek relief from actions deemed unfair by either party through the filing of an Unfair Labor Practice (ULP) complaint. As acrimony has subsided over the past several decades, there have been fewer and fewer ULP charges filed with the agency.³

A second key aspect of the regulations implementing the law is the establishment of mutually respectful procedures to guarantee that each party in a dispute will have an opportunity to seek a rapid and peaceful remedy. For example, in the event of organizing activities that disrupt production, the ALRB is required to act within seven days to directly determine whether workers, in fact, wish to have union representation. On the other hand, if workers are dissatisfied with a labor organization that has been certified by the ALRB to represent them, a complaint filed by a specified number of workers immediately triggers a vote supervised by the ALRB that can decertify that labor organization. Since 2000, there have been a half-dozen cases in which a labor organization was decertified by ALRB action following votes by the affected workers.

² Ferriss S Sandoval R, *The Fight in the Fields: Cesar Chavez and the Farmworkers Movement*, Harcourt Brace & Company, New York, 1997, 331 pp.

³ Wells M Villarejo D, "State Structures and Social Movement Strategies: The Shaping of Farm Labor Protections in California," *Politics & Society*, 32(3):291-326, September 2004.

Finally, ALRB regulations have established a basic set of “ground rules” governing how and when labor union representatives may directly contact workers on a farm. The purpose of this “access rule” is to prevent unlawful trespass onto farm property and to assure both workers and farmers that labor organizers must abide by a firm and agreed upon set of rules. Unlike factories, where “brick and mortar” typically defines the workplace, agriculture most often does not have localized and easily identified work sites. In fact, some farm operations may have two or more non-contiguous fields spread over a considerable distance. For this reason, ALRB regulations provides a mechanism, upon notice by a labor organization, to allow “access” to a farmer’s employees by labor representatives during an agreed upon 30-day continuous period during the course of one calendar year, either before or after work, or during a specified time frame that does not disrupt production. Once access is approved, labor representatives are not permitted to contact workers at the work site for an entire year after the 30-day period concludes.

Owing in part to increased stability in the California farm labor market, productivity on Golden State farms has substantially increased making the state’s crop and dairy industries the most competitive in the nation, even to the disadvantage of foreign competitors.⁴ Labor peace and labor market stability have been a factor in California agriculture’s extraordinary record of growth. In the past several decades, farmers and others have made very substantial new investments to expand labor-intensive crop production in the state because there is confidence today in labor market stability. Between 1974 and 2007, California’s total of land in orchards plus harvested vegetable and berry acreage increased from 2.5 million acres to 4.0 million acres, thereby increasing the Golden State’s share of the national acreage of these crops from 34% to 41%.⁵

⁴ Cook R Benito C Matson J Runsten D Schwedel K Taylor T, “Fresh Market Tomatoes,” *NAFTA: North American Free Trade Agreement, Effects on Agriculture, Volume IV, Fruit and Vegetable Issues*, American Farm Bureau Research Foundation, Park Ridge, IL, 1991, pp. 239-298.

⁵ United States. Department of Commerce. Bureau of the Census, *1974 Census of Agriculture. United States. Summary and State Data*, April 1977. United States. National Agricultural Statistics Service. United States Department of Agriculture, *2007 Census of Agriculture. United States. Summary and State Data*, February 2009.

Labor costs on New York farms are unlikely to be substantially impacted by the proposed overtime pay and temporary disability insurance proposals

With respect to labor costs, in 2007, total hired and contract labor expenses in New York were a larger proportion of total farm cash receipts from agricultural commodity sales than in the nation as a whole, 13.8% vs. 8.9%.⁶ But in a number of states, the corresponding proportions are even larger than in New York, in some cases, much larger: Florida, 22.5%; California, 21.5%, Oregon, 20.7%, Washington, 17.8%; and Arizona, 14.1%.⁷ It is not a coincidence that in all but one of these states (AZ, CA, OR and WA), real growth of farm cash receipts over the past several decades has outstripped the corresponding rate of growth both in New York and in the nation as a whole.

Labor costs in New York State can also be compared with costs in other “cold climate” states with substantial livestock or dairy production. The U.S. Department of Agriculture conducts a national cross-sectional survey of farm employers in each of four calendar quarters during the year. Employers report the number of their employees during a specified week, wage rates paid, and hours of work. State-level reports from farmers and ranchers are grouped into 19 crop regions, according to similarities of crop and livestock production. The findings are published in the quarterly report, *Farm Labor*.

