THE MIGRANT LABOR PROBLEM IN WISCONSIN

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Foreword

This essay on migratory labor by Professor Elizabeth Brandeis Raushenbush of the Economics Department of The University of Wisconsin will constitute a chapter in the forthcoming volume to be published in honor of the centennial of the birth of Wisconsin's famous labor economist, John R. Commons. The authors of this book, tentatively entitled "Labor, Management and Public Policy," are members of the faculty of The University of Wisconsin. The views and opinions expressed are those of the author and do not necessarily reflect those of the Governor's Commission on Human Rights.

The Commission is pleased to render this public service and give wider distribution to the contribution of an active worker as well as able scholar in the field of migratory labor. Providing interested agencies and the public with "home grown" materials on human rights subjects has always been of special interest to the Commission in carrying out its educational duties and functions.

As a scholar in the field of labor economics and legislation, Professor Raushenbush has for many years served as a consultant and resource person to the Commission in its own fact finding and community organization activities in migrant labor. Beyond this, her deep concern for migrant workers as human beings and her conviction that something must and can be done to improve the lot of these people, have made her a co-worker of the Commission, as a member of earlier state migrant committees, and now as chairman of the official Governor's Committee on Migratory Labor.

Prior to the President's comprehensive federal study of the subject, in 1950, the Governor's Commission on Human Rights issued the first official state report in the country on the newly recognized needs of migratory people. It was

entitled: "Migratory Agricultural Workers in Wisconsin: A Problem in Human Rights." Professor Raushenbush's essay brings together and up-dates at an important time much of the material contained in this report. For it appears that in 1962 we may at last achieve some real state and national cooperation to help relieve the serious migrant labor problem.

Governor's Commission on Human Rights
April, 1962

Introduction

A mid-twentieth century John R. Commons, in search of a labor problem to engage his talents, might well choose the plight of the migrant farm worker. In Wisconsin he is typically a Spanish-speaking American citizen — a Texas-Mexican — who comes to Wisconsin with his family to work in our fields and orchards. Here is a labor problem to intrigue the scholar, to arouse the humanitarian, and to challenge the skill of the social inventor.

Today in Wisconsin as elsewhere the migrant farm worker is low man on the labor totem pole. And between him and wage earners in all other employments the gap seems to be growing wider year by year. In other occupations, real wages have been rising, working hours have been falling and security has been broadened and enhanced, by laws, by collective bargaining and by employer practices. But migrant agricultural workers have had little or no share in these gains. In addition, migratory life creates special problems, calling for special government services and regulations; and these are still grossly inadequate. Why is this so? Despite a plethora of national investigations and publications, precise knowledge about these migrants is still strangely lacking. Despite all sorts of groups concerned about their plight, little has been accomplished to ameliorate their condition. To extend to migrants in agriculture existing legislation which protects other workers encounters unexpected opposition. And when they are brought under such laws, the remedies do not seem to fit the situation or work out as they should. What is wrong?

The migratory labor problem is nationwide. A majority of states use migrants, and most migrants work in several states in the course of a year. Some government action at the Federal level is clearly appropriate. But state action will remain indispensable whatever the Federal government does. This essay will indicate the over-all picture, but gives

details for Wisconsin only. Wisconsin affords a good case study, the problems here and attempts at their solution are typical. And Wisconsin happens to be the state in which the author is trying in a small way to learn more of what is actually happening and why, in order to formulate and promote action on behalf of the migrants our farmers need and use.

Migrants In Wisconsin — A Few Facts and Figures

A Look Backward

Wisconsin's substantial use of migratory labor began with the acute farm labor shortage of World War II. Probably long before that, when Wisconsin was a major wheat state, it used "harvest hands" who moved from state to state — single men "riding the rails." But when Wisconsin farmers turned to dairying, they needed relatively little seasonal labor and probably managed their harvesting largely by "swapping." However, beginning in the early 1900's some specialized crops, such as cherries in Door County and perhaps peas and other canning vegetables, needed harvesters. Sugar beets, especially, required a lot of hand labor, both in cultivating and harvesting. Probably most of this seasonal work was done by Wisconsin people until World War II, except in sugar beets where the sugar refining companies had long recruited out-of-state workers to work on the farms where sugar beets were grown. They did the tedious "stoop labor" of thinning and blocking, and later the harvesting of the beets. Early in the century these out-of-state workers were mostly recent immigrants, first Belgians and later German-Russians. Probably in the '20's, as these immigrants got farms of their own, the refining companies began to recruit Mexicans living in Texas. Whether born in Mexico or Texas, these workers were Spanish-speaking. They came in family groups, usually brought by labor contractors known as "crew leaders." The wives and children worked in the fields along with the men. How many came, how many worked in crops other than sugar beets, is one of many unknowns in the migrant story.

