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Farm Workers and Unions in California Agriculture
Philip Martin
June 30, 2008

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Summary

This \$10,000 grant supported three major activities:

1. a conference that discussed the interactions of unions and immigration in California agriculture
2. scanning and posting collective bargaining agreements signed in CA agriculture (<http://digital.dev.lib.ucdavis.edu/projects/ufw/>) and
3. coverage of farm labor and immigration issues in Rural Migration News (<http://migration.ucdavis.edu/rmn>).

The Labor and Employment Research Fund budget was reduced and the state agency faced budget cuts, so the conference was held in Wash DC to reflect the additional support received.

California was the first major agricultural state to enact a labor relations law giving farm workers union rights and establishing a state agency to supervise elections to determine if farm workers want to be represented by a union and to deal with ULP charges. There was an initial surge of union activity, followed by a sharp decline in the 1980s that has persisted.

There are four major reasons advanced for the failure of the ALRA to achieve its promise: union leadership failures, politics, changes in farm employer characteristics, and immigration, emphasizing that the rise of intermediaries and rising immigration speeded up the revolving door through which

newcomers begin their American journey as seasonal farm workers but soon move on to nonfarm jobs. Most economists believe that immigration and the changing structure of agriculture were the major reasons for the demise of collective bargaining in agriculture.

Conference

At least 50 percent of US crop workers have been unauthorized for the past decade, according to farm employers, worker advocates, and researchers. Employer and worker advocates who often disagree on farm labor issues agree that 10 to 20 percent of those employed on US farms are newcomers (in the US less than a year), suggesting that there is a constant inflow of new and unauthorized workers who replace workers exiting farm work for construction and other nonfarm US jobs or who return to their countries of origin.

Immigration reform may change agriculture's "flow-through" labor market by providing a path to legal status for some currently unauthorized farm workers, make it easier for farmers to employ legal guest workers, and perhaps affect patterns of immigration and settlement in rural and agricultural America. On June 13-14, 2007, researchers met with Congressional and Administration staff as well as industry, union, and community leaders in Washington DC to discuss:¹

1. Trends in the number of unauthorized foreigners, immigration reform proposals pending in Congress, and the reform goals of employers, workers, and communities
2. The impacts of immigrant farm workers on agriculture in particular states and commodities
3. The impacts of continued immigrant settlement on communities in agricultural areas

Immigration Reform:
Implications for Farmers, Farm Workers, and Communities
Meeting and Lodging: UC-DC (www.ucdc.edu/)
1608 Rhode Island Avenue, NW, Washington, DC 20036

¹Until 2004, seminars examining the "changing face" of rural America were held in areas attracting immigrants to fill farm jobs. These changing face seminars brought researchers together with farm employers, community leaders, and migrant advocates. They included field trips that followed the pattern of workers from fields to settlement, beginning with employers, turning to the mayors, police chiefs and teachers who act as bridges between established residents and newcomers, and concluding with migrants and migrant advocates. On two occasions, March 1998 and April 2002, seminars in Washington DC allowed researchers to report the findings to policy makers, who in turn discussed the issues on which they wanted information and analysis. The 2006 and 2007 seminars continued were held in Washington DC.

Tel 202-974-6200 Fax: 202-974-6250
Wednesday-Thursday June 13-14, 2007

At least 50 percent of US farm workers are unauthorized. Immigration reform may provide a path to legal status for some currently unauthorized farm workers and make it easier for farm employers to employ legal guest workers under a revised H-2A temporary worker program.

The purpose of this conference is to assess the provisions of pending immigration reform proposals, the roles of legal and unauthorized farm workers in US agriculture and of MSFW programs in integrating migrants and their children, and the implications of continued immigration for rural communities. The aim is to have Washington people alert researchers to potential immigration changes and the questions about immigration and agriculture where research answers would be welcome, and to allow researchers to report on the current and likely future impacts of immigration. The outcome will be a research agenda for anticipating and evaluating the impacts of immigration reform on agriculture (<http://migration.ucdavis.edu/cf/index.php>).

The conference is organized with the support of the Farm, Giannini, Northwest Area and Kellogg Foundations, and the UC Labor and Employment Research Fund.

Wednesday, June 13, 2007

8am Breakfast available in conference room on the ground floor

9am Welcome and Introductions, Philip Martin, UCD, and Bruce Cain, UC-DC

9:15 Immigration Patterns, 1986-2006, Jeff Passel, Pew Hispanic Center
Rural Mexico to Rural America, Ed Taylor, UCD

10:15 Break

10:30 Congressional Staff Panel: What has Congress debated and/or approved? Chair, Susan Martin, ISIM
Esther Olavarria, Office of Senator Ted Kennedy (D-MA)
Michael T. Dougherty, Office of Senator Jon Kyl (R-AZ)
Julia Massimino Office of Rep Howard Berman (D-CA)
Margaret Klessig, Office of Rep Jeff Flake (R-AZ)

