

Farm Labor Contractors and Low Farm Wages

Among farmworkers, farm labor contractors are both revered and scorned. In the business of recruiting and supervising farm labor, they become key intermediaries in the recruitment process. Sought by both workers and employers, they gain control over hundreds of thousands of jobs in a market traditionally associated with unemployment. For many labor contractors the temptation to abuse their power is too great, resulting in exploitation and abuse of farmworkers. Recent federal and state regulations, although helpful, have failed to eliminate practices of undesirable labor contractors. The purpose of this paper is to investigate the reasons for the dominance of farm labor contractors, survey abusive practices in the labor contractor system of recruitment, and evaluate the legislative response to these abuses.

I. THE SUCCESS OF THE FARM LABOR CONTRACTOR

Since the early 1930's the labor contractor system of recruiting farm labor has been popular with growers and workers alike.¹ Farm labor contractors provide services which no other form of recruitment can equal. Farmworkers accustomed to unemployment

¹The labor contractor type of recruitment developed during the early 1930's when individual entrepreneurs saw a chance to make money by transporting migratory workers and arranging jobs for them. *Hearings on S. 1778 Before the Subcomm. on Migratory Labor of the Senate Comm. on Labor and Public Welfare*, 86th Cong., 1st Sess. 16 (1959).

and poverty find jobs, transportation, and frequently meals and housing in the labor contractor system. Growers also prefer the convenience of the labor contractor-affiliated crew to other recruiting methods.

A. Migrants

Of three million agricultural workers,² 400,000 are migrants.³ Faced with unemployment and low wages in their winter homes in Florida, Texas, and Southern California, these workers begin to migrate each spring in the hope of finding work and higher wages. Many of the migrants travel together in family groups or in crews with several members of a family working in the fields.⁴ "Home" is often the back of a station wagon, a camp under a shady tree, or, for the more fortunate, a farm labor camp owned by the government or a prosperous farmer. Although two-thirds of the migrants find work within their home states,⁵ one-fifth travel farther than 1,000 miles from home.⁶

Guided by many years of custom, the migrants follow well defined migratory routes. Florida migrants travel along the east coast, stopping in the Carolinas, Virginia, Maryland, Delaware, and the other New England states.⁷ Migrants from Texas follow the "mid-continent" route, looking for work in the North-Central and

²This number includes 1.3 million "casual" workers who did one to 25 days of farm wage work, and 1.1 million "seasonal" workers who worked 25-149 days. The remaining are "permanent" workers. U.S. DEP'T OF AGRICULTURE, THE HIRED FARM WORKING FORCE OF 1967, at 1, 5-6 (Agricultural Economics Rept. No. 148, 1968). *See also*, U.S. DEP'T OF AGRICULTURE, THE HIRED FARM WORKING FORCE OF 1968 (Agricultural Economics Rept. No. 164).

³Since World War II the number of migrants has fluctuated around 400,000. S. REP. NO. 1006, 90th Cong., 2d Sess. 3 (1968). In 1968, however, there were only 279,000 migrants. U.S. DEP'T OF LABOR, FARM LABOR DEVELOPMENTS 13 (Oct. 1969).

⁴Two-fifths (180,000) of the migratory workers are heads of households. One-tenth are wives, one-fourth children, and the remainder unmarried adults. U.S. DEP'T OF AGRICULTURE, DOMESTIC MIGRATORY FARMWORKERS, PERSONAL AND ECONOMIC CHARACTERISTICS 5 (Agricultural Economics Rept. No. 121, 1967) [hereinafter cited as REPT. NO. 121].

⁵*Id.* at iii.

⁶*Id.* at 13.

⁷The East Coast movement of migrants originates in the tip of Florida. This stream is composed mostly of Blacks and fluctuates in numbers from 25-50,000. Approximately ten percent of the East Coast stream is composed of workers who migrate into Florida from other states in anticipation of the northward movement. Intra-state migration in Florida is extremely limited. W. METZLER, MIGRATORY FARMWORKERS IN THE ATLANTIC COAST STREAM 5 (U.S. Dep't of Agriculture Circular No. 966, 1955). *See also* S. REP. No. 1006, *supra* note 3, at 2.