We do know that around 1920 the employment of young children (probably Wisconsin children as well as migrants) in specialized kinds of agriculture led those concerned with

child welfare to push for an amendment to bring agriculture — hitherto entirely exempt — under the state child labor law. Investigations by the Industrial Commission in the early '20's found children working long hours in beet fields and cranberry marshes when they should have been in school. The cherry growers defeated the proposed amendment in 1921 and 1923. But it was passed in 1925, after the cherry growers were persuaded to withdraw their opposition. The amendment was very moderate. It did not bring agriculture under the general provisions of the child labor law, but gave the State Industrial Commission power to regulate the employment of children under 16 in "cherry orchards, market gardening, gardening conducted or controlled by canning companies, and the culture of sugar beets and cranberries".[1] In the Commission's report for 1924-26, the director of the Women and Children's Department, Maud Swett, gives this bit of history:

"From 1867-1925 provisions of the child labor law have not applied to children engaged in agricultural pursuits. During the last few years, however, certain types of agriculture, such as the harvesting of sugar beets, cherries and cranberries, and market gardening, have become specialized in form, taking on many of the characteristics of factory work. In these industrialized forms of agriculture certain evils relative to the employment of minors have crept in. Chief among these complaints are those with reference to the interference with attendance at school, the lack of careful supervision, long hours and in some instances unsuitable or harmful work and lack of proper sanitation and housing."[2]

Although Miss Swett mentions several crops, the only order issued by the Industrial Commission under its new power was limited to sugar beets. Issued in 1926, it set no general minimum age for employment, merely limited child labor up to 14 to eight hours per day and 48 per week.[3] To get the children into school, it provided that those under 14

who had not completed the 8th grade "are prohibited from working while the school in the district in which they are employed is in session."[4] That the children involved included migrants — whether Texas Mexicans or not — can be inferred from the further provision that records must be kept of "the last residential address of each migratory family."[5] In subsequent reports, Miss Swett refers to the order regulating "the employment of migratory children in sugar beet fields." This order was finally dropped in the late '30's because of the new Federal regulation of child labor in sugar beets to be described below.

In all the years up to 1960, no other order was issued by the Wisconsin Industrial Commission regulating child labor in the other crops to which its power extended. Children — whether migrant or Wisconsin children I can't determine — certainly worked at cherry picking in the '20's and '30's. Miss Swett inspected the orchards at the harvest season and urged on the growers the working and living conditions for children which she thought should be provided. Apparently the orchard owners preferred to make the changes she urged rather than have the Commission issue an order. But all this throws little light on the amount of migrant labor in Wisconsin in these years.

Then came the acute farm labor shortage of World War II. A nationwide farm labor program operated under Agricultural Extension brought to Wisconsin German prisoners of war and foreign workers from Mexico and the British West Indies to harvest a variety of fruits and vegetables. Texas Mexicans continued to be brought to the state by the sugar companies and attempts were made to put them to work in other crops between the two seasons of sugar beet work. It seems probable that 1947 was the first year that Texas Mexicans were used in substantial numbers in cultivating and harvesting crops other than sugar beets. The number of Texas Mexicans in the state that year was about 5,000. In addition, foreign migrants numbered about 2,800.[6]

It was probably assumed that the use of migrants in Wisconsin agriculture would diminish from then on. Instead it increased. Wisconsin State Employment Service (WSES) reported nearly 9,000 domestic migrant workers in 1953 and nearly 12,000 in 1954. The 10-year average for 1950-1960 was around 11,000 workers (not counting children under 16, though many of them work.) Perhaps due to exceptionally good crops the number reached 12,686 in 1961.[7] Mechanization of one harvesting operation after another which has occurred in the past decade does not seem to reduce the over-all demand for migrant labor. At least up to 1961, mechanization has been offset by other factors which increase demand.