11:30 Immigration and Agriculture: Resolving the Challenge, Senator Dianne Feinstein (D-CA)

12:15 Lunch

- 1:15 Industry Perspectives on Immigration Reform
Al Gulin, AG Consultants, ex-VP, Limoneira
Joe Swedburg, Hormel
Jim Holt, Holt Associates
Craig Regelbrugge, American Nursery & Landscape Association
- 2:45 Break
- 3:00 Worker Advocate and Community Leader Perspectives
Bruce Goldstein, Farmworker Justice
Baldemar Velasquez, FLOC
Rosaura Segura, Napa Farm Worker Oversight Committee
Rick Mines
- 4:30 International Perspectives, Manolo Abella, ILO
- 5:00 Adjourn
- 7:00 Dinner, Levante's Restaurant, 1320-19th St NW, Sunderland Building,
tel 202 293 6301

Thursday, June 14, 2007

- 8am Breakfast available in conference room on the ground floor
- 9:00 Farm Labor: Commodities and Areas, Chair, Philip Martin, UCD
California, Bert Mason, CSUF
Washington, Ernst W. Stromsdorfer
Florida, Lurleen Walters, U-Florida
Demand for Farm Workers in CA, FL, IA, Wally Huffman, ISU
Joann Warner, Gonzaga University
- 10:30 Break
- 10:45 Immigrant Impacts: Community Responses, Chair, Cornelia Flora, Iowa
State University
Changing Patterns of Immigration in Rural America, William Kandel,
USDA
Carolinas, David Griffith, E Carolina University
New York, Max Pfeffer and Pilar Parra, Cornell University
Pennsylvania, Janelle Larson, Penn State
California, Ed Kissam, Aguirre-JBS
Hinda Seif, University of Illinois-Springfield
- 1pm Lunch

2pm Changes in US Specialty Crop Production and Trade
Danny Pick, USDA
Linda Calvin, USDA

3:15 Adjourn

Contracts

About 500 contracts have been signed between California farm employers and unions. The state agency that regulates relations and deals with ULPs did not require these contracts to be filed with the state. Working with the UCD ARE library, we acquired and scanned several hundred contracts and made them available on the web at: <http://digital.dev.lib.ucdavis.edu/projects/ufw/>

Rural Migration News

Rural Migration News (<http://migration.ucdavis.edu/rmn>) covers farm labor and union issues each quarter, providing analysis of current developments. The coverage for 2007, when the LERF grant provided partial support, is below.

JANUARY 2007

California: Wages, Health

California's unemployment rate dropped to 4.5 percent in October, the lowest rate since record keeping began in 1976. Health care, education and tourism led job growth and pushed nonfarm employment to 15 million. About 50 percent of California's nonfarm employment is in the Big 3 sectors of trade and transportation, 2.8 million; government, 2.5 million; and business services, 2.2 million.

In the August 14, 2006 cover story of Workforce Management, Imperial Valley vegetable farmer Jack Vessey, described as farming 10,000 acres with 100 regular and 500 temporary workers, said that his regular workers get wages above the minimum and benefits, but the temporary workers are paid only the minimum wage or a bit more. Most temporary workers are hired via FLCs who recruit workers from among those who cross the border daily at Calexico.

SB 1135, signed into law in September 2006, provides \$20 million to expand a van program for farmworker that started in the Central Valley.

Health. A survey of Fresno county farm workers in summer 2005 found that most eat fewer than recommended servings of fruits and vegetables because they are "too expensive." The 1999 California Agricultural Worker Health Survey (CAWHS) found that 81 percent of men and 76 percent of women doing farm work were overweight, including 28 percent of the men and 37 percent of the women who were obese.

California has 760,000 children without health insurance, including 10 percent who are unauthorized. Napa Valley Vintners in 2005 donated \$1 million to the Children's Health Initiative to help provide health care to the 4,000 uninsured in the county. Like many other Napa vintner, John Shafer provides health insurance to his 17 full time workers, but not for seasonal crews brought to the vineyard by FLCs.

About 6.5 million of California's 37 million residents do not have health insurance; about 40 percent of the state's uninsured are not US citizens. The Democratic leaders of the state Senate and Assembly proposed pay or play health insurance plans, that is, employers would have employers help to pay for their employees' health insurance or pay a special tax on their employees' earnings. About 71 percent of California employers offer some health insurance benefits.

Governor Arnold Schwarzenegger in January 2007 proposed that California require all residents, including unauthorized foreigners, to have health insurance, which would increase state health care costs by \$12 billion. Individuals who refuse to carry insurance could face reductions in their state income tax refunds or the garnishment of their wages. Businesses with 10 or more employees would have to offer coverage or pay a fee of four percent of their payroll into a fund to help the uninsured buy health insurance; those with fewer than 10 employees would not have to offer insurance or pay a fee.

