



*The Status of Migrant Farm
Workers in Canada*
2006-2007



UFCW Canada :
Advocating for
Farm Workers



Wayne Hanley
NATIONAL PRESIDENT

Executive Summary

UFCW Canada (The United Food and Commercial Workers Union) has played a focal and active role in assisting and advocating for agricultural workers in Canada since the early 1990s. This sixth national report provides current information on the status of the migrant agricultural workers in this country.

Canada has operated, through its federal ministry of Human Resources and Social Development Canada (HRSDC), the Canadian Seasonal Agricultural Workers Program (CSAWP) since 1966. This program was initiated in response to severe labour shortages experienced by farm employers. There has been little change to this program since its inception in spite of the enormous increase in the number of employees and employers now participating.

UFCW Canada is gravely concerned that the federal government has done nothing to address the many serious issues facing migrant farm workers enrolled in this program. Instead, the government has initiated its Low Skilled Temporary Foreign Worker Program. This new program offers even less protection to the participating workers. There is an increasing call among faith-based groups, the academic community, labour leaders and activists, and community agencies for more government regulation, supervision, and enforcement – not less.

We need to ensure foreign migrant workers are not exploited as merely a temporary and cheap source of labour. The CSAWP and the Low Skilled Temporary Foreign Worker Program must include better regulatory controls to ensure worker exploitation is not their by-product.

Over the past several years we have worked closely with community groups, academics, local labour leaders, and faith-based groups to create and broaden awareness of the difficulties migrant workers encounter while working in Canada. We continue to build an ever-widening circle of support and advocacy in order to bring change to the CSAWP that would bring positive results for migrant farm workers. This work has resulted in increased public awareness of the inadequacies and inequities of CSAWP and an increasing demand for government action.

UFCW Canada has begun to establish a communication link with the Mexican government in order to establish an ongoing dialogue with Mexico concerning the CSAWP and improvements needed in order to adequately meet the needs of Mexican workers. UFCW Canada has also begun to establish communications with participating Caribbean countries in order to begin working

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together to respond to the concerns and issues of migrant farm workers from these sending countries. We look forward to continued dialogue and working more closely with all sending countries to improve living and working conditions for all migrant farm workers in Canada.

UFCW Canada has continued its efforts to provide representation for migrant farm workers. For workers in Ontario, our efforts toward this end are now much closer due to a landmark decision announced by the Supreme Court of Canada in June 2007. This decision upholds collective bargaining as an inherent constitutional right under the freedom of association provisions of the *Canadian Charter of Rights and Freedoms*. This ruling is good news for agricultural workers in Ontario, who in spite of the *Dunmore* ruling in 2001, continue to be prohibited from collective bargaining under Ontario's *Agricultural Employees Protection Act (AEPA)*. Under the AEPA workers can form associations, not unions. They can take their concerns to their employer but the employer is not obligated to respond at all or to bargain in good faith.

Because of these restrictions, UFCW Canada launched a new *Charter* challenge in 2003 citing the AEPA's exclusion of collective bargaining rights as unconstitutional. The June 2007 Supreme Court ruling supports our challenge. Accordingly, we have called on the Ontario government to resolve the matter as soon as possible. Agricultural workers can no longer be discriminated against and the time to acknowledge their rights is now.

UFCW Canada has worked with migrant farm workers at three farms in Québec and one in Manitoba. At all four locations the majority of workers signed union cards expressing their wish to join the union. Hearings for these certification bids are at varying stages. At one farm in Québec, a migrant worker who played a key role in the organizing effort was repatriated. We charged the employer with unfair labour practices on behalf of this worker. The Québec labour board found the employer guilty of this charge and ordered the worker returned to work and compensated for lost wages. We look forward to negotiating collective agreements for the workers at these workplaces over the coming year.

UFCW Canada has led the way in the fight for improved working and living conditions for migrant farm workers in Canada. We have met with provincial and federal legislators and their staff, consular officials from the sending countries, and representatives of farm employers. We have submitted reports and letters, hosted conferences and attended meetings nationally and internationally. We have opened seven Migrant Worker Support Centres and advocated on their behalf on a grass-roots level in the communities where migrant farm workers are predominantly located.

We have partnered the Canadian labour movement, academic community, social justice groups, faith-based organizations, and non-governmental agencies working with immigrants. The Canadian government cannot ignore this issue any longer. In Québec, hardly a week goes by without more media exposure to the issues concerning migrant farm workers. Canadians are taking notice and beginning to question why migrant workers continue to face unacceptable living and working conditions in this country 40 years after the inception of the program.

We are proud and honoured to work with and for all migrant farm workers. UFCW Canada will continue this important work. We look forward to developing and strengthening working relationships with the governments of all the sending countries participating in CSAWP, in order that together we can help these workers achieve better working and living conditions and opportunities while in Canada.