Mountain states.⁸ Southern California migrants travel through California and into Oregon and Washington.⁹ At the height of the migration, significant numbers of migrants will have worked in 668 counties of 46 states.¹⁰

Although many migrants arrange for work in advance, most start the migration with a mere hope of finding work. Weeding one farmer's sugarbeets, picking another's fruit, migrants frequently piece together many small jobs, averaging 82 days of work in a typical season.¹¹ They will sometimes travel many miles out of their way, not knowing what work is available at shorter distances. On many occasions they arrive at their long-sought job only to find that the position is already filled.¹²

[T]he picture that emerges is one of trial and error, of disappointment or rebuke here or there, of a great deal of frantic movement within the season and from one season to the next, most of it based on rumor or on the chance that things will prove to be better somewhere else. . . . [T]he whole system of migratory labor is so chaotic and unsystematic that a comfortable balance of labor supply and demand is rare and unusual. Either surplusages or shortages are more normal.¹³

Under these conditions, a typical migratory family pooling its earnings may earn \$2,700 for the season.¹⁴ This amount not infrequently just meets food, lodging, and traveling expenses.

Faced with miles of travel, unemployment, and general uncertainty, many migrants naturally seek assistance. Some receive aid under the Annual Worker Plan, a program administered by the Farm Labor Service to unite migrants with farmers and labor con-

⁸The mid-continent stream originates in Southern Texas and is the main source of migrant labor, mostly Mexican-Americans. This stream fans out to the North and West to cover most of the North-Central, Mountain, and Pacific Coast states. Some of the mid-continent stream spills into both the East and West Coast Streams. REPT. NO. 121, at 11.

⁹Composed of about 15,000 Mexican-Americans, the Pacific Coast stream originates in California's Imperial Valley near the Mexican border and extends through California, Oregon, and Washington. In addition to this interstate stream, a pool of about 15,000 workers migrate only within California. Interview with William H. Tolbert, Chief of the California Farm Labor Service, in Sacramento, Calif., Nov. 15, 1968.

¹⁰S. REP. NO. 1006, *supra* note 3, at 1.

¹¹REPT. NO. 121, at 18.

¹²LEGISLATIVE FINDINGS AND DECLARATION OF POLICY, H.R. 11687, 90th Cong., 1st Sess. (1967).

¹³V. FULLER, NO WORK TODAY! THE PLIGHT OF AMERICA'S MIGRANTS 7 (The Nat'l Council on Agricultural Life and Labor, Public Affairs Pamphlet No. 190) [hereinafter cited as V. FULLER].

¹⁴REPT. NO. 121, at 22.

tractors.¹⁵ Most, however, turn directly to one of the many labor contractors who work the migratory routes. Although the exact number of labor contractors is unknown, the Department of Labor estimates that there are more than 8,000 contractors leading 200,000 individual workers and 50,000 non-working family members.¹⁶

Under a typical labor contractor system, the farm labor contractor makes pre-season agreements with farmers to supply an entire crew, supervise their work, and pay wages. In return for joining the crew, farmworkers usually receive transportation, food and lodging in labor camps run by the labor contractor, a number of "fringe" benefits, and the security of assured work.¹⁷ The labor contractor's profit comes from fees charged to the farmworkers or, in the usual case, from the difference between the wages he pays his crew and the amount received from the farmer under the contract.¹⁸

The benefits of crew membership for migrants are not speculative. Crew-affiliated migrants have longer work seasons, earn a higher per diem wage, and make substantially more money than migrants working individually.¹⁹

B. Day-haulers

Many non-migratory farmworkers, known as "day-haulers," are unable to obtain single, steady jobs, even during the height of the agricultural season.²⁰ In general, the unavailability of regular

¹⁵The Farm Labor Service is an agency created under the Wagner-Peyser Act of 1933, which was passed to promote a national system of free public employment offices. 48 Stat. 114, 29 U.S.C. § 49(b). The Annual Worker Plan develops work itineraries for migrants, and in 1968 placed over 110,000 workers. U.S. DEP'T OF LABOR, FARM LABOR DEVELOPMENTS 14 (June, 1969). For more information on the Annual Worker Plan, see U.S. DEP'T OF LABOR, FARM LABOR DEVELOPMENTS 49 (May, 1968). Note, *Migrant Farm Labor in Upstate New York*, 4 COLUM. J. OF LAW AND SOCIAL PROB. 1, 6-7 (1968).

¹⁶*Hearings on S. 1126 Before the Subcomm. on Migratory Labor and Public Welfare of the Sen. Comm. on Labor and Public Welfare*, 87th Cong., 1st Sess. 36 (1961).

¹⁷*Hearings on S. 1778, supra* note 1, at 17. For a catalogue of services offered by Farm Labor Contractors, see also CAL. SEN. FACT FINDING COMM. ON LABOR AND WELFARE, CALIFORNIA'S FARM LABOR PROBLEMS pt. 1, at 179 (1961) [hereinafter cited CALIFORNIA'S FARM LABOR PROBLEMS].