Some critics noted that, although California requires drivers to be insured, an estimated 25 percent of the state's drivers are not insured.

Massachusetts and Vermont have passed laws requiring all their residents to obtain health insurance, with help from the state if necessary. Other states considering expanding coverage to reduce the number of uninsured include Washington, Montana, Rhode Island, Wisconsin and Illinois.

Rand released a study in December 2006 that found adolescents from Asian immigrant families improved their health habits with more time in the US, while their Latino counterparts either showed no improvement or developed worse

habits. One in five children in the United States is an immigrant or born to immigrants, and over 80 percent of these immigrant-heritage children have Asian and Latino parents.

Beginning on July 1, 2006, states were required to have persons enrolling in Medicaid (called MediCal in California) provide proof of legal status to receive benefits. Over seven million California residents receive MediCal benefits, and the state says it wants to slowly implement the federal requirements to avoid denying care to eligible persons who lack birth certificates and other documents.

The US spends about \$6,000 per person on health care, and has an average life expectancy of 78. Canada spends \$3,300 per person, and has a life expectancy of 80. About 25 percent of US health care expenditures go for administrative costs, higher than the 15 percent in single payer systems such as Canada's (Medicare's administrative costs are lower, also about 15 percent). However, researchers say that in addition to being a more diverse country, Americans expect more, including costly treatments with minimal or uncertain benefits, driving up costs and leaving 47 million without health insurance.

UFW: D'Arrigo

On November 1, 2006, D'Arrigo Brothers of California agreed to pay \$3.6 million to settle a suit involving unpaid transportation time. The company was ordered to provide compensation in September 2004, reflecting the California Supreme Court's 2000 decision in *Morillon v Royal Packing* that mandatory commutes in company vehicles must be compensated.

Between August 1997 and April 2000, D'Arrigo required workers to take company busses to and from work, and did not pay them for this travel time. Up to 3,000 workers employed between 1997 and 2000 are expected to file claims.

There are two other cases pending against D'Arrigo. In one, several women allege they were not promoted to supervisory positions because the company did not have any female supervisors. According to the suit, D'Arrigo never hired women into supervisory positions; D'Arrigo said they did not want to become supervisors because they would then have to move with the harvest.

The second D'Arrigo case involves the failure to reach a contract with the UFW. The UFW was certified to represent D'Arrigo's Salinas and Brawley lettuce workers in 1977, and D'Arrigo's Fresno and Tulare grape workers in 1978, but was unable to negotiate a contract (D'Arrigo's San Joaquin Valley operation closed in

1995). In August 1998, some workers went on strike, and in May 2006 the ALRB concluded that D'Arrigo failed to bargain in good faith.

The UFW in June 1998 proposed a standard contract that would have included a 10 percent wage increase, five paid holidays, RFK health insurance contributions of \$1.18 an hour, and JDLC pension contributions of \$0.25 an hour. D'Arrigo presented a counteroffer in September 1998 that reduced paid holidays from five to four, offered no pension contribution and froze wages for three years.

The UFW made concessions in bargaining during Fall 1998, but D'Arrigo did not, and some of its subsequent proposals removed benefits that were being provided to workers. The ALRB in May 2006, *D'Arrigo Bros* (32 ALRB 1, 2006), concluded that D'Arrigo failed to provide requested wage information, failed to provide information on the FLCs it used to obtain workers, and engaged in surface bargaining to avoid reaching a contract with the UFW. The ALRB, noting that D'Arrigo was found to have violated the ALRA at least eight times previously, concluded that D'Arrigo was advancing proposals during bargaining that it knew would be unacceptable to the UFW, and ordered makewhole from January 28, 2000 until good-faith bargaining begins.

On September 29, 2006, some 1,300 workers at Vincent B. Zaninovich and Sons Inc., a table grape grower in the Delano-Richgrove area, voted 773-425 against having the UFW represent them.

In December 2006, California's attorney general concluded that the UFW had not broken state laws in dealings between its charitable affiliates. The investigation was triggered by a series of articles in the Los Angeles Times on January 8-11, 2006 that concluded: "Chavez's heirs run a web of tax-exempt organizations that exploit his legacy and invoke the harsh lives of farmworkers to raise millions of dollars in public and private money, [but] the money does little to improve the lives of California farmworkers."

The UFW issued a 101-page rebuttal of the series, but the Los Angeles Times made only three corrections of three factual errors, all relating to the history of the union and other organizations.

The UFW in 2007 is expected to ask the Legislature to amend the ALRA to allow card-checks to certify unions as bargaining representatives for farm workers. The ALRA allows unions to petition for a secret ballot election when they satisfy the 50-50 rule, over 50 percent of currently employed workers have signed petitions asking for representation when employment is at least 50 percent of the peak level of the previous 12 months. Many unions argue that employers intimidate workers to reject the union during pre-election campaigning, so that "stealth" organizing is the only way they can be certified to represent workers.