Recommendations

Based on our continuing work with migrant farm workers in Canada we propose the following recommendations for changes to the CSAWP:

1. Provide a transparent, impartial process of appeal, available to all workers, before any decision to repatriate is made, including the appointment of a representative from UFCW Canada to fully participate in this appeal process on behalf of the workers.
2. Comply with the rulings of the Supreme Court of Canada and make it a condition of the CSAWP that provinces bringing migrant workers to Canada allow these workers the right to the freedom to associate and bargain collectively.
3. Immediately make public the statistics used by HRSDC to determine the yearly wage rates to be paid to migrant farm workers.
4. Enforce the provisions of the CSAWP that state migrant farm workers receive the same rate of pay as the provincial seasonal average wage rate.
5. Include migrant farm workers in the process to determine the yearly wage rate and provincial levels of pay based on seniority, past experience, and being “named” (requested by name) by an employer and include UFCW Canada as a full and equal participant on behalf of the migrant workers.
6. Inspect all worker housing prior to and following their occu-

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Recommendation #15:
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pany. Random inspections should also be mandated and occur regularly throughout the season, and employers who are found to be in non-compliance with standards for adequate housing terminated from the CSAWP. Immediately ban the practice of housing workers above or adjacent to greenhouses in recognition of the obvious dangers associated with living in buildings housing chemicals, fertilizers, boilers, industrial fans and/or heaters.

7. Make it mandatory that any and all written materials, instructions and signage – particularly in regard to workplace health and safety issues and chemical/pesticide use and application – be provided in English, French, Spanish, and other native languages as necessary.
8. Eliminate the practice of withholding 25% of wages for Caribbean workers.
9. Immediately terminate from CSAWP any employer found to be holding the personal documents, particularly passports and health cards, of migrant workers. Amend the program to ensure that this is a direct contravention of the program whether the withholding of the documents is done by the employer or through the consulate.
10. Where an employer is removed for CSAWP for violation of the terms of the agreement, this employer should also be ineligible to participate in any other federal or provincial foreign temporary worker programs.
11. Ensure workers are given a free medical exam on return to their home country to assess that they are arriving healthy and free from workplace illness or injury. In situations where this is not the case, ensure that worker compensation claims are duly filed.
12. Recognize UFCW Canada as an equal partner in negotiations of the CSAWP agreement on behalf of migrant workers.
13. Provide financial support for effective, on-the-ground representation for seasonal agricultural workers.
14. Provide a path to landed immigrant status for seasonal agricultural workers and other temporary foreign workers after 24 months accumulated Canadian employment.
15. Canada must not wait any longer to sign the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, which has been adopted by the United Nations General Assembly.

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The Status of Migrant Farm Workers in Canada

2006-2007

Introduction

UFCW Canada is a trade union representing more than 240,000 workers in Canada. It is part of the United Food and Commercial Workers International Union, headquartered in the United States, which represents 1.4-million workers internationally. UFCW Canada's members are engaged in work throughout the food industry from harvesting, to processing, to meat-cutting, to retail. In the province of Québec, it is known by its French acronym, TUAC Canada.

UFCW Canada has actively assisted and advocated on behalf of migrant agricultural workers in this country since the early 1990s. Over the past several years, UFCW Canada has delivered support services, information, training, and advocacy to, and on behalf of, thousands of migrant farm workers working in Canada through the Canadian Seasonal Agricultural Workers Program (CSAWP). These services are delivered through Migrant Worker Support Centres fully funded and operated by UFCW Canada.

Between 18,000 and 20,000 workers from Mexico and the Caribbean are brought to Canada each year to work on our farms. The terms of their working and living conditions are determined through the CSAWP. These terms are developed, modified and agreed to annually in meetings between the Canadian government, the sending countries and representatives of the farm employers. The migrant workers are not invited to participate in this process, nor do they have any representatives participating in the process on their behalf. The many problems and challenges that migrant workers experience while working in Canada are a direct consequence of their exclusion from the negotiation of their working and living conditions.

Our work on behalf of migrant workers has expanded to meet the migrant workers' increased need for services and advocacy. Our first centre was opened in Leamington, Ontario in 2002. Since that time, UFCW Canada has opened six more Migrant Worker Support Centres. Currently we provide assistance to migrant workers in four provinces through seven centres. In Ontario our centres are located in Leamington, Simcoe, Bradford and Virgil. Our Québec centre, originally located in St-Rémi, now provides services throughout much of rural Québec through a retrofitted mobile home. This mobile Migrant Worker Support Centre became necessary when a number of farm employers in the St-Rémi area applied pressure to local landlords to not lease office space to us. This summer, in response to an increase of migrant workers in Manitoba and British Columbia, we opened our Portage La Prairie and Abbotsford centres.

Canadian Seasonal Agricultural Worker Program

Farm work in Canada is seasonal, labour intensive, dangerous, and low-paying. Provincial labour laws generally exclude farm workers from many provisions governing hours of work, vacation pay, and overtime. Manitoba's *Employment Standards Act* provides the least provisions and protections for agricultural workers in Canada. The *Act* excludes agricultural workers from vacations, weekly day of rest, lunch breaks, minimum wage, maternity and parental leave, and provisions regarding child employment. In Alberta and Ontario, farm workers are prohibited from joining a union. In Ontario, until June 2006, all farm workers were excluded from health-and-safety legislation.

The agricultural industry is not viewed as a favourable employment sector by Canadian workers due the low wages, hard physical labour, and seasonal nature of the work. The CSAWP provides Canadian farm employers a reliable temporary workforce willing to work under these unfavourable conditions. Migrant farm

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workers arriving to Canada expect to work hard – however they have no expectation, nor should they, that to work in Canada means their rights can be violated by employers simply because they are not Canadian citizens.