A discussion of the Labor Contractor's "extra" services appears in *Hearings on S. 8, S. 195, S. 197, and S. 198 Before the Subcomm. on Migratory Labor of the Senate Comm. on Labor and Public Welfare*, 90th Cong., 2nd Sess., pt. 4, at 973 (1968).

¹⁸V. FULLER, *supra* note 3, at 6.

¹⁹Rept. No. 121, at 15.

²⁰Although it is difficult to determine the exact number of day-haul workers, it is likely that they comprise many of the nation's 1.3 million "casual" workers (one to

employment results not from a total lack of jobs but from the fact that most crops need relatively little attention except during the brief span of the harvest. To maintain stable employment, therefore, these workers must be able to capitalize quickly on successive work opportunities. Two factors, however, inhibit the achievement of any real degree of job mobility. First, communication between employer and employee is not effective. Although the Farm Labor Service offices list and circulate job opportunities,²¹ most farmworkers continue to rely on rumors and "grapevine" information.²² As a result, much of the guesswork and inevitable disappointment characteristic of migratory farmwork is also found in local agricultural employment. Second, even when farmworkers know of the existence of jobs they may be unable to arrange their own transportation. The cost and maintenance of an automobile is often beyond their means.²³

To achieve job mobility, day-haulers rely on the one individual who offers both jobs and transportation: the farm labor contractor. Seizing on the opportunity to provide a needed service, labor contractors, with the help of farmworkers, have formed a unique hiring system known as the "day-haul" to coordinate labor supply and demand.²⁴ Under this system, farmworkers gather as early as 4 a.m. at prearranged locations in vacant lots, supermarket parking lots, or other customary locations. Labor contractors arrive early to recruit workers in fulfillment of their agreements with farmers. Normally, there is extensive bargaining for wages, meals, and jobs before the contractor and laborer can agree to terms. Labor contractors offering desirable employment fill their busses quickly and are in route to the fields long before dawn, while others with less

25 days of farm wage work) and 1.1 million "seasonal" workers (25-149 days of farm wage work). Presumably, most of the country's .7 million "permanent" farmworkers are able to obtain stable jobs with a single grower. *See generally* U.S. DEP'T OF AGRICULTURE, THE HIRED FARM WORKING FORCE OF 1967 (Agricultural Economics REPT. NO. 148, 1968).

²¹To facilitate the rapid, statewide transmission of farm labor needs, California Farm Labor Service offices use teletypes with a moderate degree of success. CALIFORNIA DEP'T OF EMPLOYMENT, CALIFORNIA ANNUAL FARM LABOR REPORT 1967, at 13 (1968).

²²ASSEMBLY COMMITTEE ON AGRICULTURE BY ITS ADVISORY COMMITTEE ON FARM LABOR RESEARCH, THE CALIFORNIA FARM LABOR FORCE: A PROFILE 68 (1969).

²³*See generally* CAL. DEP'T OF EMPLOYMENT, SOME CHARACTERISTICS OF THE EMPLOYEES OF FARM LABOR CONTRACTORS (Research and Statistics, Rept. No. 841, 1966).

²⁴The day-haul process is described in some detail in CALIFORNIA'S FARM LABOR PROBLEMS, *supra* note 17, at 78. *See also* U.S. DEP'T OF LABOR, THE DAY-HAUL PROGRAM (Bulletin 245, 1962).

desirable jobs may have difficulty finding workers. By 7 a.m. the recruitment is ordinarily at an end, and the persons not taking jobs begin to disperse. As nightfall approaches, the scene is again a flurry of activity as crew members return and line up to receive their pay, often in cash. On succeeding days the farmworkers may hire out to the same labor contractor or accept employment with a new contractor supplying labor to a different farm.

Relieved of the problems of hunting for jobs and arranging transportation, farmworkers benefit greatly from the day-haul. Nevertheless, the system has a number of inherent disadvantages. First, the day-to-day nature of its work attracts many persons who only are interested in working long enough to earn a bare subsistence.²⁵ This discredits the day-haul to such a degree that even the good workers suffer.²⁶ Second, the day-haul makes inefficient use of time.²⁷ Workers arise at two or three in the morning to meet with labor contractors, and then waste several hours waiting to go to the job site, another hour or more in the fields waiting for the crops to dry, and often still more time while the labor contractor negotiates with the farmer. Third, the jobs available through the day-haul are generally considered to be the undesirable ones that other workers have refused.²⁸

Whatever the problems of the day-haul, most workers will accept its jobs if the only alternative is unemployment. Without the services of the farm labor contractor unemployment might indeed be the alternative.