Other. Harry Kubo, who founded the Nisei Farmers League in 1971, died in December 2006. The NFL had 1,500 mostly smaller farmer members at its peak.

Kubo starred in the 1976 campaign to defeat Proposition 14, a UFW-backed measure that would have guaranteed funding for the ALRB. During World War II, Kubo and his family were forced to spend four years at the Tule Lake Relocation Center in Modoc County, and the anti-Prop 14 campaign recounted this internment.

April 2007

California: EEEEC, Coachella

EEEC. California's Economic and Employment Enforcement Coalition is a federal-state effort established in 2005 to combat the underground economy (www.edd.ca.gov/eddeec.htm OR www.dir.ca.gov/EEEC/EEEC.html). About 8,000 small businesses a year are inspected, including in agriculture, construction, restaurants and garments.

During the first quarter of 2006, some 260 farming operations were inspected, and 85 percent had violations. Some had more than one violation, and the 222 farms with violations had a total of 761 violations, for projected penalties of \$1.3 million. Violation rates were higher in construction and garments, where 96 to 97 percent of inspections found violations of labor laws.

The U.S. Department of Labor fined G.V. Farm Labor Service \$37,600 in February 2007 after an investigation resulting from a May 16, 2006 traffic accident that killed three farm workers near Selma, California. GV was found to be using unsafe vehicles to transport workers to Tos Farms of Hanford.

Workers Compensation. Some 780,000 California workers were hurt on the job in 2006 and treated under a state workers' compensation law that was overhauled in 2004. A survey of 1,001 injured workers concluded that most received quick, competent medical treatment and were back on the job within three days. However, almost a quarter of those surveyed were dis-satisfied with their care.

SB 452 would exempt California farmers with less than \$100,000 in annual farm sales from workers compensation if they use only unpaid relatives on their farms. About 60,000 of the state's 80,000 farms would be allowed to drop workers compensation under SB 452. Advocates for the exemption say that workers compensation costs at least \$500 a year for a

family member, and the exemption would especially benefit limited-English speaking Asian farmers in the Fresno area.

California's workers compensation system costs \$22 billion a year; employer rates have been cut in half since 2003.

The California Supreme Court in April 2007 ruled that managers or assistant managers in retail, food service, insurance and banking can receive back pay for up to three years if they are required to work through meal and rest breaks required by state law. In many firms, "managers" are considered exempt and not given state-required 10-minute paid breaks after four hours of work and a 30-minute unpaid meal break for every five hours worked.

In November 2006, IBM agreed to pay \$65 million to settle claims that it illegally denied overtime pay to 32,000 computer technicians.

Coachella. The Coachella Valley Farmworkers Survey (www.iurd.org) interviewed 525 farm workers in 2006, reporting that 54 percent were legal immigrants, 37 percent unauthorized, and nine percent US citizens. About 71 percent do not speak English, and 72 percent live in the area year round, although 58 percent reported going to Mexico for medical care.

About 75 percent of the workers interviewed earned less than \$15,000 a year. Two-bedroom apartments in the Coachella Valley rent for an average \$920 a month.

Housing. State law requires that farms that house five or more workers have their "labor camps" inspected. Most dairies house workers and their families in mobile homes— one farmer with 800 cows housed six employees in this way.

The Wasco Housing Authority in Kern county manages about 200 apartments in agreement with the U.S. Department of Agriculture to provide low-cost housing to farmworkers. The Authority sent notices to three tenants that their leases will be terminated because they lack documents proving they are legal U.S. residents, prompting protests in January 2007.

Chavez, UFW, ALRB, Unions

Cesar Estrada Chavez was born March 31, 1927 and died April 21, 1993. Chavez established the National Farm Workers Association in Delano in 1962, and in 1966 merged with the AFL-CIO's Agricultural Workers Organizing Committee to form the United Farm Workers Organizing Committee. Chavez was honored on March 31, 2007 with marches and observances around the state; state employees had a holiday on March 30.

Workers from Santa Rosa Berry Farms protested a \$1 a box piece rate for picking strawberries that are to be used to make juice. After the April 9, 2007 protest, the piece rate was raised to \$1.50 a box, matching the highest rates in Ventura county.

UFW President Arturo Rodriguez has been traveling the US to announce "the next great civil rights crusade." Speaking at Whitman College in Walla Walla, with workers from Ste. Michelle Wine Estates in Paterson, Washington and the Threemile Canyon Farms and Willow Creek dairies near Boardman, Oregon, Rodriguez urged support for immigration reforms pending in Congress.

The ALRA was enacted in 1975 in part to funnel protests from the streets to the ballot box—the UFW accused growers of voluntarily recognizing the Teamsters to avoid allowing workers to vote for the UFW. In an ironic reversal, the UFW now supports "card checks," under which workers could sign a petition to have a union represent them, and the union could be recognized as the workers' bargaining representative without an election.