Mexico and the participating Caribbean countries are considered economically disadvantaged countries with high levels of unemployment and poverty. The CSAWP allows these sending countries an opportunity to provide their workers with employment. As the number of workers has increased since the inception of the program, the remittances sent home by the migrant workers have become an ever-important source of income for these countries.

The CSAWP was initiated in 1966 as a pilot project between Canada and Jamaica in response to severe labour shortages experienced by farm employers. It allowed for 264 Jamaican workers to come to Canada temporarily to harvest tobacco in Southern Ontario. Over the next 40 years the program has expanded in all directions. The participating countries now include Mexico, Jamaica, Trinidad and Tobago, Barbados, and the Organization of Eastern Caribbean States (OECS).

The agricultural sectors now participating in the program include fruit, vegetables, and horticulture. All provinces except for New Brunswick and Newfoundland and Labrador participate in the program. The CSAWP also serves for a model for migrant workers in other Canadian industries including hospitality, construction and meat-packing. In 2005 the number of migrant farm workers in Canada totalled 20,274. Of this number, 11,798 were from Mexico and 5,916 were Jamaican. The remainder came from Trinidad and Tobago, OECS, and Barbados.

In 2005, of the over 20,000 migrant farm workers in Canada, nearly 16,500 were employed in the province of Ontario. Québec followed as the province with the second largest contingent of nearly 2,670. For the 2007 growing season the number of migrant farm workers in British Columbia has exploded from 551 in 2005 to approximately 2,500 this year. Additionally, our centres in Ontario have been experiencing an increased number of calls for help from migrant workers in Manitoba. Subsequently, UFCW Canada opened our two newest Migrant Worker Support Centres in these provinces this year to respond to the growing need for assistance expressed to us by the farm workers.

The CSAWP provides Canadian farmers with a reliable source of temporary foreign workers. It also provides the sending countries with temporary employment opportunities for many citizens who would be unlikely to find comparably paying work in their home countries. Unfortunately it provides no incentive for the agricultural industry to improve working conditions and pay. The continued result is a Canadian agricultural industry with poor standards and working conditions for Canadian and foreign workers alike.

In fact, the Canadian Horticultural Council is pressing the federal government to “enhance the availability of seasonal farm labour” by undertaking a number of reforms including:

- Allowing foreign visitors to work without work visas,
- Remove the clause in the labour contract that ties the offshore labour rate to the prevailing Canadian wage rate,
- Raise the employee’s deduction to cover the total cost of medical insurance, and
- Abandon federal plans to impose a payroll tax to fund bankruptcy insurance funds for employees.

While the Canadian Horticultural Council continues to lobby the federal government for easier and cheaper access to more migrant farm workers, UFCW Canada continues to provide support and assistance to these very same workers. Through our work at our seven Migrant Worker Support Centres, we see first-hand the challenges and difficulties working in Canada presents for many of these migrant workers. The Canadian Horticultural Council is correct: the CSAWP needs changes. Based on our work with the migrant workers, the changes most desperately needed are those that would improve working conditions for the employees.

Migrant Worker Support Centres

Over the past several years we have worked closely with community groups, academics, local labour leaders and faith-based groups to create and broaden awareness of the difficulties migrant workers encounter while working here. We continue to build an ever-widening circle of support and advocacy in order to bring change to the CSAWP that would bring positive results for migrant farm workers. This work has resulted in increased public awareness of the inadequacies and inequities of CSAWP and an increasing demand for government action.

UFCW Canada fully funds and staffs seven Migrant Agricultural Worker Support Centres in four provinces. Our centres operate for about six months during the peak growing season and have, on average, one full-time and one part-time staff. They are often overwhelmed with requests for help from migrant workers. Casework performed by staff at all our seven centres includes but is not limited to:

- Issues surrounding working conditions
- Pleas for help in repatriation cases
- Assistance with filing worker compensation claims and appeals
- Preparation of Canadian Income Tax returns
- Questions concerning Canada Pension Plan (CPP) contributions, deductions and benefits
- Queries regarding payroll deductions, hours worked, and vacation pay entitlements
- Translation requests for medical care, banking,
- Attendance at hospitals with injured or sick workers
- Obtaining health cards
- Filing claims with RBC Insurance (the mandated insurance provider under the CSWAP) for medical and dental coverage not related to workplace accident or illness
- Submitting parental benefits claims under the terms of Employment Insurance Program

Our staff does an incredible job responding to the high volume of work and to the complexity of the casework involved. UFCW Canada local unions also contribute significant efforts teaching Spanish to Canadian union members who interact with foreign workers as supermarket cashiers. Additionally, UFCW Canada local unions provide language instruction in English and French to members who are temporary foreign workers in the agriculture and meat-packing industries.

Our centres do not have an advertising budget, yet workers and employers know we are there through word of mouth and the outreach programs and activities of our staff. In fact, staff from our more established centres often receive calls from migrant workers in other provinces where there are no centres. Consulate staff from sending countries also approach our support centres for assistance on numerous issues including workers compensation and providing assistance to access medical care. Through this work and outreach we have acquired a definitive understanding of the many problems migrant farm workers encounter. Their needs are real, and their concerns are valid.

