

FARMING AND FIGHTING FOR THEIR RIGHTS:
A LOOK AT POLICIES AND PRACTICES AFFECTING THE MIGRANT
FARM WORKER

By

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Abstract:

This study looks at the circumstances cases were filed due to a violation of rights granted by the Migrant and Seasonal Agricultural Worker Protection Act of 1983 (MSPA). This act declares the basic rights all migrant farm workers are entitled to that covers compensation, working conditions, health and safety. MSPA has a private right to action clause that states that a migrant farm worker has the right to file suit in any federal district court regardless of amount, situation, or legal status, and be provided a lawyer. This provides an avenue for migrant workers to practice their rights, and this research seeks to determine if this avenue is actually being taken. By analyzing the cases filed and comparing the quantity to the actual number of MSPA violations, we can determine if migrant farm workers are using and receiving their rights granted by the act. Results showed that not very many cases have gone to the higher courts in the past twenty-three years; however, we still get a glimpse of what is going on at a federal level. Furthermore, we gain understanding to what migrant farm workers have to go through in order to obtain their given rights. Ultimately, these results start to display the disconnect between policy and practices.

Introduction/Literature Review

Migrant and seasonal farm workers are an irreplaceable aspect of the agricultural industry. They provide an inexpensive and reliable labor force that is crucial for producing the projected \$56.2 billion in farm income for 2006.¹ Despite the profitability of the industry, the migrant farm worker continues to struggle. Farm workers, in general, are known to be a vulnerable population, and when it comes to migrant farm workers, their susceptibility is often exploited and abused. In 1998, the United States Department of Labor conducted a study called the National Agricultural Workers Survey. The results from this survey reported the following:

- On average, migrant farm workers were employed in agriculture for less than half of a year (24 weeks).
- Migrant farm workers supplemented their agricultural earnings with five weeks of non-farm employment in the United States.
- The average migrant farm worker wage was \$5.94 hourly.
- Farm workers have lost 11 percent of their purchasing power over the last decade.
- 52% of all migrant farm workers were married.
- 61% of migrant farm workers had incomes below the poverty level.
- The median income of individual migrant farm workers has remained less than \$7,500 per year while that of farm worker families has remained less than \$10,000 in the past ten years.²

While migrant farm workers are performing some of the most intense forms of labor, they are barely able to provide for themselves, much less their families. This research involves looking at what attempts have been made in the policy arena to help migrant farm workers receive the credit they deserve.

The focus of this research study is to find out if migrant farm workers are using and receiving their rights granted by the Migrant and Seasonal Agricultural Worker Protection Act. The act has private right of action clause that allows migrant farm worker to file suit in reaction to a violation of their federally-given rights. By researching the reality of the suits of the past, it can be assessed how migrant farm workers are obtaining their rights. By comparing the number of suits filed to the actual number of documented complaints, I will be able to determine if migrant farm workers are using their rights given by the act. The preliminary hypothesis believes that migrant farm workers are not attaining their granted rights due to reasons not of emphasis in this study but could include: fear of job loss, not having knowledge of rights, legal status, societal barriers, fear of dealing with officials, etc.

Migrant Farm Workers in the United States

Before looking at current policy, it would be helpful to discuss the history of migrant farm workers. However, just a few of the prominent events will be discussed that are relevant to understanding the need for policy.

¹ United States Department of Agriculture. (August 31, 2005). Farm Income.
<http://www.ers.usda.gov/Data/FarmIncome/>

² United States Department of Labor. (March 2000). Findings from the National Agricultural Workers Survey: A Demographic and Employment Profile of United States Farmworkers.
http://www.doleta.gov/agworker/report_8.pdf

Braceros

The Bracero Program was initiated in 1942 to assist with the rapid growth of the American agricultural market. With the declining economy of Mexico after the Mexican Revolution and the increased labor demands of the United States during WWII, the two governments came together to create a binational temporary contract labor program called the Bracero program. Braceros is a term derived from the Spanish word “brazo”, which means “arm,” and idiomatically refers to farm hand or labor for hire.³ The program was supposed to supply a few hundred experienced Mexican agricultural laborers to help with California agriculture, but soon, the Mexican laborers were needed all over the United States. The program lasted until 1964. By the end of it, 4.5 million Mexicans had carried the name of bracero.⁴ The terms of work within the program varied because independent farmer associations made the contracts. It was common that the workers would sign contracts in English and not understand the terms of the contract or their rights.⁵ Disregarding their significance in maintaining America’s economic stability, the braceros became the target of harassment from racist groups, took abuse from their employers, and were exploited by the entire nation.⁶