C. Farmer Reliance

For a number of reasons, farmers generally prefer labor contractors to their own recruiting. First, it is much easier to contact one man, the farm labor contractor, than to locate an entire crew. Second, the presence of a labor contractor insulates the farmers from the normal employee-employer problems and responsibilities.²⁹ Third, a labor contractor leading his own crew is

²⁵F. Schmidt, Institute of Industrial Relations, UCLA, *After the Bracero: An Inquiry into the Problems of Farm Labor Recruitment* 37, Oct. 1964 (An unpublished report submitted to the Dept. of Employment of the State of California).

²⁶A good discussion of this problem appears in CALIFORNIA'S FARM LABOR PROBLEMS, *supra* note 17, at 78—80.

²⁷The tremendous time wastages and general inefficiency of the day-haul are fully explored in *Hearings on S. 8, S. 195, S. 197, S. 198*, *supra* note 17, at 993—96.

²⁸CALIFORNIA'S FARM LABOR PROBLEMS, *supra* note 17, at 142—44.

²⁹Chase, *The Migrant Farm Worker in Colorado—The Life And The Law*, 40 COLO. L. REV. 15, 59 (1967). "Most farmers prefer to avoid being involved with migrant workers in any way that entails contact with them. These farmers essentially

usually more effective than a foreman hired to supervise a temporary crew assembled by the farmer himself.³⁰ Fourth, the labor contractor frequently is better able to communicate with workers who do not speak English.³¹

II. ABUSE OF FARMWORKERS

Their futures often characterized with uncertainty and poverty, migrants and day-haulers quite naturally become reliant on labor contractors. To work for a labor contractor may mean the difference between relatively stable employment or a chaotic search for work. Most labor contractors are reliable, going far beyond their duties as an employer to help their crew members.³² Many others, however, use their relatively powerful positions to exploit and abuse their workers.

Perhaps the most serious abuse occurs in connection with the payment of wages. Since most farm labor contractors are responsible for paying wages to their crew members,³³ they are in an excellent position to embezzle funds and manipulate payroll records. It is not uncommon, for example, for labor contractors to underpay, make unauthorized "deductions," conceal the amount of profit that they will realize from their crew's efforts, and deduct for social security without forwarding the money to the state.³⁴ In general,

[T]heir lives are hard to trace. Some use colorful pseudonyms like Sugar Daddy, Cool Breeze, or Meatball. A few years ago, the *New York Times* reported that only half the crew leaders coming into New York gave addresses that could be located. Tax investigators in Oregon found that relatively few crew leaders had ever filed personal income

abdicate control over the organization of work to the crew leader [labor contractor]." *Hearings on S. 8, S. 195, S. 199, S. 198, supra* note 19, at 995.

³⁰U.S. DEPT OF LABOR, FARM LABOR DEVELOPMENTS 12 (1968).

³¹*Id.*

³²*See, e.g.*, the story of "Little Jim" in D. REISCHE, UNITED STATES AGRICULTURAL POLICY 120 (1966).

³³A study in California shows that over 90 percent of the labor contractors, not the farmers for whom they work, pay wages. CALIFORNIA'S FARM LABOR PROBLEMS, *supra* note 17. On the federal level, "Nearly two-thirds of the areas surveyed reported that workers were paid by the crew leaders. In addition, three-fourths of the areas reported that the crew leader acts as bookkeeper and paymaster. . . ." H.R. REP. NO. 743, 87th Cong., 1st Sess. 5 (1961).

³⁴*See Hearings on S. 1126, supra* note 16, at 45—46; and *Hearings on S. 1778, supra* note 1, at 17.

taxes, and almost none had filed social security returns for the crew, although all presumably deducted from their migrants' paychecks.³⁵

Typical of an unethical labor contractor is the case of Nato Martinez, migrant worker turned "entrepreneur."³⁶ Under the normal fee arrangement in which the contractor takes the amount remaining after payment of wages, Nato agreed to charge a farmer two dollars for each acre of sugarbeets his crew weeded. Telling his 50 workers that the price was one dollar per acre, Nato made \$270 in three days, while the crew members received less than minimum wage. Nato's profit was more than the farmer himself would realize from the field.