SB 180 would allow farm worker unions to fill out authorization cards for workers, including the name of the employer and union. If a majority of workers signed the cards, the ALRB could recognize the union as the workers' bargaining representative without an election. SB 180 would help the UFW in cases such as VBZ Grapes (www.vbzgrapes.com/), where it lost an election 425-793 in September 2006 despite getting about 70 percent of workers to sign union authorization cards (VBZ used labor consultants to turn the tide against the UFW just before the election).

California's nonfarm packing and processing facilities are much more likely to be organized, with most workers represented by the Teamsters and the UFCW, than field workers. By some estimates, 80 percent of the state's packing and processing workers are represented by unions.

Agricultural Labor Relations Board Chair Irene Raymundo, whose term expired at the end of 2006, was reappointed for another five-year term.

The ALRB in D'Arrigo Brothers (33 ALRB 1) concluded that the UFW could request mandatory mediation with D'Arrigo: there has been no contract since the UFW was certified to represent D'Arrigo workers in 1977 and D'Arrigo had committed several unfair labor practices.

In UFW (33 ALRB 2), the ALRB decided that the UFW failed to properly inform the 400 workers at the California Mushroom Farm (the former Pictsweet Mushroom Farm that had its contract imposed by mandatory mediation, and CMF took over Pictsweet in December 2004) that they could withhold that portion of UFW dues used for political purposes. Under the January 1, 2004-December 31, 2006 contract, employees must pay dues or fees after 31 days of employment of two percent of their wages (the UFW asserted that its representation costs were more than two percent of wages, so members and fee-paying nonmembers owed the same amount).

The UFW held a meeting attended by 150 employees, handed out dues check off forms and, some workers testified, insisted that workers sign or risk losing their jobs. In February 2006, the UFW sent out dues notices to non-payers, and asked CMF to fire them, which it did not do.

The ALRB and California courts in *Breaux* (1990) 217 CA. App.3rd 730 held that employees cannot be required to pay dues for union activities not related to collective bargaining. Furthermore, unions that require membership as a condition of employment must explain their fees and place into escrow amounts that objectors say are not related to collective bargaining. The UFW violated these provisions by not explaining its expenditures, requiring those who objected to dues check off to pay the same two percent as those who did not object, and not properly informing workers that they had a right to refunds of the portion of dues spent on non-collective bargaining activities. According to the ALRB, up to 10 percent of UFW dues are used for political purposes.

The UFW, which is in the third year of a three-year contract at nursery LE Cooke in Visalia, won a decertification election on February 2, 2007 with a 110-61 vote to remain the workers' bargaining representative.

Napa's Hess Collection Winery in February 2007 dropped efforts to have mandatory mediation declared unconstitutional and began to bargain with the UFCW on a contract. The UFW used mandatory mediation to reach a contract with the California Mushroom Farm in Ventura in 2005.

UFCW Local 1096, led by Peter Maturino in Salinas, merged with several other UFCW locals late in 2006 to form a new Local 5 based in San Jose. It reportedly began to take access to organize workers employed on Tulare county dairies.

The UFCW was negotiating new contracts for 65,000 workers employed by southern California grocery chains in Spring 2007. There was a five-month strike in October 2003. The UFCW, which represents nearly a million food industry workers, said more than 400,000 UFCW members were negotiating new contracts in 2007.

The Distillery, Wine & Allied Workers Union, which belongs to the United Food & Commercial Workers represents about 2,100 active workers at 21 California wineries, including 800 at Gallo. It has about 10,000 retirees covered by a pension fund jointly administered by the union and the wineries to which wineries contribute \$0.25 an hour or \$45 a month. Some of the wineries want to substitute 401(k) funds for the current pension.

Unions. The US had 15.4 million union members in 2006, 12 percent of the total 128 million employees. The percentage of private-sector workers in unions fell to less than eight percent, but over 36 percent of public sector workers were union members.

The A.F.L.-C.I.O, citing polls that find 53 percent of nonunion workers agreeing they would vote to join a union tomorrow if they could, pushed hard for approval of the Employee Free Choice Act. The House approved the EFCA March 1, 2007 on a 241-185 vote.

Under current law, unions can request that employers recognize them as the bargaining agent for their workers after 30 percent of employees have signed cards. Employers can then demand a secret-ballot election and campaign for a no-union vote.

The EFCA would allow unions to demand recognition when a majority of workers sign cards, which unions say would limit employer unfair labor practices in campaigns before secret ballot elections. Some 31,000 workers were issued back pay in 2005 because of employer unfair labor practices, up from 26,197 in 1995, according to unions. Another provision of EFCA would require federal arbitration to reach labor contracts if newly certified unions and employers do not reach agreement within 90 days.

Employers organized as the Coalition for a Democratic Workplace say that the current system, under which employers may demand secret-ballot elections, better reflects employee preferences.