Cesar Chavez

Cesar Chavez is arguably one of the most significant figures in the domain of migrant farm work. In 1962, Chavez founded a farm worker union called the National Farm Workers Association, which is now known as the United Farm Workers (UFW). During this time, unions did not play a significant role in workers’ rights. By 1970, the UFW was able to unite most of the agricultural industry. At the prime of the union, it had 50,000 dues paying members.⁷ The strength of the union came from Cesar Chavez and his continued dedication to the farm worker, his powerful leadership, and his commitment to nonviolent tactics (boycotts, pickets, and strikes). Some of his and the union’s accomplishments include: the Delano grape strike, his fasts (for 25 days in 1968, 24 days in 1972 and 36 days in 1988) that focused national attention on farm workers problems, and the 340-mile march from Delano to Sacramento in 1966.⁸ Cesar forced the public to recognize the difficulties and obstacles farm workers face for adequate pay and safe working conditions. Cesar Chavez and the UFW fought for recognition of the importance and dignity of all farm workers.⁹

H-2A Visa Program

According to the United States Department of Labor:

The H-2A labor certification program for agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the U.S. to

³ Bracero History Project. History of the Bracero Program. <http://echo.gmu.edu/bracero/docs/overview.pdf>

⁴ The Farmworkers’ Website. (December 1999). The Bracero Program <http://www.farmworkers.org/bracerop.html>

⁵ Bracero History Project. History of the Bracero Program. Retrieved July 5, 2006 from <http://echo.gmu.edu/bracero/docs/overview.pdf>

⁶ The Farmworkers’ Website. (December 1999). The Bracero Program. <http://www.farmworkers.org/bracerop.html>

⁷ United Farm Workers. (2006). The Story of Cesar Chavez. http://www.ufw.org/_page.php?menu=research&inc=history/07.html

⁸ United Farm Workers. (2006). The Story of Cesar Chavez. http://www.ufw.org/_page.php?menu=research&inc=history/07.html

⁹ United Farm Workers. (2006). The Story of Cesar Chavez. http://www.ufw.org/_page.php?menu=research&inc=history/07.html

perform agricultural labor or services of a temporary or seasonal nature. The H-2A certification is valid for up to 364 days. As temporary or seasonal agricultural employment, the work is performed at certain seasons of the year or for a limited time period of less than one year when the employer can show that the need for the foreign worker is truly temporary. The employer's need for a worker must be of a seasonal or other temporary basis. A seasonal basis is the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may be continuous or carried on throughout the year. A temporary basis is for a limited time only or is contemplated for a particular piece of work, usually of a short duration.¹⁰

Additionally, workers with an H-2A visa should receive the same wages or rate of pay as a U.S. worker, free housing as long as traveling to and from their residence is unreasonable, be provided either three meals a day (workers may be charged for this) or kitchen facilities to prepare their own meals, receive transportation compensation, be provided Workers' Compensation Insurance (if required by state law), and supplied the necessary tools to perform their job at no cost.¹¹

The H-2A Visa program is continually criticized because of the very limited number of visas granted every year. Some politicians say if more were provided, it would decrease the size of the undocumented immigrant population in the United States. Even though there is no cap on the number of H-2A workers, for national security reasons, restrictions were placed to slow processing of visa requests.¹² In 2002, out of the 1.2 million farm workers, 15,628 were H-2A workers.¹³ Moreover, it is estimated that 52% of the total farm hands in the United States are undocumented workers.¹⁴

Guest Worker Program

Current President, George W. Bush, is trying to deal with the nation's call to address immigration reform. This reform project is a work in progress. Nevertheless, part of his reform plan includes a guest worker program. President Bush's intent is "to match willing foreign workers with willing American employers, when no Americans can be found to fill the jobs."¹⁵ He is also pushing a program that will allow undocumented workers already in the United States to have the opportunity to gain citizenship. A requirement being proposed is that participants in the program must have a job (or have a job offer). The president's goal is not to grant amnesty, but to encourage migrants to take the legal route.¹⁶ The legal status from the program expires after three years but is renewable up to six years but it does not make the migrant eligible for a green card or citizenship. President Bush is asking employers to take on some important