In addition to the foregoing abuses, farmworkers are commonly subjected to a variety of other practices. Chief among these are the exploitation of child labor, solicitation of prostitution, illegal sale of liquor, and transportation of workers in unsafe, uninsured vehicles.³⁷ Pressured by their contracts with farmers, farm labor contractors also frequently make misleading statements about terms of employment and the existence and quality of housing, wages, and fees.³⁸ In addition, some labor contractors make no pretense about hiring "Wetbacks" from Mexico, presumably to pay them less than the going rates.³⁹

III. CONTROL OF LABOR CONTRACTORS

The federal government and seven states now have comprehensive statutes and regulations to control the labor contractor system. These laws, in the form of farm labor contractor registration acts, attempt to eliminate unethical labor contractors from the system, provide a measure of security to farmworkers by requiring prompt payment of wages and disclosure of information relevant to offered employment, and protect workers from labor contractors using

³⁵D. REISCHE, *supra* note 32.

³⁶This story is told in full in Chase, *supra* note 29, at 58—59.

³⁷*Hearings on S. 1126, supra* note 16, at 45; and *Hearings on S. 1778, supra* note 1, at 17.

³⁸Note, *Migrant Farm Labor in Upstate New York*, 4 COLUM. J. OF LAW AND SOCIAL PROB. 1, 8—9 (1968).

³⁹CAL. JOINT LEGISLATIVE COMMITTEE ON AGRICULTURE AND LIVESTOCK PROBLEMS, THE RECRUITMENT AND PLACEMENT OF FARM LABORERS IN CAL. 1950, at 168 (Special and Partial Rept. published by Cal. Sen., 1951).

unsafe, uninsured vehicles. In general, both the federal and state laws apply to all persons who for a fee recruit, supply, or employ workers to perform farm labor for another.

A. Federal Farm Labor Contractor Registration Act

Under the Federal Farm Labor Contractor Registration Act,⁴⁰ effective January 1, 1965, any labor contractor who transports ten or more workers across state lines must annually obtain a certificate of registration from the Department of Labor.⁴¹ With each application for registration the labor contractor must submit information concerning his method of operation,⁴² proof of liability insurance coverage on all vehicles used to transport migrant workers,⁴³ and a set of fingerprints.⁴⁴ The Secretary of Labor may use this information to deny registration, and may also suspend, revoke, or refuse to renew a certificate of registration if the labor contractor (1) makes “misleading statements” to his crew members, (2) breaks his contracts, (3) recruits any person whom he knows is in this country illegally, or (4) commits certain crimes.⁴⁵ In addition, the federal act also requires labor contractors to show their registration cards to the workers and farmers with whom they deal,⁴⁶ inform workers at the time of hiring them about pay rates and job conditions,⁴⁷ post pay rates in a conspicuous place on the job, and keep comprehensive payroll records.⁴⁸

Willful violation of any of the provisions of the federal act is punishable by a \$500 fine.⁴⁹ Compliance with the act does not excuse farm labor contractors from obeying state laws and regulations.⁵⁰

⁴⁰Farm Labor Contractor Registration Act of 1963, 78 Stat. 920, 7 U.S.C. §§ 2042—53 (1964).

⁴¹*Id.* §§ 2042(a)(b), 2043(a).

⁴²*Id.* § 2044(a)(1).

⁴³*Id.* § 2044(a)(2). The amount of the policy cannot be less than amounts required under state laws and regulations. In no event, however, can the policy be less than \$5,000 for bodily injury or death of one person or \$20,000 for bodily injuries or death of all persons injured in one accident.

⁴⁴*Id.* § 2044(a)(3).

⁴⁵*Id.* § 2044(b).

⁴⁶*Id.* § 2045(a).

⁴⁷*Id.* § 2045(b). In the language of the Act, he must “ascertain and disclose to each worker at the time the worker is recruited the following information to the best of his knowledge and belief: (1) the area of employment, (2) the crops and operations on which he may be employed, (3) the transportation, housing, and insurance to be provided him, (4) the wage rates to be paid him, and (5) the charges to be made by the contractor for his services.”

⁴⁸*Id.* § 2045(c), (e).

⁴⁹*Id.* § 2048.

⁵⁰*Id.* § 2051.