The Change to Win coalition of seven major unions representing six million workers broke away from the AFL-CIO in September 2005. Its goal was to spend more to organize workers and less on political activities. Change to Win represents 5.4 million workers in health care, trucking, hotels and construction (the UFW is a member). The Service Employees International Union, with 1.6 million members, is still growing, as are Unite Here and the International Brotherhood of Teamsters. However, the 1.3-million-member United Food and Commercial Workers and the 657,000 member Laborers International Union of North America lost members in 2006.

Change to Win pledged to develop joint strategies on three issues: retirement security, health care and immigration. Consensus is proving difficult to achieve. The SEIU, for example, favors a guest worker program, which other Change to Win unions oppose.

Bargaining may be difficult in 2007. The United Automobile Workers union, saying that "Collective bargaining is not collective begging," warned in March 2007 that if bankrupt auto parts manufacturer Delphi tried to void union contracts and cut wages and benefits, the UAW would call a strike.

The US Court of Appeals for the District of Columbia in February 2007 upheld a 2004 ruling that gave the National Labor Relations Board (NLRB) had jurisdiction over tribal businesses. The Court ruled that "tribal sovereignty in American law... recognizes the independence of [Indian communities] as regards [to] internal affairs... [giving] latitude to maintain traditional customs and practices [but does not confer] absolute autonomy [and] permit a tribe to operate in a commercial capacity without legal constraint."

The NLRB wants to protect the rights of more than 250,000 casino workers across the country's 400 plus tribal casinos in 28 states. Indian gaming is a \$22 billion a year industry.

July 2007

California: UFW, ALRB, Card Checks

UFW. The UFW has two major goals in 2007, getting AgJOBS immigration reform enacted by Congress and persuading the California Legislature to approve card checks as a substitute for secret ballot elections.

In arguing for AgJOBS, UFW President Arturo Rodriguez asserted that "There is nobody born in America standing in line to work in agriculture today."

The UFW signed a five-year contract with Monterey Mushrooms in Watsonville in May 2007. The new contract increases wages between 8.4 and 13 percent and adds a new holiday, the employee's birthday, for the 600 workers covered. Workers currently earn \$9.22 to \$18 an hour.

Monterey, owned by Shah Kazemi since the late 1970s, had sales of \$769 million in 2005. It produces about 750,000 pounds of mushrooms a week in Watsonville, far more than the average plant, which produces 100,000 pounds a week. With plants in other states and countries, the firm has a total 3,100 employees.

The UFW-D'Arrigo Brothers Co dispute went to mediation on May 10, 2007. A mediator is to help the parties reach agreement by June 10, 2007 and, if that fails, he can impose a contract. D'Arrigo, which has 25,000 acres in California and Arizona, may reject the contract suggested by the mediator/arbitrator and challenge the constitutionality of the binding mediation law, which was upheld by a Sacramento court in 2006.

The UFW was decertified at Excelsior Farms (Waterdam Packing) in April 2007 on a 239-59 vote; fewer than half of the 670 eligible workers voted. A 2004 decertification effort failed on a 135-195 vote. The contract reached in May 2005 raised wages to at least \$7 an hour, but some workers were apparently unhappy about the two percent union dues.

The UFW was also decertified at Gallo of Sonoma on a 125-95 vote in June 2007; the UFW was decertified at Sonoma Cutrer Vineyards in 2003, and in 2007, Charles Krug ended over three decades of UFW contracts by subcontracting its farm work to a vineyard manager (the UFW is challenging Krug's action). Roberto Parra, a former UFW ranch committee member who spearheaded the decertification effort at Gallo's 3,200-acre Sonoma operation, said that the UFW did not earn the two percent of wages workers paid in dues.

There was a decertification vote in 2003, but the votes were not counted because of Gallo interference. Gallo and the UFW signed a contract in 2005 that was extended in May 2007 to 2011. Gallo has 80 full-time workers, including Parra, and obtained another 220 workers from four labor contractors.

The Jackson-Perkins rose operation, owned by Harry & David Holdings, Inc, was sold for \$49 million in April 2007 to a nursery that will take over the remaining plants and a firm that plans to replace roses with almonds on Jackson-Perkins' 3,200 acres near Wasco. Jackson-Perkins, with sales of \$74 million a year, is the largest marketer of premium rose plants, selling over six million a year. It is not clear what will happen to the UFW contract, which covered over 1,000 workers.

The UFW's LM-2 report filed with the US Department of Labor for 2006 states that there were 4,592 members at the end of the year, plus 874 retired members. The UFW reported total income of \$6.4 million, including \$2.3 million from member dues and fees. Expenditures were \$6.6 million, including \$2.8 million for representational activities. The UFW has about 50 paid employees, including President Arturo Rodriguez, who received \$82,000 in 2006.

A 54-year old Mexican worker died on May 9, 2007 while picking peaches, prompting UFW protests.