¹⁰ U.S. Department of Labor Employment and Training Administration. (March 16, 2006). H-2A. <http://www.ows.doleta.gov/foreign/faqs.asp#h2a>

¹¹ U.S. Department of Labor Employment and Training Administration. (March 16, 2006). H-2A. <http://www.ows.doleta.gov/foreign/h-2a.asp>

¹² Alabama Cooperative Extension System. (2006). Hiring Temporary Foreign Workers for Farm Labor. <http://www.aces.edu/pubs/docs/A/ANR-1244/>

¹³ Alabama Cooperative Extension System. (2006). Hiring Temporary Foreign Workers for Farm Labor. <http://www.aces.edu/pubs/docs/A/ANR-1244/>

¹⁴ National Center for Policy Analysis. (October 3, 2000). Undocumented Immigrants are a Majority of Farm Workers. <http://www.ncpa.org/pd/immigrat/pd100300d.html>

¹⁵ President Bush Proposes New Temporary Worker Program (May 15, 2006). <http://www.whitehouse.gov/news/releases/2004/01/20040107-3.html>

¹⁶ President Bush Proposes New Temporary Worker Program (May 15, 2006). <http://www.whitehouse.gov/news/releases/2004/01/20040107-3.html>

responsibilities, which include making a significant attempt to hire an American worker for the job at hand and not hire undocumented aliens or temporary workers whose legal status has expired. He is also stating that his guest worker program will not only have economic benefits to America, but also make the country safer since we will have a better idea of who is here. Some other stated benefits are that law enforcement on the border will be less of a problem meaning more attention will be brought onto to more actual national threats and the program will allow temporary workers to travel legally and freely.¹⁷

Arguments for the program entail providing farmers with willing and legal labor hands. However, because the program does not grant legal status after a participant's expiration, the migrant worker is simply setting themselves up for deportation because the government will know exactly where to come pick them up.¹⁸

Existing Policy Affecting Migrant Farm Workers

Before reform can happen, it is vital to have an understanding of what currently exists in the policy field. Throughout preliminary research of policy affecting migrant farm workers, I found that many policies overlap each other and sometimes conflict with each other. The following is an overview of existing policy that affects migrant farm workers.

Fair Labor Standards Act

The Fair Labor Standards Act of 1938 (FLSA) encompasses many aspects of labor in general. It sets a federal minimum wage, requires overtime wages, restricts child labor, and mandates record keeping by employers.¹⁹ However, FLSA exempts agricultural employers from selected provisions, but these exemptions vary depending on the type of agricultural employers. Also, the minimum wage clause is not required if employers do not use more than 500 man-days of agricultural labor during any calendar quarter of the preceding calendar year. A man-day is any day during which an employee performs at least one hour of agricultural labor.²⁰ Agriculture employees are also usually excused from the overtime wage conditions. The FLSA is meant to be the minimum standard that applies to employers and employees. However, the FLSA's reach is limited because it is contingent with submission with other laws, allowing for state and local laws to interfere.

Occupational Safety and Health Act

The Occupational Safety and Health Act of 1970 (OSHA) was created to guarantee that any worker in the United States works in a safe and healthy working environment. The expected result from this act is that employers provide a workplace that does not have hazards that could cause death or potential for injuries.²¹ Specifically for agriculture, points of interests are: temporary labor camps, tractor roll-over protection, guarding of farm field equipment, storage of anhydrous ammonia, field sanitation, hazard

¹⁷ President Bush Proposes New Temporary Worker Program (May 15, 2006).

<http://www.whitehouse.gov/news/releases/2004/01/20040107-3.html>

¹⁸ Wipf P. & Wipf J. (2003). The Guest Worker Program: Both Sides of the Issue/Political Stands.