B. State Acts

State laws and regulations dealing with labor contractors generally follow the scheme of the federal act, requiring registration and compliance with laws designed to prevent abuse of farmworkers. The coverage of these rules, however, varies greatly from state to state. The following summary of state laws illustrates the range of coverage in seven states that have laws aimed specifically at farm labor contractors: California, Colorado, Nevada, New Jersey, New York, Oregon, and Washington.⁵¹

1. Licensing

Although six of the seven states require an annual license or certificate of registration before the labor contractor may commence work,⁵² the standards and procedure for issuance are not uniform. The labor contractor generally must submit a written application containing information about his character, competence, and reliability.⁵³ New York also requires a set of fingerprints,⁵⁴ and California, Nevada, and Washington require the posting of a surety bond as evidence of financial responsibility.⁵⁵ In Nevada and Oregon anyone protesting the issuance of a license may obtain a hear-

⁵¹California, CAL. LABOR CODE §§ 1682—99 (West 1955); Colorado, COLO. REV. STAT. ANN. §§ 80—8—1 to 8—10 (1963); Nevada, NEV. REV. STAT. §§ 619.010—.160 (1967); New Jersey, N.J. REV. STAT. §§ 34:8A—1 to—6 (1965); New York, N.Y. LABOR LAW §§ 212—a (McKinney 1965); Oregon, ORE. REV. STAT. §§ 658.405—.455 (1967); Washington, WASH. REV. CODE ANN. §§ 19.30.010—.30.900 (1961). Texas has a “labor agent” provision of limited utility. See TEX. CIV. ST. ART. 5221a—5.

Some states, such as Pennsylvania, control labor contractors by administrative regulation, and most have delegated rule making power to their labor commissioners. For a summary of state and federal laws and regulations, see U.S. DEP’T OF LABOR, MAJOR PROVISIONS OF STATE AND FEDERAL FARM LABOR CONTRACTOR LAWS (Bulletin 275, May 1965).

⁵²CAL. LABOR CODE § 1683 (West 1955); NEV. REV. STAT. § 619.030 (1967); N.J. REV. STAT. § 34:8A—2 (1965); N.Y. LABOR LAW § 212—a(2)a (McKinney 1965); ORE. REV. STAT. § 658.410 (1967); WASH. REV. CODE ANN. § 19.30.020 (1961).

⁵³See CAL. LABOR CODE § 1684 (West 1955); NEV. REV. STAT. § 619.030 (1967); N.J. REV. STAT. § 34: 8A—2 (1965); N.Y. LABOR LAW § 212—a(2)b (McKinney 1965); ORE. REV. STAT. § 658.415 (1967); WASH. REV. CODE ANN. § 19.30.030 (1961).

⁵⁴N.Y. LABOR LAW § 212—a(2)b (McKinney 1965).

⁵⁵CAL. LABOR CODE § 1684(c) (West Supp. 1970) (\$5000); NEV. REV. STAT. § 619.040 (1967) (amount of bond in discretion of labor commission); WASH. REV. CODE ANN. § 19.30.040 (1961) (amount of bond in discretion of director of labor).

ing to present his objections.⁵⁶ Only four states require a licensing fee.⁵⁷

2. *Prohibited Practices*

Most states specifically prohibit certain abusive practices, such as giving false information to workers about jobs, making false statements on applications for registration, and breaking the employment contract.⁵⁸

3. *Duties*

All states except New Jersey regulate by statute the payment of wages by farm labor contractors to farmworkers. California, Colorado, Nevada, Oregon, and Washington require relatively prompt payment of wages.⁵⁹ In addition, California, Colorado, and New York require the labor contractor to maintain comprehensive payroll records and furnish wage and withholding statements to each worker.⁶⁰ Labor contractors are also required to make their agreements with growers and workers open for inspection (California, Oregon, Nevada, and Washington),⁶¹ to file changes of address (California, Nevada, Oregon, Washington),⁶² and to carry and display their registration certificates (California, Nevada, New Jersey, New York, Oregon, Washington).⁶³

⁵⁶NEV. REV. STAT. § 619.060(3) (1967); ORE. REV. STAT. § 658.420(3) (1967).

⁵⁷CAL. LABOR CODE § 1684(d) (West Supp. 1970) (\$75); NEV. REV. STAT. § 619.030(4) (1967) (\$10); ORE. REV. STAT. § 658.415(4) (1967) (æ10); WASH. REV. CODE ANN. § 19.30.030(3) (1961) (\$10).

⁵⁸CAL. LABOR CODE § 1696 (West 1955); NEV. REV. STAT. § 619.110 (1967); N.J. REV. STAT. § 34:8A—4 (1965); ORE. REV. STAT. § 658.440(2) (1967); WASH. REV. CODE ANN. § 19.30.120 (1961).

⁵⁹CAL. LABOR CODE § 1695(3) (West 1955); COLO. REV. STAT. ANN. § 80—8—5 (1963); NEV. REV. STAT. § 619.100(3) (1967); ORE. REV. STAT. § 658.440(2) (1967); WASH. REV. CODE ANN. § 19.30.110(3) (1961).