Migrants in Wisconsin in 1960 and 1961

Facts as to numbers, location, and length of stay

In 1961 WSES counted 12,686 domestic migrants working in Wisconsin plus 5,039 children under 16, many of whom worked, too. Most of these were Texas Mexicans — 10,770 out of the 12,686.[8] How many additional migrants worked in the state without using the Employment Service, we don't know. The sugar refining company recruited directly in Texas without using the Service, but WSES believes that most of these Texas Mexicans registered with them after beet cultivation was over and thus got into their count. Figures for 1960 indicate that migrants worked in 28 of the 71 counties of the state.[9] The largest concentrations were in Waushara, Door, and Oconto — in Waushara and Oconto mainly to harvest cucumbers for pickling, in Door to pick cherries. Smaller numbers were used in harvesting peas and sweet corn for canning, to thin and block sugar beets and to work in miscellaneous vegetables, including mint — much of this in mucklands. The migrants stayed in one location for lengths of time varying from over five months in vegetables, where they plant, weed and harvest,

to four weeks in cherries where they merely pick. In sugar beets, migrants in recent years were used only in the early season — late May to early July — to thin and block. The harvesting was done by machine without the use of migrants.

In addition to these domestic migrants the WSES brought to Wisconsin in 1961 approximately 1,300 foreign workers. Most of this group were Mexican Nationals. (The conditions under which these foreign workers could be brought in will be discussed later.)

Conditions of migrants in Wisconsin — What we know and what we don't know

Evils inherent in migrant life

Obviously there are evils inherent in migratory work regardless of the wages, hours and working conditions — the criteria by which other kinds of jobs are judged. First, for the migrants there are days of travel from "home base" and then from one job to the next — days lost so far as earnings are concerned. If the migrants are brought from Texas by "crew leaders," they usually travel in overcrowded buses or trucks, often ill-protected in case of bad weather, and with few stops en route to eat or sleep. No wonder a car of his own to make the trip is often the first thing a migrant worker buys. It is far better than riding in a truck, even if it, too, is overcrowded when the whole family is aboard.

Then consider the living conditions for migrants in the places where they stop to work. For them living conditions are part of working conditions. It is natural, if not inevitable, for the employer to furnish living quarters for temporary workers who come from far away. For single men (such as foreign workers) the employer usually furnishes meals too. But for "family type" labor it is customary to provide some kind of stove for cooking; in addition the need for some kind of laundry facilities is apparent. Water sup-

ply and sewage disposal problems are sure to arise in a migrant camp. Yet where workers are needed and used for often as little as five or six weeks in the year, it is understandable that employers are reluctant to invest the sums needed to provide housing which would be even minimal for year round living.

So all over the country the housing typically available for migrant workers and their families has been the most visible evidence of their substandard conditions. Migrant families are too often crowded into shacks with rudimentary sanitary arrangements, inadequate cooking and laundry facilities. Though Wisconsin's State Board of Health has worked on this problem for more than a decade, there remain many migrant camps in the state which can only be called rural slums. It is really immaterial whether, as is often alleged, the homes in which the migrants live in Texas are no better than the housing in these Wisconsin camps. Actually many migrants, perhaps the majority, spend more time "on the road" than they do in Texas, so camp conditions are the more important. It is touching to see the enthusiasm of migrant women for fixing up their "homes" in a Wisconsin camp, if they are given any encouragement. They sometimes even plant flowers beside the door to enjoy "when we come back next year."

For the children, migrant work means broken and shortened schooling. Every study has shown retardation in school. Retardation increases with age; tests show that gradewise the children are on the average one or more years behind their age group at age 6 and 7; but three or more years behind at age 11 and above.[10]

Finally, Texas Mexicans in Wisconsin are usually regarded as foreigners because they speak Spanish; and their dark skins often subject them to discriminatory treatment in stores and movies and sometimes even in taverns and churches.

Why then do Texas Mexicans travel so far to work in Wisconsin? Earnings and employment must look a lot better than in Texas. How good are they?