<http://immigration.about.com/od/laborjobissues/i/GuestWorkrIssue.htm>

¹⁹ U.S. Department of Labor. (March 2004). Fair Labor Standards Act. <http://www.dol.gov/esa/whd/flsa/>

²⁰ U.S. Department of Labor. (March 2004). Fair Labor Standards Act. <http://www.dol.gov/esa/whd/flsa/>

²¹ National Ag Law Center. (October 29, 2004). Labor- An Overview.

<http://www.nationalaglawcenter.org/assets/overviews/labor.html>

communication, cadmium usage, and logging operations.²² Nonetheless, employers in agriculture are exempt if they employ less than ten farm workers.

Immigration Reform and Control Act

The Immigration Reform and Control Act of 1986 (IRCA) is an encompassing policy that affects immigration in general. It attempts to restrict unauthorized immigration by enforcing regulations on employment of migrant workers. It creates fines for employers who hire undocumented workers and requires employers to verify employment eligibility by obtaining official documents that prove the worker's status.²³ An important protection granted by this act is that any eligible employee is not to be discriminated against or be denied employment because of their nationality or ethnicity.²⁴

Migrant and Seasonal Agricultural Worker Protection Act

The Migrant and Seasonal Agricultural Worker Protection Act of 1983 (MSPA) is the focus of this research study. It was created to help decrease the vulnerability of migrant and seasonal workers by giving them protected rights. The MSPA is the primary agricultural labor statute and has remained relatively controversy-free and intact since its establishment twenty-three years ago.²⁵

The MSPA establishes, in part, wage and working condition requirements and requires the registration of farm labor contractors. Farm labor contractors are defined by the statute as any person other than agricultural employers, their employees, or agricultural associations that recruit, solicit, hire, employ, furnish, or transport any migrant or seasonal agricultural worker for money or other valuable consideration. The only workers covered by MSPA are persons engaged in seasonal or temporary agricultural employment. The act also distinguishes between workers that are away from home overnight and those that live near the work site. Farm labor contractors are required to register with the United States Department of Labor before they perform any labor contracting activities. If the labor contractor provides transportation for the workers, proof of vehicle safety and adequate insurance are also required. The contractor must also verify that the workers' housing meets safety and health standards for occupation. Workers must be provided with information about wages, hours, workers' compensation, working conditions, and housing. This information must be supplied by the labor contractor or the employer at the time the workers are recruited. Payroll records must be kept by the contractor and agricultural employer and a written earnings statement must be given to each employee.²⁶

²² National Ag Law Center. (October 29, 2004). Labor- An Overview. <http://www.nationalaglawcenter.org/assets/overviews/labor.html>

²³ National Ag Law Center. (October 29, 2004). Labor- An Overview. <http://www.nationalaglawcenter.org/assets/overviews/labor.html>

²⁴ National Ag Law Center. (October 29, 2004). Labor- An Overview. <http://www.nationalaglawcenter.org/assets/overviews/labor.html>

²⁵ United States Department of Agriculture. (June 30, 2006). Migrant and Seasonal Agricultural Worker Protection Act of 1983.

<http://www.ers.usda.gov/publications/ah719/ah719e.pdf#search='Migrant%20and%20seasonal%20agricultural%20workers%20protection%20act%20summary'>

²⁶ National Ag Law Center. (October 29, 2004). Labor- An Overview. <http://www.nationalaglawcenter.org/assets/overviews/labor.html>

There are additional points to the MSPA, but the area of interest is the private right of action section. This section states that if any migrant farm worker feels that their rights granted by the MSPA have been violated that they should file suit in any federal district court, regardless of the amount in controversy, citizenship of the parties, or whether the parties have exhausted their administrative remedies.²⁷

Literature Review Conclusion

Farm worker and migrant farm worker policy is a research topic with vast areas of specific research. I chose to focus on the Migrant and Seasonal Agricultural Worker Protection Act because it is supposed to provide for the basic rights migrant farm workers should receive. The private right to action section was interesting because it allows for investigation of how often and under what circumstances migrant farm workers demand their rights. More often than not, they do not fight for their protections.²⁸

The reasons for the small number of filed suits are beyond the scope of this research. It can be assumed that general immigration policy interference, phobias and attitudes toward migrants, racism/nativism, migrants having knowledge of their right, and fears play a role but these have been excluded from the study because this study intends to focus on the circumstances of the suits and not necessarily the reasons for the circumstances.