⁶⁰CAL. LABOR CODE § 1695.5 (West, Supp., 1970); COLO. REV. STAT. ANN. § 80—8—2(3), (4) (1963); N.Y. LABOR LAW § 212—a(2)c, d (McKinney 1965).

⁶¹CAL. LABOR CODE § 1695(5) (West Supp. 1970); NEV. REV. STAT. § 619.100(5) (1967); ORE. REV. STAT. § 658.440(1)(e) (1953); WASH. REV. CODE ANN. § 19.30.110(5) (1961).

⁶²CAL. LABOR CODE § 1695(2) (West 1955); NEV. REV. STAT. § 619.100(2) (1967); ORE. REV. STAT. § 658.440(1)(b) (1967); WASH. REV. CODE ANN. § 19.30.110(2) (1961).

⁶³CAL. LABOR CODE § 1695(1) (West 1955); NEV. REV. STAT. § 619.100 (1967); N.J. REV. STAT. § 34:8A—2 (1965); N.Y. LABOR LAW § 212—a(2)(e)

4. Revocation or Suspension of License

All states except Colorado provide statutory grounds for refusing to issue, and for suspending or revoking registration.⁶⁴ The most common grounds are giving false information to the state agency or worker, violating any of the provisions of the labor contractor registration laws, and doing "irresponsible" acts.

5. Penalties

Although all seven states provide penalties for violation of the laws, the severity of the penalties varies drastically from state to state. In Colorado the only penalty is a \$50 fine for each failure to pay wages to a worker.⁶⁵ In the other states, penalties range from \$25 or fifteen days in jail (New Jersey)⁶⁶ to \$5,000 and imprisonment for up to six months, or both (Washington).⁶⁷

IV. SUGGESTED REFORMS

Despite considerable legislative and Congressional activity, there is still much abuse in the labor contractor system.

Although progress has been made since passage of the Farm Labor Contractor Registration Act of 1964, special attention must still be given to the act's provisions protecting migrant workers from exploitation and abuse by irresponsible crew leaders, including collecting wages from employers and then abandoning workers without paying them, failing to pay agreed-upon wages, making improper deductions from workers' earnings, and failing to forward OASDI and income tax deductions to the proper authorities.⁶⁸

(McKinney 1965); ORE. REV. STAT. § 658.440(1)(a) (1967); WASH. REV. CODE ANN. § 19.30.110(1) (1961).

⁶⁴CAL. LABOR CODE § 1690 (West 1955); NEV. REV. STAT. § 619.120 (1967); N.J. REV. STAT. § 34:8A—4 (1965); N.Y. LABOR LAW § 212—a(5) (McKinney 1965); ORE. REV. STAT. § 658.445 (1967); WASH. REV. CODE ANN. § 19.30.060 (1961).

⁶⁵COLO. REV. STAT. ANN. § 80—8—9(1) (Supp. 1967). Until 1967, the fine was only \$10. COLO. REV. STAT. ANN. 80—8—9 (1963). Another provision added in 1967 apparently, but by no means clearly, makes it a misdemeanor to fail to pay wages. COLO. REV. STAT. ANN. 80—8—17 (Supp. 1967).

⁶⁶N.J. REV. STAT. § 34:8A—6 (1965).

⁶⁷WASH. REV. CODE ANN. § 19.30.150 (1961).

⁶⁸S. REP. NO. 1006, *supra* note 3, at 35.

Similar problems continue to plague the states. Indeed, in 1961 California reported that over half its crew leaders had failed to register under its 1951 act and that there was considerable fraud and corruption on the part of the contractors.⁶⁹

Inadequate enforcement is primarily responsible for much of the continuing abuse. This is particularly evident on the federal level, where only five full-time investigators are employed to enforce the Federal Farm Labor Contractor Registration Act.⁷⁰ Although participating to a very limited degree with other police agencies, these five investigators, who patrol the migrant streams during harvest season, must oversee more than 8,000 labor contractors.⁷¹ The problem of compliance is so acute that in 1969 only about 3,000 labor contractors were registered in accordance with federal law.⁷²

An obvious means of reducing some of the abuse of the labor contractor system is to increase the number of investigators responsible for enforcement. Even this, however, would not reach the underlying problem. The persons protected by farm labor contractor laws are generally poor and uneducated, and, therefore, are in the worst position to assert their rights. Rather than providing farmworkers with remedies, however, present laws merely punish unethical labor contractors. As gratifying as retribution may be, it cannot replace one's hard earned pay. Civil actions are impractical when the labor contractor is insolvent or in hiding.