Maltreatment of migrant farm workers is a real and growing concern. Our staff has actively assisted with or has been notified of serious workplace issues and injustices. We provide just a small sampling of the problems migrant workers ask our help with. We have removed the workers' names as they have a legitimate fear of reprisals.

Work Accident, Repatriation Clarksburg, Ontario

While loading machinery onto a truck, the worker displaced two vertebrae. The doctor prescribed an operation but the worker was pressured to return to Mexico by both the employer and the consulate.

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Breaking Contract, Mistreatment, Sickness

Prince Edward, Ontario

A worker at this farm reported that they did not have potable water and eight workers suffered itching skin, eye irritation, stomach aches, and diarrhea. One worker was seriously ill as a result. The employer provides no facility to wash their clothes or pots for cooking and is aggressive and insulting toward them.

Anti-Union Reprisal, Slander

Québec

As of 2006, this worker had six years with the same employer. In the airport he informed our staff that the night before returning to Mexico, the employer requested that four of the workers sign a letter to renounce their wish to be represented by TUAC Canada (UFCW Canada). They refused and subsequently the employer wrote in their letter of recommendation that they had behaviour problems and did not request them back for 2007.

Obscene Gestures, Insults, Mistreatment

Manitoba

In 2006, three workers report that every morning the employer offers them bread, rubs it on his genital area, and requires all eight workers to eat it. If they refuse he becomes furious, shouts, and gives them fewer hours of work. He insults them saying “you are pigs” and “you eat shit”. He drives the truck in which they are transported at high speeds. He subtracts money unduly from their paycheques.

Discriminatory Treatment by Federal Authorities

British Columbia

When workers arrive at the airport, they are put in a separate line at customs. They are sniffed by police dogs. In February of 2007, one worker was strip-searched and detained for questioning, although the customs officers knew no Spanish at all. He was eventually released and no evidence was ever produced of any wrongdoing.

Violating the CSAWP

British Columbia

The CSAWP clearly prohibits employers from employing migrant farm workers in industries other than agriculture. In 2007, one British Columbian farm employer sent his migrant employees to Alberta to do construction work. They were not paid construction wages, they were not properly trained and some of these workers suffered work-related injuries. The employer has claimed in the media that building greenhouses might be considered agricultural work, but we assert that this was clearly construction and the injuries could have been avoided.

Retention of Documents, Violation of Contract

British Columbia

The employer demands piecework although the contract specifies workers will be paid by the hour, as reported by workers in 2007. The employer confiscated their documents, and did not provide beds, only sleeping bags. The Canadian workers at this farm must fill three boxes per day and they receive \$50 per box; the Mexican workers are required to fill seven boxes per day at \$17 per box.

Sub-standard Housing

British Columbia

A group of approximately 15 Mexican workers in 2007 reported that their housing conditions were substandard. The local health and fire departments were contacted and the employer was compelled by the authorities to make changes. The changes included covering an open septic tank and a pipe that were next to their living quarters and the fields where vegetables are grown.

Maltreatment, Violence

British Columbia

A Mexican worker in Abbotsford was physically assaulted because he was not weeding according to the farm employer's expectation. This 25-year-old worker was deeply frightened and came to our support centre to seek refuge. The police were notified and the worker sought to press charges. The Abbotsford police have stated in the media that they may not be able to follow through with any charges as the complainant has since returned to Mexico. The worker experienced great difficulty in receiving his wages and his flight ticket home, both obligations that the employer was reluctant to fulfill. The worker is worried that he will be blacklisted from the CSAWP in the future because he complained about his employer. In this case, the Mexican Consulate was made aware of

the problem by our Abbotsford Migrant Worker Support Centre staff and worked co-operatively to return the worker home.

Delays in Receiving Pay

Leamington, Ontario

The CSAWP agreement signed with Jamaica provides that 25% of these workers' earnings will be withheld from their cheque and provided to them on their return to Jamaica. Workers approached our centre in Leamington for help in recovering these wages due to them for over a year. Through the intervention of our Migrant Worker Support Centre, the employees finally received their money.

UFCW Canada's Migrant Workers Support Centre staff are dedicated to helping migrant farm workers whenever and wherever they are able. Our staff have made a difference to the lives of thousands of migrant workers. While our centres have had great successes in remedying many problems we are concerned for the many workers who have no access to our centres. There are many issues that remain unreported because workers are either not able to contact our centres, are unaware that our support services exist, or fear being sent home (repatriation) if they speak out.

Repatriation

When migrant workers raise issues of concern to their employer, they do so knowing they face the very real risk of being sent home under the CSAWP's repatriation provisions. Under these provisions, workers can and are sent home by their employer, often with just a day or two's notice, for any reason. This ability of employers to have workers repatriated for any reason is perhaps the most significant negative aspect of CSAWP. In essence, it provides a blanket of immunity for employers to treat workers as they choose, since any worker who tries to object can be immediately repatriated.

This provision also allows employers to send home workers who become sick or injured while working in Canada. It is a convenient method for farmers to avoid worker compensation claims and the temporary staffing issues associated with employee illness. In real terms for the migrant workers, it means that should they injure themselves on the job, they risk immediate repatriation if they file for compensation. The same is true in cases of illness. Each summer staff at all our centres encounter issues where workers become ill, require medical attention and are subsequently sent home.

