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FAST FACTS

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Rights of Migrant Farm Workers Recognized

It has been a good summer for workers' rights in Manitoba – at least on the legal front. On June 26th, the Manitoba Labour Board (MLB) issued a groundbreaking ruling on seasonal agricultural workers at Mayfair Farms.

The Manitoba Labour Board approved the application by United Food and Commercial Workers (UFCW) to represent some 65 agricultural workers at Mayfair Farms, near Portage La Prairie. Almost all of the workers are Mexicans brought in under the Seasonal Agricultural Workers Program (SAWP). After more than 65 per cent of the workers signed union cards, UFCW applied for automatic certification in October, 2006. The employer challenged the application on a number of grounds.

In its final ruling, the MLB rejected all of the challenges. The thoughtful and detailed ruling offers a strong defence against future attacks on the collective bargaining rights of agricultural and migrant workers. With some 18,000 agricultural workers coming to Canada under SAWP in 2006 and more coming every year, this is not a small gain.

Both as agricultural workers and as temporary migrant workers, these employees are among the most exploited in Canada. SAWP sets out a number of ways to establish wage rates, but in practice they tend to be at or near the provincial minimum wage plus on-farm accommodations. It also sets out a 'normal' work day of eight hours

and work week of 40 hours. While no statistics are available, anecdotal information from both workers and employers indicates that work days are routinely 12 hours or more. Days off are irregular, and during busy times, weeks can pass without a day off. No premium rate is paid for overtime.

Given the low wages, the long hours of often gruelling physical labour are the only way the migrant workers can make the trip worthwhile. One study of migrant workers from Tlaxcalan State in Mexico indicated that they had to work an average of 63 hours a week over five months in Canada to transfer a median of \$4,900 a year to their families. They accept long hours and hard work. But without union representation, they have no practical way to set any limits to the hours or to seek some pay premium for overtime – things that are set out in law for most workers in Canada, but not agricultural workers. Nor do they have any practical way to address working or living conditions on the farms.

The SAWP does offer a glimmer of hope for improvements. It states that migrant workers will have all the legal protections that Canadian workers have while they are in Canada. In Manitoba, the right to unionize is one of those protections.

In fighting the certification, the company offered three broad reasons for the Board to reject the union application.



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First, Mayfair argued that the migrant workers were not within provincial jurisdiction as they were hired under a federal program and involved non-Canadian workers. The Board cited clear case law that where the industry and the work performed fall under provincial jurisdiction, provincial legislation applies.

Second, Mayfair claimed that the workers were not employees within the meaning of the legislation. Among other points, the company argued that they did not determine the content of the labour contract as it was provided by the federal government. The Board's response quoted the Labour Relations Act that an "employee means a person employed to do work and includes any person designated by the board as an employee for the purposes of this Act." While agreeing that "the employment is certainly unique" the Board made clear that it believed that the workers were employees and that "viable and meaningful collective bargaining" was possible.

Third, Mayfair argued that it was not the employer, as the governments of Canada and Mexico chose the workers and determined many of the conditions of the employment. Again, the Board ruled that Mayfair functioned as employer based on the factors that the Board, and the courts, have used in the past to define an employer. It pointed out that in addition to being explicitly described as the employer in the employment contract, Mayfair functioned as employer in its day-to-day relations with the workers, setting hours, assigning work and providing tools.

The clarity and effectiveness of the Board's ruling is made clear by the excited response of the small business community and the provincial Conservatives. They are described in the *Winnipeg Free Press* as saying that "agricultural workers should not be unionized since the demands of a farm don't jibe with typical union work rules." Not surprisingly, the employer representatives didn't elaborate on who they thought should be unionized, but we can speculate that it would be a very short

list indeed. Nor do they explain why collective agreements can't be negotiated that reflect the unique needs of the agriculture sector. Workers who leave their families for extended periods to send home money will find ample common ground with employers who need long hours to meet mother nature's timelines.

Unfortunately, the Mayfair workers are under a lot of pressure to drop the union. In one worrisome story, a Mexican worker indicated that the Mexican government had told them to stay out of trouble in Canada. That could be taken to mean they should not stand up for their right to unionize. They have also expressed fear that they would not be allowed to return under the program next year if they joined a union.

These fears need to be addressed by all the parties. The governments of Manitoba, Canada and Mexico need to explicitly assure migrant workers that they will not be punished for exercising their rights under Canadian law. Unions, the NDP and other progressive organizations need to speak clearly in support of UFCW and the right of migrant workers to organize. Silence leaves migrant workers at risk of being intimidated into submission for fear of losing the opportunity to work in Canada.

UFCW and the migrant workers have won a significant and necessary legal victory. But it is just a start. Despite their long hours, low pay and punishing working conditions, unionization will be an uphill battle for migrant workers. But there are few workers in Canada who need the support of a union and collective bargaining more than these 'strangers within our gates'.

- Dave Hall

Dave Hall is a Winnipeg writer and long time student of labour affairs



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