Some research has been done on the experiences of migrant farm workers, but not much has been done on why they have those experiences. The Migrant and Seasonal Agricultural Worker Protection Act is one of the reasons why. By researching the cases filed under the MSPA, we begin to discover how the political aspect of farm work and immigration plays out. Furthermore, we gain insight into what migrant farm workers have to go through in order to obtain their given rights. By conducting this research, we will start to see the disconnect between policy and practices.

Abbreviations

Migrant and Seasonal Agricultural Workers Protection Act: MSPA

United States Supreme Court: USSC

Department of Labor: DOL

Wage and Hours Division: WHD

Notes

Suits and cases will be used interchangeably

When presenting the data, the terms violation, citation, and claim refer to a MSPA violation. The difference in wording is because of the language the state or department use.

²⁷ U.S. Department of Labor. (August 12, 1983). Migrant and Seasonal Agricultural Worker Protection Act http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_500/toc.htm

²⁸ Based on preliminary research on the number of suits filed.

Methodology:

Theoretical Framework

In theory, when the government makes a policy, it is expected that the practices will coincide. When this does not occur, it is valid to wonder whose responsibility it is to bring attention to the inconsistency. Nonetheless, it is up to the victims to fight for their rights. As members of a supporting community, we have a role to make sure we give every opportunity to the victim to voice their concerns. Through this research study, I proposed to find the disconnection between the Migrant and Seasonal Agricultural Workers Protection Act and the enforcement concerning it.

With regard to the Migrant and Seasonal Agricultural Workers Protection Act, it is cited as the main document pertaining to migrant farm workers. It is the policy that is written specifically for the migrant agriculture population, and is often referred to when it comes to migrant farm worker issues.

It would be convenient to assume that the number of suits looked at in this study with would be strong evidence of the rights granted by MSPA are being practiced. However, since a small number of suits were selected, this needs to be cautioned. The private right to action clause in the policy appeared to be the regulatory mechanism to keep the act maintained. By looking at the cases filed, it shows who and how many are able to declare their rights.

Variables

The variables that were looked at were the number of cases, the circumstances of the cases, and the number of actual violations. The number of actual violations was the independent variable and the number of cases filed was the dependent variable. Circumstances of the cases are another dependent variable. Meanwhile, possible intervening variables are mentioned as limitations: general immigration policy interference, phobias and attitudes toward migrants, racism/nativism, and fears.

Research Design/Sampling

The research revolved around content analysis; meaning that it was considering possible characteristics surrounding the filed suits under MSPA to see if any patterns arise.

Data Collection

All cases selected for this research met the following requirements: the main issue was a MSPA violation, filed after 1983, published, and filed in a circuit court of appeals or the United States Supreme Court. Cases from courts of appeals or the Supreme Court were chosen because these are the cases that tend to get more attention and are used as precedence for future proceedings.

Data Needed

The data that needed to be collected were all cases filed under MSPA that meet the set requirements in the past twenty-three years. By doing an analysis of the cases, the information was used to determine if migrant farm workers are/were receiving their rights. How many actual MSPA violations there have been since the law has been

enacted were also additional data needed in order to determine if there has been sufficient action taken to correct the mistreatments.

The primary data used were the cases themselves. *FindLaw for Legal Professionals* was where transcripts of each case were obtained. The number of actual violations was also primary data, but had to be obtained from secondary sources (department reports and organizational publications) because the department and agencies did not provide that information as public information.

Data Analysis

After obtaining the carefully chosen cases, the following data were gathered: the year the suit was ruled on, the location where the suit originated, who represented the plaintiff, the issue at hand, and the ruling (affirmed or reversed). In addition, the cases found at the Supreme Court level will be assessed to determine the number of times it has been cited and used to determine the ruling in other cases since. From the information collected, review was needed to reveal if there were any correlations or patterns among the cases. Furthermore, the quantitative information of how many suits filed and how many actual violations was utilized to determine if migrant farm workers are/were receiving their protections granted by the Migrant and Seasonal Agricultural Workers Protection Act.