The terms of the CSAWP do not provide for any opportunity to appeal repatriation decisions. This creates an atmosphere of fear for employees and impunity for employers. An appeal process for repatriation cases is more urgent now than it has ever been. For the first time since inception of the program, migrant workers are now covered under health-and-safety legislation in Ontario. Over 80% of the approximately 20,000 migrant farm workers in Canada work in Ontario. Without an appeal process for repatriation, this health-and-safety legislation will become as hollow as the employment contracts under CSAWP.

Employment Insurance Parental Benefits

For decades, migrant workers have been forced to pay into the Employment Insurance (EI) program but have not been eligible to receive any of its benefits. UFCW Canada took exception to this inequity and began advising workers to claim for parental benefits. This is the only provision of the EI program for which they are eligible.

Over the past three years we have assisted more than 4,000 migrant workers with their claims for parental benefits through Canada's EI program. The financial benefits of this claim average \$5,000 per claimant. In 2007, we noted a dramatic

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increase in the number of Jamaican and eastern Caribbean workers who are also seeking our assistance to file claims for parental benefits. The workers are approaching our support centres in spite of intimidation, harassment and misinformation from Jamaican liaison officers and employers who say that the workers will not be returned to Canada if they file for these benefits.

Through our assistance, advocacy and outreach, we take great pride in knowing that thousands of migrant farm workers and their families are now, for the first time, receiving some benefits from a program they were required to pay into for far too many years while not entitled to benefits.

Income Tax Preparation

Additionally, we have helped thousands of migrant workers submit Canadian income tax returns and these workers have received an average refund of \$250 each. The CSAWP program does not provide enough information and education to the migrant workers on their obligations to file income tax returns. More importantly, employers in CSAWP do not consistently provide their migrant employees with the required record of earnings and deductions (T4 slips) in the legislated time frames; some do not provide T4 slips at all. In some instances, the T4 slips are sent to the consulate or to a private company that completes the tax form and charges the workers for the service.

All participants in the CSAWP program should be required to fulfill their legislated obligations with regard to the issuing of T4 slips so that workers are better able to complete their obligation to file their personal income tax returns. Delays in receiving their T4 slips has led to workers being assessed late filing penalties and interest on unpaid taxes; taxes that they were not aware they owed.

Provincial Health Insurance and RBC Private Health Coverage

Since our centres in Ontario began operating, we have seen a decline of casework involving lack of Ontario health coverage and delays with obtaining health cards. We attribute this to our advocacy, and outreach work with employees, employers and health care providers. However, the number of migrant farm workers in British Columbia has increased dramatically over the past two growing seasons and health coverage is a serious issue. Migrant workers are not entitled to provincial coverage in B.C. until they have been in the province for three months. The workers are required to rely on RBC private health coverage insurance in case of illness.

In many cases, the hospital requires the worker to pay for health care up front and then submit a claim to RBC for reimbursement. This is clearly not feasible in most if not all cases for workers newly arrived at the beginning of the season since they have little to no money, and have yet to begin to receive wages. RBC does not see itself as an insurer for primary health care and workers face resistance when submitting claims. Additionally, workers in British Columbia are experiencing employers who do not enroll their workers in the provincial health care program once they have passed the three-month residency requirement.

Health care coverage is also a critical issue for migrant workers in Manitoba. This province provides provincial health care for permanent residents only. Migrant workers here must rely solely on RBC private health care insurance. One recent case brought to our centre in Portage La Prairie illustrates how migrant workers pay the price for this oversight in the CSAWP:

A migrant worker in Manitoba was advised by his doctor that he would likely need surgery in the coming months. RBC Insurance was reluctant to guarantee coverage for the procedure if it took place in Canada and as a result the worker's physician was unable to find a surgeon who would schedule a date for the procedure. The worker was pressured to return to his home country by both the Mexican Consulate and RBC Insurance. RBC Insurance guaranteed coverage of up to \$3,500

for the operation if it was performed in Mexico, but there was no guarantee that this would cover the entire cost of the operation or that the surgery would occur in a timely manner in Mexico.

Retention of Documents

We are gravely dismayed and concerned that this issue continues. Employers frequently intimidate and coerce migrant workers to surrender their passports and health cards to them upon arrival to Canada. In some cases, consular officials are pressuring workers to sign consent forms authorizing farm employers to retain the workers' documents. We cannot fathom a reason why an employer would feel this is necessary or justifiable. In fact, we believe it is not only unnecessary, inexcusably paternalistic, and discriminatory, but more importantly illegal. Each employee should be provided with access to a locker in which s/he can secure valuables including personal documents.