For the Northeast I crop region (in which New York accounted for 55% of hired labor expense in 2007 within the seven state total),⁸ reported hired labor wage rates for field and livestock workers in 2009 were lower than in the crop regions corresponding to the Great Lakes, Corn Belt and Northern Plains. Table I presents reported average field and livestock wage rates during 2009 for the Northeast I crop region (mostly New York hired laborers) as compared with all four of the Midwest and Upper Great Plains crop regions.

⁶ United States. National Agricultural Statistics Service. United States Department of Agriculture, *2007 Census of Agriculture. United States. Summary and State Data*, February 2009. Cf. State Data. Table 2. Market Value of of Agricultural Products Sold Including Direct Sales: 2007 and 2002, and Table 3. Farm Production Expenses: 2007 and 2002.

⁷ Ibid.

⁸ Op. cit. *2007 Census of Agriculture*, State Data. Table 3. Farm Production Expenses: 2007 and 2002.

**Table I. Average Annual Wage Rate, 2009, Hired Labor
Field and Livestock Workers, Selected USDA Crop Regions**

Source: Farm Labor, USDA/NASS, Nov. 11, 2009

| <i>USDA Crop Region (states included)</i> | <i>Average wage, Hired Labor, Field and Livestock Workers</i> |
|---|---|
| Northeast I (CT, ME, MA, NH, NY, RI, VT) | \$10.16 |
| Lake (MI, MN, WI) | \$10.57 |
| Cornbelt I (IL, IN, OH) | \$10.51 |
| Cornbelt II (IA, MO) | \$10.86 |
| Northern Plains (KS, NE, ND, SD) | \$10.66 |

There is a possibly widespread belief that because New York has a shorter growing season than California, farmers in New York have greater pressure to rapidly expedite harvest work than is the case for California farmers. Hence, it is argued, New York farmers should not be forced to incur higher labor expenses by the proposed overtime wage law when extra labor is needed.

First, it is incorrect to argue that California farmers do not have substantial harvest time pressure. The contrary is the case, in some crops associated with climate factors, and in other crops with narrow marketing windows in which mostly foreign producers are unable to compete. For example, when as many as two hundred thousand acres of San Joaquin Valley vineyards have raisin grapes lying on the ground to dry in the sun for a two-week period, an early fall rainstorm could turn the vineyards into worthless raisin “soup”. Or when the early season Desert table grape harvest begins in late May or early June in the Coachella Valley, growers are attempting to market their crop in a narrow several-week window between imported late season Chilean grapes and early season Mexican table grapes. Similar comments regarding harvest time pressure apply to a variety of crops grown in California, ranging from tomatoes to melons.

Second, with respect to the possible impact of establishing overtime pay for farm labor following 60 hours of work in one week, or after 10 hours in a day, there is little evidence indicating there is a substantial amount of overtime work on New York farms beyond 60 hours per week or 10 hours per day. In fact, there is evidence that suggests most of the hired labor on New York farms may, in fact, be working fewer hours per week, on average, than are workers on California farms. The aforementioned USDA

quarterly employer survey published as *Farm Labor* reports average hours per week of hired labor.

Table II presents findings for 2009 during each of four calendar quarters comparing reported average hours per week in the Northeast I crop region (mostly New York farm workers) and California. Importantly, the reported average hours per week of hired labor on Northeast I farms are highest during the winter and early spring periods, and lowest during the summer and fall months, during peak crop harvest periods.

**Table II. Average Hours per Week, 2009, Hired Labor
California and Northeast I USDA Crop Regions**
Source: Farm Labor, USDA/NASS

| <i>Survey week</i> | <i>California, average hours per week</i> | <i>Northeast I crop region, average hours per week</i> |
|---------------------|---|--|
| January 11-17, 2009 | 41.3 | 41.3 |
| April 6-12, 2009 | 43.9 | 41.1 |
| July 12-18, 2009 | 46.1 | 38.5 |
| October 12-18, 2009 | 42.1 | 38.5 |

In conclusion, the experience in California strongly suggests that establishing the legally protected right of farm laborers to form organizations of their own choosing to engage in collective bargaining on their own behalf has significantly reduced the likelihood of disruptions of farm production activities. There are no findings in the published literature on farm labor to the contrary.

Second, there is no direct evidence suggesting New York farms would be significantly adversely affected by approving the proposed overtime law or temporary disability coverage. There is compelling evidence that New York farm operators are not overly paying an excessively large total of hired and contract labor expenses in proportion to their sales of agricultural commodities. The USDA Quarterly survey of farm employers indicates that wage rates in the Northeast I crop region (mostly New York farms) are lower than corresponding wage rates in the Great Lakes, Corn Belt and Northern Plains, and that farm laborers in the Northeast I crop region actually work fewer hours per week during crop harvest periods than workers on California farms.