Results and Findings

Actual Violations Figures

One of the main comparisons that needed to be made was the number of suits filed to the number suits of that should have been filed. The number of suits that should have been filed was represented by all MSPA violations. Some of the first pieces of information needed to be researched were how many actual violations have occurred since the MSPA was enacted in 1983. The information was more difficult to find that expected. However, through secondary sources, figures for two years were found. This information is shown in Table 1. It is also important to note that even though the 1998 information states the amount in fines, the amount collected was not mentioned. After searching for the amount collected in some other states, for example California, the amount collected averaged to about 14% of the fined amount.²⁹

| Year | Number of Violations |
|-------------|--|
| 1997 | DOL's WHD found over 900 MSPA violations ³⁰ |
| 1998 | DOL's WHD found 889 MSPA violations totaling more than \$970,000 ³¹ |

Obtaining figures for two years did not give a complete picture of the situation; therefore, specific states were examined to fill in gaps. Information was found from California (Table 2) and Arizona (Table 3). These two states are border states and known for having a large migrant population. The numbers gathered from these two states represented MSPA violations found by the states' departments and were not factored into the numbers produced by the Department of Labor's (DOL) Wage and Hour Division (WHD). That is, these are additional MSPA violations that the DOL did not investigate. To clarify, any violation documented results in fines and similar punishments. Follow-up investigations appear to be the course of action taken to correct the situation, but failure to comply in the follow-up may lead to larger fines and harsher penalties.

| Year | Number of Citations |
|-------------|-----------------------------|
| 1993 | 282 citations |
| 1994 | 173 citations |
| 1995 | 111 citations |
| 1996 | 168 citations |
| 1997 | 130 citations ³² |

²⁹ Bugarin, A., & Lopez, S. (1998). Farmworkers in California. California Research Bureau. <http://www.library.ca.gov/crb/98/07/98007a.pdf>

³⁰ United States General Accounting Office. (August 1998). Child Labor in Agriculture: Changes Needed to Better Protect Health and Educational Opportunities. <http://www.gao.gov/archive/1998/he98193.pdf>

³¹ Catholic Legal Immigration Network, Inc. (2000). Work Without Justice: Low-Wage Immigrant Laborers. <http://www.cliniclegal.org/Publications/AtRisk/atrisk3.pdf>

| | |
|------------------------|-----------------------------|
| 2001 | 152 citations |
| 2002 | 162 citations ³³ |
| Total for stated years | 1178 citations |

| Table 3: Number of Actual Claims in Arizona Alone³⁴ | |
|---|-------------------------|
| Year | Number of Claims |
| 2000 | 581 claims |
| 2001 | 583 claims |
| 2002 | 606 claims |
| 2003 | 488 claims |
| Total for stated years | 2258 claims |

Since the Department of Labor is responsible for enforcing the Migrant and Seasonal Agricultural Worker Protection Act, data regarding the MSPA or any investigations they have conducted was sought after. In the DOL's 2002 Fiscal Year Report, it stated the goals achieved in different labor areas. Specifically under agriculture, the department stated the goals achieved regarding different regulations set by the MSPA. Table 4 shows what the DOL found.

| Table 4: DOL 2002 Fiscal Year Report on MSPA Regulations³⁵ | |
|--|---|
| Provision | Percent of employers in compliance |
| MSPA disclosure provisions | 61% |
| MSPA housing safety and health Provision. | 74% |
| Average compliance rate | 81.5% |
| MSPA vehicle insurance provisions (transportation) | 85% |
| MSPA vehicle safety provisions (transportation) | 88% |
| MSPA drivers license provisions (transportation) | 90% |
| MSPA wage provisions | 91% |

To summarize the findings of actual violations, the Department of Labor made it very difficult to find this information. Despite the difficulty, it was surprising to discover the actual number of violations. I expected the values to be higher because there is

³² The 1993-1997 information came from the same source: Bugarin, A., & Lopez, S. (1998). Farmworkers in California. California Research Bureau. <http://www.library.ca.gov/crb/98/07/98007a.pdf>

³³ The 2001-2002 information came from the same source: Division of Labor Standards Enforcement. (2000 & 2001). Bureau of Field Enforcement Report 2000 & 2001. <http://www.dir.ca.gov/dlse/DLSEReports.htm>

³⁴ Industrial Commission of Arizona. (2004). 2004 Annual Report. <http://www.ica.state.az.us/2004%20Annual%20Report.pdf>