In June 2007, a worker in Québec suffered a workplace injury requiring medical attention that included necessary surgery for a hernia. This worker was denied his health card by his employer and medical attention was delayed until he approached our Migrant Worker Support Centre. Our staff was forced to call the police in order to have the employer relinquish the worker's health card. With our help, his health card was returned to him, he received the surgery and we have assisted him in placing a claim for Worker's Compensation. The Québec media also assisted in bringing this issue to light. The question remains: why would the employer refuse to give a sick worker his health card? UFCW Canada also shares the same puzzlement as the CBC journalist who asked a more important question: *why would the employer keep the health card in the first place?*

Since the federal government and its CSAWP program has not resolved this vital issue of personal rights and freedoms for migrant workers, UFCW Canada through our support centre in Québec will continue to pursue the legality of personal document retention/surrender with the police and the Québec Human Rights Commission. We are deeply disappointed that something as fundamental as the right to retain personal documents must be clarified and enforced by the police. Clearly, the federal government and CSAWP have been negligent in ensuring that employers in the program are properly educated as to their responsibilities with regard to workers.

This is but a small sampling of what it means to be a migrant farm worker in Canada today. We know that too many migrant workers have no access to support services. It would be naïve to presume that there are not thousands of issues similar to the representative sampling provided here that go unreported and sadly unaddressed. This is why UFCW Canada provides these workers with support centres and why we continue to advocate for changes to CSAWP.

Health and Safety

UFCW Canada is acutely aware of the inherent dangers of working in the agricultural industry. Agricultural workers have a very high rate of serious workplace accidents, injuries, illness, and fatalities. In 1999, the *Canadian Medical Association Journal* published a study finding that farm fatalities average 11.6 deaths per 100,000 workers per year. In the five-year period from 1991-95, there were 503 farm fatalities in Canada.

Our staff members devote a great deal of time providing materials to migrant workers in an effort to help them work safely. Regular education sessions for workers in the tobacco industry have been conducted in order to provide information on tobacco poisoning, how to recognize it, and steps to take to prevent it are held every season by our support centres. Seminars are also regularly provided on heat stress, West Nile virus, and pesticide poisoning. We have distributed thousands of Spanish/English health-and-safety manuals to migrant farm workers.

Clearly, the federal government and CSAWP have been negligent in ensuring that employers in the program are properly educated as to their responsibilities with regard to workers.

UFCW Canada believes it important to establish an ongoing dialogue with Mexico concerning the CSAWP and improvements that need to be made in order to adequately meet the needs of Mexican workers in Canada.

UFCW Canada has recommended in every report submitted to the Canadian government since 2001 that it establish eligibility criteria for all provinces wishing to participate in CSAWP on behalf of their farm owners. One essential criterion for participation that we have recommended was that migrant farm workers be covered under provincial health-and-safety legislation in order for that province and its farm employers to participate in CSAWP. The federal government refused to act on this recommendation even though nearly 80% of all migrant farm workers were located in Ontario and this province did not include agricultural workers (foreign or indigenous) under health-and-safety legislation. UFCW Canada began a legal challenge based on the provisions of the Canadian Charter of Rights and Freedoms against the province of Ontario in order to force the province to include all agricultural workers under the provisions of health-and-safety legislation.

As a result of these legal proceedings, the government of Ontario has finally included all agricultural workers, including migrant farm workers, under provincial health-and-safety laws. As of June 2006, farm workers in Ontario finally have the right to refuse unsafe work, the right to know about workplace hazards, and, depending on the size of the operation, the right to a joint health-and-safety committee. As of July 2007, the Ontario Ministry of Labour has investigated, charged, and fined agricultural operations with unsafe working conditions that have resulted in worker injuries. The Ontario Ministry of Labour has conducted more than 200 inspections at agricultural operations since the implementation of this legislation. The ministry has issued 173 Orders to Comply as a result of their investigations.

Unfortunately, migrant agricultural workers cannot exercise these new rights free from fear of penalty and reprisal until CSAWP is amended. Changes are necessary in order to address the systemic flaw in this program that leaves migrant workers vulnerable to employer retaliation through the repatriation provision. As of June 2006, a migrant farm worker has the provincially legislated right to refuse to perform unsafe work. Yet, because of this critical flaw in CSAWP, this worker's employer can simply have him repatriated for exercising this fundamental right.

UFCW Canada Outreach to Mexican Officials

In 2007, UFCW Canada began to establish a communication link with the Mexican government. Since the majority of migrant farm workers in Canada come from Mexico, UFCW Canada believes it important to establish an ongoing dialogue with Mexico concerning the CSAWP and improvements that need to be made in order to adequately meet the needs of Mexican workers in Canada.

In February 2007, UFCW Canada participated in a delegation to the Mexican Congress Commission on Population, Borders and Migration in order to discuss the problems facing Mexican migrant workers in Canada and our work.

At the invitation of UFCW Canada national president Wayne Hanley, five Mexican federal deputies from the same commission came to Canada in June 2007 to more fully discuss and explore the issues UFCW Canada had presented in February 2007 in a brief on Mexican migrant farm workers.

In June 2007, Deputies José Edmundo Ramirez Martínez, Omeheira López Reyna, Camerino Eleazar Márques Madrid, Alberto Amaro Corona, and David Figueroa Ortega arrived in Canada to spend a week touring UFCW Canada Migrant Worker Support Centres in Québec and Ontario and meeting with provincial and national Canadian labour leaders. The deputies enjoyed many opportunities to meet with Mexican migrant farm workers in Ontario and Québec and discuss their concerns.

Several proposals for continued dialogue and follow-up emerged from the tour. They included:

- Convene meetings between representatives of UFCW Canada, the Canadian Parliament, and Mexican Congress, stressing the need for an appeals process regarding repatriated workers and the need to continue the CSAWP but improve it.