The House in July 2007 approved a bill that would require the US Department of the Interior to study sites "significant to the life of Cesar E. Chavez and the farm labor movement in the western United States." Interior would examine ways to preserve the sites, recommend some for inclusion with 76,000 others on the National Register of Historic Places, and interpret them to the public. Eight states have some kind of official Chavez Day, including California.

ALRB. The UFW won an election on a 27-25 vote on March 7, 2006 to represent workers at Artesia Dairy in Corcoran. There were challenges to the right of some of the voters, with both the employer and union arguing that some workers' votes should not be counted. The Agricultural Labor Relations Board made case-by-case determinations of the challenged voters' eligibility.

California is the nation's largest producer of milk, with about 20 percent of US cows. Many of the state's dairies have 10 to 20 employees, and San Jose-based United Food and Commercial Workers Local 5 has been trying to organize some of them. However, the UFCW says that, when it begins to organize, many dairies add workers to their payrolls, including family members, in an apparent bid to tilt the vote against the union. After the election, there are challenges to some of those who voted, delaying certification and bargaining.

The UFCW won a vote at the 10,000-cow Bayou Vista Dairy in Tipton, which was sold after Bayou was ordered to begin mandatory mediation to reach a first contract.

On June 16, 2007, 20 farm workers shared a \$252,000 settlement that the United Food and Commercial Worker Local 1096 reached with Napa-based Hess Collection Winery over their unfair dismissal. The state's 2002 amendment to the ALRA that calls for binding arbitration to reach contracts was first invoked with Hess, which refused to participate, challenged the constitutionality of binding arbitration, and lost. The UFCW won an election to represent Hess workers in March 1999; the contract imposed by the mediator expires in July 2007.

In June 2007, the ALRB ruled that Napa's Krug Winery, owned by the Peter Mondavi family, discriminated against 27 former workers represented by the UFW when it dismissed them on July 6, 2007 and turned to a vineyard management firm to care for its grapes. The ALRB General Counsel issued a complaint that Krug had failed to bargain in good faith with the UFW before subcontracting out its vineyard work, and that the 27 workers are due back wages. Krug and the UFW were unable to reach a new agreement because the UFW refused Krug's request to have workers undergo physical exams. The UFW has represented the Krug workers since 1977.

Card Checks. SB 180 would allow farm worker unions to fill out authorization cards for workers, including the name of the employer and union. If a majority of workers signed the cards, the ALRB could recognize the union as the workers' bargaining representative without an election. ALRB recognition would trigger a requirement that the employer begin to bargain with the union in good faith for a contract. SB 180 would also raise the penalties for some unfair labor practices.

On June 13, 2007, SB 180 was approved by the California Senate in June 2007 and by the Assembly 45-33 in July 2007.

SB 180 would help the UFW in cases such as VBZ Grapes (www.vbzgrapes.com), where it lost an election 425-793 in September 2006 despite getting about 70 percent of workers to sign union authorization cards (VBZ used labor consultants to turn the tide against the UFW just before the election).

The ALRB reported that unions won 73 of the 132 elections called between 1990 and 2005. The UFW says that the reason for winning only half of the elections that unions request is because employers hire labor consultants who make last-minute appeals to workers to reject the union. Several Indian gaming compacts are being blocked in the Legislature because they do not include card-check provisions.

Growers oppose SB 180. They note that employers would be required to provide the ALRB with a list of employees within 24 hours of the union submitting what it says are signed authorization cards from a majority of workers—growers say this time period is too short. SB 180 requires bargaining to begin when the ALRB recognizes the union, even if the employer wants to challenge the signatures and process.

The similar Employee Free Choice Act (H.R. 800) is the top legislative priority of the AFL-CIO in Congress. The EFCA was approved by the House on March 1, 2007 on a 241-185 vote; the Senate voted 51-48 for the bill on June 26, 2007, but 60 votes were needed to move the bill.

EFCA has three major provisions. First, it would allow unions to win NLRB recognition if a majority of workers in a bargaining unit sign authorization cards, that is, there would no longer be a need for a secret ballot election. Second, the EFCA requires companies and newly certified unions to enter binding arbitration for a two-year contract if they cannot reach agreement on an initial contract after 90 days of negotiations. Third, the EFCA would increase the penalties for unfair labor practices committed by employers during an organizing drive.

Currently, unions can request that the National Labor Relations Board (NLRB) hold an election when at least 30 percent of the workers in a bargaining union sign authorization cards. Elections are held an average 40 days after unions request them, and unions win 60 percent of them.

Under the EFCA, after 90 days of fruitless bargaining, the Federal Mediation and Conciliation Service is to assign a mediator for a 30-day period to help the parties reach agreement. If mediation fails, an arbitration board is to determine a first two-year contract.

The EFCA would raise the penalties for unfair labor practices committed during an organizing drive from the current remedy of restoring the worker to the same economic status she would have had if there had been no ULP (rehire an unlawfully fired worker with back pay) to triple back wages plus a civil penalty of up to \$20,000.