Earnings of migrant farm workers in Wisconsin

Earning figures in Wisconsin are hard to come by. Most migrants are paid on a piece-rate basis. How many hours they work and how much they earn per hour, day, or week seems to be largely unknown. The U. S. Department of Agriculture by the use of its statistical samples and techniques gives 84½¢ per hour as the average cash hourly earnings for agricultural workers of all types in 1960 in the East North Central region of which Wisconsin is a part. For Wisconsin alone their figure was 85¢.[12] Incidentally 84½¢ was the lowest regional average outside of the South. The average for the Pacific region was $1.21. The national average of 82¢ per hour for agriculture should be compared with $2.29 per hour for production workers in manufacturing in 1960 and with the figure for the lowest non-agricultural classification, which was laundries, where average hourly earnings were $1.22.[12] In Wisconsin for 1960 compare 85¢ per hour for farm workers with $2.37 per hour for manufacturing and $1.34 per hour in laundries.[13] The gap between farm workers and laundry workers, the lowest paid non-agricultural group, looks even wider when we reflect that about three-fourths of laundry workers are women.

The 85¢ per hour is an average for all Wisconsin farm wage workers. Hourly wage figures for migrants only are not available. However, the U. S. Department of Agriculture does provide a daily average earnings figure, specifically for migrant farm workers, by regions. For the North Central Region it was $6 per day in 1959.[14] If we compare this with daily earnings in Wisconsin in that year, we find the gap between migrants in agriculture and the lowest paid non-agricultural occupation is even wider. Compare $6 per

day with $9.74 for laundry workers. For manufacturing the average daily earnings figure was $18.61.[15]

Since most migrants move across state lines, to ask what they earned in Wisconsin in a particular year would tell only part of the story. Fortunately there are some national figures. For 1959, excluding persons who worked less than 25 days in agriculture (not really part of the farm labor force), we find that the average annual earnings from farm work of migrant farm workers was $710. The average days worked on farms numbered only 119. If we add earnings from supplementary work outside agriculture, we can only add an average of $201 more.

While wages of other workers have been rising, the annual earnings and daily earnings of migrant farm workers seem to be going down. In 1954 the national annual average was $794, the daily average $6.40. In 1956 these figures went up to $935 per year and $8.05 per day. But in 1959 they had fallen to $710 per year and $6 per day.[16] For Wisconsin it is possible to compare at least one piece rate paid in 1961 with that prevailing in 1946. It is somewhat startling, in view of changes in price levels, to find that 20¢ per pail for cherry picking — the rate set by the Industrial Commission to meet the minimum wage in 1961 — was reported as the "most common prevailing wage" for cherry picking in 1946.[17] If 20¢ per pail for cherry picking is representative of other rates paid to migrants in the post war period, it would suggest that their "real" earnings in Wisconsin have fallen substantially in the past decade. It would take 30¢ in 1961 to equal the purchasing power of the 20¢ paid in 1946.

Hours and working conditions

For migrant farm workers in Wisconsin, as elsewhere, there is no legal restriction on hours of work and no time and a half for overtime.[18] In general actual hours are probably very long per day and frequently too short per week as

well as per year. That is, on good days when the crop is ready, these workers, women and children as well as men, are urged, if not required, to work "from sun up to sun down" — as textile mill workers did in New England more than a century ago. But in many weeks, bad weather or a crop unready to harvest means days without work or pay. For Wisconsin we have no figures on this. In New York (where weather and crops are similar) an attempt was made in 1959 in a study of migrants to find out how many days of work were completely lost. The figures show that no work was available on one-fifth of the regular work days. This lost time of course reduces earnings substantially.[10]

What working conditions are part of migrant jobs? The accident rate is very high in mechanized agriculture, but this does not apply to most of the work migrants do. As for other physical conditions, they are usually assumed to be highly desirable — outdoor fresh air work. However, it should be noted that, except for cherry picking, almost all the work migrants do involves "stoop labor," which even those accustomed to other kinds of hard physical work find extremely distasteful in large doses. In fact, the use of children is often defended on the ground that they don't have so far to stoop and don't find continued squatting as difficult as adults do.

Wide and Deep Concern For Migrants

In view of the condition of migrant farm workers, it is perhaps not surprising that humanitarian concern for their welfare began years ago. As stated at a Senate Committee hearing in 1959:

"There have been nearly 60 occasions in the last 50 years when the American conscience, disturbed temporarily by the paradox of poverty amid plenty, has prompted investigations and recommendations in the hope of eventually alleviating this malignant social problem. Four of these reports were issued between 1909 and 1930, the remainder have come forth — at the rate of nearly 2 each year."[19]

The most important of these reports was made by the President's Commission on Migratory Labor in American Agriculture in 1951. In 1954 President Eisenhower established a Federal Interdepartmental Committee on Migratory Labor made up of the secretaries of Agriculture, Labor, Interior, and Health Education and Welfare plus the Administrator of the Housing and Home Finance Agency. This Committee, through a small staff and working representatives of the named Federal agencies, promotes joint Federal-state action on behalf of migrants.