- Review the negotiation process for the CSAWP, seeking to have workers and their representatives, including UFCW Canada, participate in the negotiations.
- Convene a meeting with the Mexican Ministry of Foreign Affairs to ensure its neutrality in worker representation campaigns and discuss ways to improve the well-being of workers while in Canada.
- Devote special attention to the situation of access to health care – including language barriers, lack of training on workers compensation, employer retention of documents, the inadequacies of the RBC insurance, and barriers to obtaining provincial health cards.

As Mexico and Canada continue to discuss the expansion of foreign worker programs to more and more employment sectors, we stress that the utmost attention be devoted to workers rights and representation as a central feature of any temporary foreign workers program, not incidental to them.

North-South Institute Workshop on Adding Value to Temporary Foreign Worker Programs

UFCW Canada has also begun to establish a dialogue and relationship with Jamaica and Barbados. A representative from UFCW Canada participated in workshops hosted by the North-South Institute in Jamaica and Barbados. Government officials from many of the sending countries were also in attendance. These Caribbean workshops presented an opportunity to review some strengths and weaknesses of the CSAWP. Panel discussions addressed the Ontario horticultural sector, workers' working and living experiences and ways to enhance workers' access to their rights including independent dispute-resolution mechanisms.

In the Barbados workshop, workers raised concerns about housing conditions, worker selection, and relations with labour liaison officials and employers in Ontario. In the Jamaican workshop, issues raised included occupational health and safety of migrant farm workers, improving housing conditions, and mechanisms that could provide workers with independent representation.

Our Migrant Worker Support Centres report that one of the main concerns expressed by workers was the mandatory withholding of 25% of their pay, to be returned to them once they are back in their home country. As previously illustrated, workers often encounter significant delays in receiving these wages. In the case of the workers from Leamington, they were told the farmer was experiencing cash flow problems and as a result the 25% withheld from their wages was delayed for over a year. There has been concern expressed to the government of Trinidad and Tobago by one of its elected officials that the 25% withholding monies taken from migrant workers was missing from the bank account established for this purpose.

UFCW Canada supports migrant workers who insist that withholding 25% of their wages should be a voluntary program and not mandatory. UFCW Canada believes that the mandatory withholding of workers wages is not legal under any of the employment standards legislation throughout Canada and that workers should receive all their wages. We look forward to continued dialogue and working more closely with these sending countries as well to work together to improve living and working conditions for all migrant farm workers in Canada.

Temporary Low Skilled Worker Program

The Canadian government has begun a new "low-skilled" temporary foreign worker program. This program provides even less protection and oversight for more migrant workers. These workers now work in industries including the service sector, health care, agriculture, construction, and even Alberta's oil fields. Employers have even fewer obligations with regard to living and working conditions than those participating in the CSAWP.

UFCW Canada and the Canadian labour movement believe this new program

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will result in creating animosity and discord at workplaces where both CSAWP workers and “low-skilled” temporary workers work side-by-side under different rules and benefits. For example, wages and housing costs vary between the two programs.

Workers brought to Canada through this new program are frequently recruited by labour brokers from the sending countries. Labour brokers charge the workers varying fees for their service. In one case, Chinese workers in the meat-packing industry were charged \$10,000 each for recruitment and training fees before they arrived in Canada. UFCW Canada believes strongly that the Canadian government must work with sending countries to remove third-party recruiters from all aspects of this program. Recruitment must be done only by the Ministries of Labour, or their equivalents, in the sending countries.

The Alberta Federation of Labour has created a new Temporary Worker Advocate Office to help protect the basic human and workplace rights of vulnerable foreign workers in the province. They are responding to stories of exploitation, neglect, and unfair treatment of these workers. The new advocate office is helping temporary foreign workers understand their rights, file employment standards complaints, complaints about workplace health and safety, deal with immigration issues, and navigate the provincial and federal bureaucracies.

UFCW Canada agrees with the Alberta Federation of Labour, as does the rest of the Canadian labour movement. And we do not stand alone: faith-based groups, immigration advocacy agencies, community agencies and individual Canadians also agree. The temporary foreign worker program benefits employers only to the detriment of the temporary workers and to our social and cultural beliefs and traditions. The concern with this program is growing daily – it is a government sanctioned and facilitated nationwide program that by the very nature of its design will only degrade Canadian working conditions and wages. The real solution to tight labour market issues is in better training for domestic workers, and reform to the immigration system.

Migrant Farm Workers and the Right to Unionize

In Canada, all 10 provinces have jurisdiction to establish labour laws for their workers. Currently, two provinces prohibit agricultural workers (foreign or domestic) from joining a union. In Ontario, the provincial government continues to assert that agricultural workers can join an association and bring their workplace issues forward under the *Agricultural Employees Protection Act*. This *Act* was the government’s response to the Supreme Court of Canada’s ruling, as a result of a challenge brought forward by UFCW Canada, that agricultural workers have the right to the freedom to associate and bargain collectively.

Just this summer, once again, the Supreme Court of Canada was called upon to clarify, for governments and employers, that the freedom to associate is an enshrined right in the *Canadian Charter of Rights and Freedoms* and includes the right to bargain collectively. The government of Ontario has yet to repeal the *Agricultural Employees Protection Act* to comply with the latest ruling of the Supreme Court.