California SB 319 allows 16- and 17-year olds to work 10 hours a day and 60 hours per week during Lake county's pear harvest, which is in July and August. The law has been in effect for the past 12 years.

OCTOBER 2007

California: Pesticides, UFW

Pesticides. The California Department of Public Health released a report in July 2007 suggesting that a high rate of autism in children may be linked to women's exposure to the organochlorine pesticides endosulfan and dicofol (now banned DDT belongs to this type of pesticide). There were eight autistic children in a sample of 29 women living within 500 meters (547 yards) of fields, a rate that is six times higher than for all women.

The pesticides are used to kill mites in cotton and some vegetables, with the heaviest use in Fresno, Kings, Imperial and Tulare counties. Autistic children have impaired social and communication skills.

The US Environmental Protection Agency in October 2007 approved the use of methyl iodide to replace methyl bromide, which has been banned under an international treaty because it damages the earth's ozone layer. The EPA promised critics that required buffer zones around the strawberry and tomato fields being fumigated will protect people. Fields are normally covered with plastic, and the fumigant, sold under the Midas label, is injected into the soil to kill a broad spectrum of insects and diseases without leaving residue on crops.

The Senate Governmental Organization Committee held a hearing on July 19, 2007 that featured testimony from the UFW alleging that August 2005 heat-stress regulations were not being enforced. The state Division of Occupational Safety and Health said that it issued 136 citations in the first seven months of 2007, about the same as in all of 2006, and that most farm employers provided sufficient water, but in some cases workers did not drink enough.

Summer 2007 was cooler than usual, and only one worker, an out-of-state trucker, died due to heat excessive heat; in the Fresno area, there were 27 days with 100+ temperatures, down from the average 36 days. Cal-OSHA has 215 inspectors for all work places, including agriculture, and found most violations of the heat-stress regulations in construction in summer 2007; agriculture was second.

Teamsters Union Local 890 filed a class action suit in October 2007 against three Salinas labor contractors, charging that they did not pay overtime wages or give unauthorized workers meal and rest breaks because of their legal status. The suit charged that the plaintiffs had to pay to get their jobs.

UFW. SB 180, which would allow farm worker unions to win recognition by having a majority of workers sign authorization cards, was approved by the Legislature in August 2007 but vetoed by the governor. The UFW argued that farm workers need to be the first private-sector employees to have an alternative to the secret-ballot elections required by the 1975 Agricultural Labor Relations Act because many are migrants and unauthorized.

The UFW accepted an amendment that requires both the worker and union organizer signing the authorization card to confirm that there was no coercion. An identical bill, SB 650, that would sunset the card-check procedure in 2013, was also approved by the Legislature and vetoed. Under both SB 180 and SB 650, unions could be recognized without a secret-ballot election, but a secret ballot election would be required to decertify a union.

Many newspapers opposed SB 180, using Cesar Chavez's words on the need for state-supervised secret ballot elections to avoid having growers and the Teamsters sign "sweetheart agreements." The UFW opposed amendments to the ALRA for the first quarter century, fearing that opening the law to amendments could result in the loss of important worker and

union protections. However, in 2002, the UFW won an amendment to require mandatory mediation or binding arbitration if a union and employer are unable to agree on a first contract.

The governor, who made an unscheduled appearance at a UFW rally September 5, 2007 at the Capitol that was aimed at persuading him to sign SB 180/650 into law, emphasized in his veto message that “strengthening workplace protections for agricultural workers” was one of his “top priorities.” Citing more labor law inspectors, reformed farm worker housing laws, and heat-stress regulations, the governor asked the UFW to work with the state to ensure that labor laws and regulations are “vigorously enforced.”

The UFW reported 5,504 members to DOL, including 874 retired members.

AB 377, which would require farm labor contractors to disclose on worker pay stubs up to five farms where they worked during the pay period, was vetoed by Schwarzenegger, who said that it would impose an extra burden on licensed contractors and not affect unlicensed contractors. A similar bill without the five-farm cap was vetoed by in 2006.

The UFW in August 2007 announced that the successor of Wasco-based Jackson & Perkins would continue to employ the operation's 665 workers, and provide severance pay if they are dismissed. According to the union, the firm's new owners will hire most of the laid-off workers and sign a two-year contract with the UFW.

The ALRB, in an unusual decision, agreed to vacate its decision in D'Arrigo Brothers (32 ALRB 1) after the UFW and D'Arrigo reportedly reached agreement on a new collective bargaining agreement and dropped the charges they had filed against one another.

The UFW filed over 20 Notices of Intent to Take Access to table grape farms in the southern San Joaquin Valley in summer 2007. If at least 10 percent of the workers on a farm sign authorization cards, the employer must provide the union with a payroll list that includes worker names and addresses.

In 1983, about 22 percent of California's almost 10 million workers were union members. California's wage and salary work force expanded to 15 million by 2006, with 17 percent union members— half of the union members are public employees.