Meanwhile many private organizations have for years been working in various ways to help migrants — both with direct services and in promoting government action at all levels. The U.S. Department of Labor counts 28 such organizations.[20] The Migrant Ministry of the National Council of Churches is the oldest. It dates its work with migrants from 1920 when it started a day-care center for migrant children in Hurlock, Md. The National Council of Catholic Women has also been working for migrants for years. More recently the Catholics have set up a special

Bishops' Migrant Committee and in many areas the National Council of Catholic Men is also active.

Then there is the National Council on Agricultural Life and Labor, the National Sharecroppers Fund, and the National Advisory Committee on Farm Labor. The American Friends are concerned and active and so is the National Child Labor Committee.

Activity at the state level is also widespread. In recent years many states have set up official representative committees to study the migrant problem and promote a variety of activities on their behalf. Five such committees were set up before 1954. Since then, partly due to promotion by the President's Committee created in that year, 24 other states have followed suit. This makes 29 states with such committees. Rather surprisingly, this list does not include the state which ranks second in its use of migrants, namely California, where 59,700 domestic migrants worked in the peak period in 1959.[29] Three other states using substantial numbers of migrants, Kansas, Missouri, and Montana, also lacked an official state committee. But private groups, especially church groups, were undoubtedly functioning in all these states.

The state committees varied in size from 10 to 40 members. In six states (Maryland, Oregon, New Jersey, Texas, Rhode Island, and Oklahoma), they were established by legislative action; in the others by executive action of the Governor. Members represented state departments and a variety of groups and individuals concerned with migrant problems. The amount of activity has varied widely from state to state. Some committees have considerable achievement to their credit. All indicate wide recognition of the migrant situation.[30]

In Wisconsin in 1950 the Governor, at the request of the Governor's Commission on Human Rights, appointed an Interagency Committee on Migrant Problems. In 1953

this was converted into a widely representative State Migrant Committee under the auspices of the Wisconsin Welfare Council — with representatives of state departments, church, and many other concerned groups plus representatives of growers who use migrant labor. This committee promoted various activities, including legislation such as the migrant camp law described in the next section. In 1960 this non-official state committee was disbanded, to be succeeded by a somewhat smaller official committee appointed by the Governor — again made up of representatives of the state departments concerned with the migrant problem plus representatives of growers using migrant labor plus church and other groups and a few interested individuals, the Governor's Committee on Migratory Labor.

In addition to this statewide committee, county or local committees have been organized in some areas in Wisconsin. In others a local Protestant or Catholic group has provided a school or some other direct service for the migrants who came there. Most of these local committees have rallied strongly in support of various proposed bills and administrative orders dealing with migrant problems; their representatives have appeared at hearings, talked and written to legislators, etc. Other groups not serving migrants directly also have supported some of these proposals — the Wisconsin sections of the League of Women Voters, the American Association of University Women, the Wisconsin AFL-CIO, etc. In short, the plight of migrant workers, especially migrant children, has a wide and strong appeal. All kinds of people want to help them.

Government Protection of Migrant Workers

It seems clear that migrants are a disadvantaged group and as such have aroused widespread humanitarian concern. Further it appears that groups which want to help migrants have decided that government action, state and Federal, is needed. What has been accomplished? What laws and regulations exist to protect or serve migrant workers and their families in one way or another?

Federal

The principal Federal laws which might be expected to protect migrant farm workers are: (1) The Fair Labor Standards Act (FLSA) and (2) Social Security's Old Age Survivors and Disability Insurance (OASDI).

Actually, FLSA exempts agriculture completely so far as its wage and hour provisions are concerned. If there were a Federal minimum wage for agriculture even approximating the present $1.15 per hour for other workers, it would obviously force a considerable increase in migrant wages in most parts of the United States.