UFCW Canada will continue its work on behalf of all of Ontario’s agricultural workers to ensure that the provincial government enacts legislation accordingly and finally allows agricultural workers in Ontario to unionize. We are awaiting dates at the Ontario Superior Court for our appeal hearings on behalf of three agricultural workplaces whose workers have indicated that they wish to join our union.

In Québec, there are three farm locations where a majority of migrant farm workers have signed union cards with TUAC Canada (UFCW Canada). These hearings have been completed and the labour board’s decision is imminent. In Manitoba, UFCW Canada has won the certification rights to represent migrant workers at one farm. The employer is considering an appeal.

In our previous recommendations to the government of Canada we have recommended that the CSAWP be amended to make it a condition of the CSAWP that

migrant farm workers belong to a union and acknowledge UFCW Canada as the union representative for migrant farm workers in this country. The federal government has taken no action as of this date, but UFCW Canada continues to move forward one worker at a time, one farm at a time, to provide these workers with the representation they need and deserve.

UFCW Canada Leading the Way

UFCW Canada has led the way in the fight for improved working and living conditions for migrant farm workers in Canada. We have met with provincial and federal legislators and their staff, consular officials from the sending countries and representatives of farm employers. We have submitted reports and letters, hosted conferences and attended meetings nationally and internationally. We have opened seven Migrant Worker Support Centres and advocated on their behalf on a grassroots level in the communities where migrant farm workers are predominately located.

We have partnered with the Canadian labour movement, academic community, social justice groups, faith-based organizations, and non-governmental agencies working with immigrants. The Canadian government cannot ignore this issue any longer. In Québec, hardly a week goes by without more media exposure to the issues concerning migrant farm workers. Canadians are taking notice and beginning to question why migrant workers continue to face unacceptable living and working conditions in this country 40 years after the inception of the program.

One of UFCW Canada's guiding principles is "what we wish for ourselves, we wish for all". We cannot watch from the sidelines, workers who have no protection, no representation, and no opportunities to participate in decisions affecting their working and living conditions. Given our inherent beliefs as Canadians and union members, we are compelled to act to help migrant farm workers as they try to address the challenges they face while in Canada.

We are proud and honoured to work with and for all migrant farm workers. UFCW Canada will continue this important work. We look forward to developing and strengthening working relationships with the governments of all the sending countries participating in CSAWP, in order that together we can help these workers achieve better working and living conditions and opportunities while in Canada.

Recommendations

Based on our continuing work with migrant farm workers in Canada we propose the following recommendations for changes to the CSAWP:

1. Provide a transparent, impartial process of appeal, available to all workers, before any decision to repatriate is made, including the appointment of a representative from UFCW Canada to fully participate in this appeal process on behalf of the workers.
2. Comply with the rulings of the Supreme Court of Canada and make it a condition of the CSAWP that provinces bringing migrant workers to Canada allow these workers the right to the freedom to associate and bargain collectively.
3. Immediately make public the statistics used by HRSDC to determine the yearly wage rates to be paid to migrant farm workers.
4. Enforce the provisions of the CSAWP that state migrant farm workers receive the same rate of pay as the provincial seasonal average wage rate.
5. Include migrant farm workers in the process to determine the yearly wage rate and provincial levels of pay based on seniority, past experience, and being "named" (requested by name) by an employer and include UFCW Canada as a full and equal participant on behalf of the migrant workers.
6. Inspect all worker housing prior to and following their occupancy. Random inspections should also be mandated and occur regularly throughout the season, and employers who are found to be in non-compliance with standards for

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**Recommendation #9:
Immediately terminate
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adequate housing terminated from the CSAWP. Immediately ban the practice of housing workers above or adjacent to greenhouses in recognition of the obvious dangers associated with living in buildings housing chemicals, fertilizers, boilers, industrial fans and/or heaters.

7. Make it mandatory that any and all written materials, instructions and signage – particularly in regard to workplace health and safety issues and chemical/pesticide use and application – be provided in English, French, Spanish, and other native languages as necessary.
8. Eliminate the practice of withholding 25% of wages for Caribbean workers.
9. Immediately terminate from CSAWP any employer found to be holding the personal documents, particularly passports and health cards, of migrant workers. Amend the program to ensure that this is a direct contravention of the program whether the withholding of the documents is done by the employer or through the consulate.
10. Where an employer is removed for CSAWP for violation of the terms of the agreement, this employer should also be ineligible to participate in any other federal or provincial foreign temporary worker programs.
11. Ensure workers are given a free medical exam on return to their home country to assess that they are arriving healthy and free from workplace illness or injury. In situations where this is not the case, ensure that worker compensation claims are duly filed.
12. Recognize UFCW Canada as an equal partner in negotiations of the CSAWP agreement on behalf of migrant workers.
13. Provide financial support for effective, on-the-ground representation for seasonal agricultural workers.
14. Provide a path to landed immigrant status for seasonal agricultural workers and other temporary foreign workers after 24 months accumulated Canadian employment.
15. Canada must not wait any longer to sign the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, which has been adopted by the United Nations General Assembly.

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