³⁵ United States Department of Labor. (2002). Annual Report FY 2002. http://www.dol.gov/_sec/media/reports/annual2002/performance_goal.htm

currently an estimated 1 to 3 million migrant farm workers in the United States.³⁶ Meaning, according to the Department of Labor, at most, .09% of migrant farm workers were living and working under illegal working conditions. Not to be pessimistic, but to point out if this number was true, the MSPA average compliance rate should be closer to 100%. Nevertheless, there were still plenty of wrongdoings being documented and all the victims of these violations have the right to file suit in any district court without any legal barrier. Determining if this holds true was the next step in the research project. It is also important to keep in mind that the number of violations is actually the documented number of violations and not the true number. Plenty of violations go undocumented and, unfortunately, cannot be included in this study.

*Case Analysis*³⁷

To begin the case analysis, all the cases meeting the said requirements were found. Table 5 shows how many cases were ruled on at a circuit court and Supreme Court level. It was interesting to find that there has only been one case concerning the Migrant and Seasonal Agricultural Workers Protection Act at the Supreme Court. This case was *Adams Fruit Co v. Barrett* (1990), which dealt with the transportation regulation of MSPA. Nevertheless, the small number of cases was unanticipated due to the fact that there are large number of violations occurring yearly.

| Court | Number of Cases |
|--------------------------|------------------------|
| Circuit Court of Appeals | 12 |
| Supreme Court | 1 |

The years the cases were ruled on provide some valuable insight. It may be worth mentioning that the MSPA had minor amendments in 1986³⁸ and 1995³⁹. The fact that the one case that went to the Supreme Court was the first case and how all the other came about after the act was amended for the second time was something worth noting. Table 6 goes on to display the timeline distribution of the cases.

| Year | Number of Cases |
|-------------|------------------------|
| 1990 | 1 (at the USSC) |
| 1996 | 3 |
| 1997 | 2 |
| 1998 | 1 |
| 1999 | 1 |
| 2003 | 4 |
| 2006 | 1 |

³⁶ Cornell University. (2001). Facts on Farmworkers in the United States. http://www.farmworkers.cornell.edu/pdf/facts_on_farmworkers.pdf

³⁷ All case information was obtained from: <http://caselaw.lp.findlaw.com>

³⁸ The 1986 amendments added how the Immigration and Nationality Act affected the MSPA.

³⁹ The 1995 amendments added explanations about workers' compensation insurance and also provides more detail to the private right to action clause.

Table 7 provided some potentially interesting information. The border states (California, Arizona, New Mexico, and Texas) are known to have higher migrant worker populations. Nonetheless, only three of the cases originated from a border state. Florida is prominently established with a strong agriculture and migrant farm worker community, so this was no surprise. But the fact that five cases came from other states was somewhat unanticipated.

| Table 7: Where Cases Originated | |
|--|------------------------|
| Location | Number of Cases |
| Florida | |
| Appeals | 4 |
| USSC | 1 |
| Texas | 1 |
| California | 1 |
| Illinois | 2 |
| Georgia | 1 |
| Oregon | 1 |
| Arizona | 1 |
| Oklahoma | 1 |

Part of the MSPA's private right to action statement states that a migrant farm worker may file suit regardless of the amount and their legal status and would be provided a lawyer if needed. Table 8 shows if the migrant farm worker used a public or private lawyer. In one of the cases where a private lawyer was obtained was the one case in which the plaintiff was not a migrant farm worker; it was a farm owner who filed concerning MSPA.

| Table 8: Who Represented Plaintiff | |
|---|------------------------|
| Type of Lawyer | Number of Cases |
| Private | 2 |
| Public | |
| Appeals | 6 |
| USSC | 1 |
| Not Available | 4 |

It was important to find out under what violation would migrant farm workers take actions and this is explained in Table 9. The issue of joint employment became a repeated theme because it dealt with who has to pay the migrant worker. It was anticipated that the main issues would be those concerning payment and this result was obtained.

| Table 9: Case Issue | |
|----------------------------|------------------------|
| MSPA Issue | Number of Cases |
| Joint Employment | 4 |
| Wages | 3 |
| Transportation | |

| | |
|-----------------------------------|---|
| USSC | 1 |
| Conspiracy to terminate | 1 |
| Jurisdiction | 1 |
| Housing | 1 |
| Misrepresented working conditions | 1 |
| Wrongful death claims | 1 |