The child labor provisions of FLSA also exempt agriculture — with one very important exception. During the hours and days that the school in the district is in session, no child under 16 may be employed in agriculture. To the extent that this requirement is enforced or observed, it keeps migrant children out of the fields during school hours when their parents are doing spring work and takes them out in the fall after school has started. The Federal Wage Hour Division makes a gallant attempt to enforce this 16-year limit. It has devoted much of its inspection man power to the task in spring and in fall ever since the provision was enacted in 1949. But the areas to be covered are great in the

short periods involved. Violations have continued at a high rate.[24]

The difficulty of enforcing this Federal provision is enhanced by the absence of state regulations to back it up. The lack of a state child labor permit requirement for agriculture in almost all states puts a great burden on the Federal inspectors. In Wisconsin for example, though no child may be legally employed in "commercialized" agriculture under the age of 12, those from 12 to 18 do not have to have the permits required up to age 18 in almost all other occupations.[25] In inspecting in other employments, Federal inspectors can ask to see the state permits for children whom they suspect are under age. In agriculture it is obviously far more difficult to detect or prove a violation of the Federal 16-year minimum age if the child asserts he is 16 or over.

Even though not fully complied with, this Federal child labor provision is immensely important. However, it should be noted that when the Wage Hour Division orders the children out of the fields, this does not automatically put the children into school. Do state laws require school attendance by migrant children; or even require the local schools to accept them? The answers to these questions for Wisconsin are discussed below.

During summer months then, the present Federal provision offers no protection against work at any age, however young. Amendments to FLSA now pending in Congress would set a minimum age for summer work in agriculture.

The second Federal statute which should give some protection to migrant agricultural workers is OASDI. Originally agriculture was completely exempt. A beginning of coverage for agricultural workers came in 1950. The present provision dates from 1956. But how many migrant workers are actually building up accounts through payment of tax by themselves and their employers, no one really knows. The tax is collected from employers by the Internal Revenue

Service. In its reports no attempt is made to distinguish between migrant and non-migrant agricultural workers. But a comparison between the number of hired agricultural workers for whom tax was paid in 1959 (as reported by Internal Revenue)[26] and the U.S. Department of Agriculture's estimate of hired workers employed in agriculture 25 or more days in the same year[27] indicates 250,000 to 300,000 such workers for whom no OASDI tax was paid. It is safe to guess that most of these farm workers lost to OASDI were domestic migrants. Since the total number of such migrants in 1959 was about 500,000,[28] this indicates that for a half to three-fifths of them the presumed protection of OASDI will prove non-existent when the time comes for them to claim benefits.[29]

One reason why so many migrant workers are lost to OASDI lies in the definition of employer and the earnings requirement. Tax must be paid by an employer if he pays a worker $150 in a year, or if the worker works for him on 20 or more days in a year. Further, the statute makes the crew leader the employer if he arranges with the farm operator to furnish workers and if he pays the workers on his own behalf or on behalf of the farmer.[30] How many crew leaders understand their obligation in this respect, pay the tax for themselves and deduct and pay for the worker? It is said that in Wisconsin most wages are paid directly by the grower or processor. If this is true, few crew leaders here are "employers" for the purpose of the OASDI definition. This suggests that perhaps a larger proportion of migrants have their tax deducted and paid here than in many other states. But do many Wisconsin farmers who pay migrants directly, pay them enough, or employ them long enough to meet the definition? And when they do, do they all actually pay the tax for themselves and their migrants? Since Internal Revenue does not distinguish migrants from other farm workers, there is no figure for migrants paying tax in Wisconsin to compare with the

Employment Service figure of migrants working in Wisconsin.

It is not easy for Internal Revenue to collect the OASDI tax for migrants because of the difficulty of determining who are the employers responsible for its payment, and of educating them to compute and pay it. Amendment of the definition of employer of agricultural labor in the OASDI Act would help.[31] But a basic difficulty would remain arising from the nature of the employment of migrant workers.