The following discussion concerning grower liability and surety bonds suggests two needed remedies to alleviate the chief problem of the labor contractor system: the embezzlement of payrolls.⁷³

A. Grower Liability

Growers who use labor contractors should be secondarily liable for lost wages. As long ago as 1952 it was recognized that there was a need to shift some of the risk of agricultural work to those who benefit most from it:

⁶⁹CALIFORNIA'S FARM LABOR PROBLEMS, at 182.

⁷⁰Letter from Robert J. Brown, Acting Deputy Associate Manpower Administrator for U.S. Training and Employment Service, to the *U.C.D. Law Review*, Nov. 12, 1969.

⁷¹*Id.*; see text accompanying note 16, *supra*.

⁷²*Id.*

⁷³See text accompanying note 29, *supra*; see also the testimony of several farmworkers in CALIFORNIA'S FARM LABOR PROBLEMS, at 180—81. See also Chase, *supra* note 29, at 71: "The foregoing discussion should make it evident that there is a basic cancer in the wage system for migrant farmworkers, and the cancer is the [labor] contractor."

The contractor system is a highly effective device for transferring the risk of agricultural employment to the workers. It is a sound principle of industrial relations that the various economic risks incident to employment ought to be distributed fairly or else insured against.⁷⁴

Although perhaps politically unpopular, this suggestion seems no more objectionable than the right of mechanic's liens given to many other workers. It need not result in double liability unless farmers continue to use unreliable labor contractors. Moreover, farmers can protect themselves by insisting on proof, before paying labor contractors, that farmworkers have received their wages. Although none of the acts now in force contain such an extensive grower liability provision, a similar law has been proposed in California.⁷⁵

An alternative to the above suggestion would be to declare illegal the use of unregistered labor contractors. This proposal, however, involves at least three objections. First, it incorrectly assumes that registered labor contractors are not a problem. Second, it is unlikely to be enforced any more rigorously than the farm labor contractor registration laws themselves. Third, it provides farmworkers with no more remedies than they now have.

B. Surety Bonds

Merely requiring labor contractors to make "prompt" payment of wages is not enough; they should be required to post surety bonds in amounts sufficient to cover their payrolls. An obvious benefit to farmworkers, the bonds should also protect growers who become liable for wages under the foregoing grower-liability provision.

Although several states already have bonding requirements,⁷⁶ their protection is illusory. For many years in California, for example, the amount of the bond was \$1,000.⁷⁷ Yet a study revealed that the weekly payroll of 90 percent of the labor contractors exceeded \$1,000, the average payroll being between two and three thousand

⁷⁴*Hearings on S. 8, S. 195, S. 197, and S. 198, supra* note 17 at 998.

⁷⁵*See* Cal. Assembly Bill 1993 (1969). At present, New York goes furthest in imposing grower liability: "If a farm labor contractor fails to comply with the provisions of subdivision two of this section relating to the giving of copies of information to workers, the posting of a copy of such information, the keeping of payroll records, and the giving of wage statements to workers, the commissioner shall notify the grower or processor who utilizes the services of such farm labor contractor and responsibility for compliance shall thereafter be imposed on such grower or processor with the same force and effect as though the grower or processor were primarily responsible for compliance." N.Y. LABOR LAW § 212—a(3)(c) (McKinney 1965).

⁷⁶*See* note 55, *supra*.

⁷⁷CAL. STATS. 1951, ch. 1746, p. 4162, §2.

dollars.⁷⁸ Suggestions to raise the amount of the bond were resisted on the ground that its cost would be prohibitive.⁷⁹ In 1969, however, the legislature increased the amount to \$5,000.⁸⁰ Fears of prohibitive costs proved unfounded, since standard underwriting companies in California now charge only \$75 for a \$5,000 labor contractor bond.⁸¹

Although helpful, the various state and federal farm labor contractor laws, at least as they are now enforced, have proved inadequate to eliminate the problems that have plagued farmworkers for half a century. The enactment of grower liability and bonding provisions will do much to insure payment of wages, but will have no effect, of course, on fraudulent promises of work and other abusive practices. For these evils, the only remedy is vigorous enforcement of laws which now exist.

Richard K. Park

⁷⁸CALIFORNIA'S FARM LABOR PROBLEMS, at 182. These figures were obtained in 1947, and, therefore, are likely to be far below today's figures.

⁷⁹*Id.*

⁸⁰CAL. LABOR CODE § 1684(c) (West 1970).

⁸¹Telephone Interview with Travelers Insurance Company, 400 Capitol Mall, Sacramento, Calif., on Jan. 20, 1970. The underwriter reports that the \$75 figure applies to all persons seeking farm labor bonds and that the posting of collateral is not required.