Table 10 provides some of the most important insight in this research study. The way the court rules can be used to show how the MSPA is being enforced at a local and federal level. Like many other policies, the act leaves room for local laws and regulations to pre-empt federal laws. While local and federal regulations are supposed to be complimentary, it is starting to show an inconsistency with interpretation. A little more than half of the cases were reversed and this can be said to mean that at a local level, courts are using the MSPA in a local context instead of its federal implications. In other words, when the cases go to the higher courts, the higher courts are not subject to local regulations and are more able to interpret the cases without being burdened by regional laws. Also, in the cases where the rulings were reversed in favor of the plaintiff, the rulings were all in favor of migrant farm worker rights.

| Table 10: Court Ruling | |
|---------------------------------------|------------------------|
| Ruling | Number of Cases |
| Reversed in favor of plaintiff | 6 |
| Reversed in favor of defendant | |
| USSC | 1 |
| Upheld district decision of plaintiff | 2 |
| Upheld district decision of defendant | 3 |
| Part affirmed, part reverse | 1 |

With the limited number of MSPA cases going to court, it was important to see the significance these few cases have had on proceedings to come. In particular, the one case that has gone to the United States Supreme Court, Adams Fruit Co v. Barrett (1990), was what was looked at. Table 11 presents the number of times that case has been cited as precedence in other cases not necessarily dealing with MSPA, but with other similar disputes. What is significant to discuss is that the Adams case was only cited once of the other cases looked at in this study. So despite it being the only Supreme Court example of MSPA interpretation, one other case has used it as an example.

| Table 11: Precedence of USSC MSPA Case (Adams Fruit Co v. Barrett 1990) | |
|--|------------------------|
| In Which Court | Number of Cases |
| In other Court of Appeal Cases | 51 |
| In other USSC Cases | 7 |

It would be inaccurate to assume that the thirteen cases studied are a complete representation of all the suits being filed, since this study did not look at federal district courts. However, it is safe to say that this is a glimpse of what is taking place at the district level. The thirteen cases are a look at what is getting the higher courts' attention

and look at the use of the Migrant and Seasonal Agricultural Worker Protection Act through a specific lens.

Conclusion

From this research study, insight has been gained on the limited number of instances where migrant farm workers feel that they can have access to their given rights. By understanding that violations are occurring often, it should be motivating to want to change the circumstances. Despite different views, the change that needs to occur is often not seen or taken to a serious level.

There are many reasons why a migrant farm worker would not want to file a suit or even voice a simple complaint. Many fear that they will lose their jobs if they were to say anything bad about their employer. Several migrants are seasonal and therefore are not here long enough to file or think that filing will not make a difference. But the sad reality is that many do not file because they do not know that they can. The reasons why not more of the 1-3 million migrant farm workers are not fighting for their rights are something that still needs to be addressed.

Some people believe working is a right, while others believe it is a privilege, for several, it is a way of life. All workers in the United States deserve to be given credit for the job they do and have a right to work in an environment that, at the minimum, promotes the regulations the government has set forth. The government does its share by implementing policy to help give people credit and support a healthy environment. However, even the most idealistic policy is worthless unless it is enforceable. The practice of the policy should mimic the truths behind it and the policy should be complete and not simply a way to please constituents.

The Migrant and Seasonal Agricultural Worker Protection Act is the blanket of warmth defending the migrant farm worker. However, unless all regulations accorded by the act are enforced, the blanket will always have holes leaving the warmth to escape and allowing for opportunities for vulnerability. The purpose of this research was to see if migrant farm workers were receiving their rights granted by MSPA. I found that it takes a supportive environment that allows the worker to overcome the obstacles. Nonetheless, the obstacles should not be there in the first place.

There is much research needed that may provide more clarification about the effectiveness of MSPA and the influence general immigration policy has on it. By putting forth the effort to understand this population of migrant farm workers, the better we can disseminate information about the migrant farm worker. This population is at the root of agriculture industry and the industry in the heart of the country. With the way agriculture is subsidized, it might be worthwhile to make sure the roots of the industry are taken care of as well.