One group of migrants is protected by a special Federal law first enacted in 1937 — namely the Sugar Act, which provides a special subsidy to the growers of sugar cane and sugar beets. The Act contains a child labor provision and requires the Secretary of Agriculture to set minimum wage rates. So while working in sugar beets, migrant workers are covered by these provisions. No child under 14 can be legally employed and those 14 and 15 years old must not work more than eight hours per day nor 48 per week. Agents of the U.S. Department of Agriculture are directed to reduce the subsidy payments where violations of these child labor provisions are found.[32] In an endeavor to make these provisions enforceable, Texas Mexicans are urged by the U.S. Department of Agriculture to bring with them birth certificates or other evidence of age for their children 14 and over. But neither the law nor the Secretary of Agriculture requires child labor permits — the essential for enforcing a child labor law. As for wages, the Secretary of Agriculture sets "fair and reasonable" minimum wage rates for sugar beet workers — an hourly rate plus, for specified operations, piece rates which he "finds" will yield the hourly minimum. These rates can vary between geographical areas.[33] In 1961 the hourly rate was 85¢ in Wisconsin.[34] Here (and probably elsewhere) most of the sugar beet work is paid on a piece-rate basis.

One other special Federal regulation for migrant workers must be noted: the Interstate Commerce Commission's rules

for their transportation. Long before domestic migrants got this protection, it was included in the standards set up for the use of foreign migrants. For foreign migrants there must be insurance against injury en route, a vehicle with fixed seats and covering against inclement weather, hours of travel must be limited to 12 per day, drivers must be licensed, etc.[35] Finally in 1956 Congress directed the Interstate Commerce Commission to regulate the interstate transportation of domestic migrants in similar fashion. The Commission has issued regulations listing qualifications for drivers, standards for vehicles, requiring meal stops, etc.[36] But the ICC lacks funds for adequate enforcement and states have been urged to enact and enforce parallel regulations. Migrants standing in crowded open trucks, carried long distances without stopping, have probably diminished in numbers, but have not entirely disappeared.

Finally another attempt to protect migrant agricultural workers by Federal action deserves mention. In 1959, in the face of strong protests from growers using migrant labor, the then Secretary of Labor, James P. Mitchell, issued regulations to be met by growers who wished to use the Employment Service. These regulations were designed "to make certain, before interstate recruitment of domestic agricultural workers by the U.S. Employment Service, that the wages, housing and facilities, provisions for transportation, and other terms and conditions of employment accord to prevailing standards of employment".[37] The actual regulations are too detailed to be even summarized here. Obviously this put a great new burden on Employment Service personnel. They were instructed to determine in each state those "prevailing wages" with which proposed migrant wage rates should be compared. But much "stoop labor" work is done only by migrants. What prevailing wage is there except what they are paid? On housing, the Secretary of Labor's regulations accepted state housing standards, if any. Since Wisconsin has a state housing code, the Employ-

ment Service was to help to enforce it, including enforcement for small units below six workers — not covered under our state law.

Growers have continued to oppose this new use of the Employment Service to protect migrant workers. In 1961 they tried to have it outlawed by Congress.

In 1962, the U.S. Department of Labor is trying to do more for domestic migrants through the leverage of the Mexican Migrant Labor Program. After holding regional hearings, the Department has announced minimum wage rates per hour which must be paid to Mexican "braceros" this year and piece-rate earnings will have to be translated into hourly earnings for each pay period to be sure that they equal this hourly minimum. The rate for most of the country outside of the South has been set at $1 per hour. This is designated as an "adverse effect minimum wage." In other words, the Secretary of Labor has found that to pay foreign workers less than $1 per hour would have an adverse effect on the wages of domestic workers. Apparently an employer who uses both Mexican "braceros" and domestic workers in 1962 will have to pay the $1 per hour to the domestic workers, too. What effect this "adverse effect" rate will have on growers not using any "braceros" is not clear. The requirement that they must pay "prevailing wages" in order to use the facilities of the Employment Service still stands. Is the "adverse effect wage" the prevailing wage? At this writing, no one seems to know.

To this writer it seems doubtful whether denying use of the Employment Service can or should be used as a way to enforce a minimum wage or other minimal conditions for domestic migrants — especially where the wages and other conditions are specified only in terms of "prevailing standards of employment." Even after these standards are translated into more specific terms (such as the $1 per hour wage) can Employment Service personnel effectively in-

spect and check on wages actually earned per hour and a wide variety of working and living conditions besides? This is certainly a backhanded way to protect domestic migrants from substandard conditions. It is scarcely an effective substitute for a definite minimum wage, for better enforcement of existing transportation regulations, or a well-enforced housing code.

State

Wisconsin's laws and orders for the protection of migrant agricultural workers and their families rank high in comparison with most other states.

Minimum wage

Our state minimum wage law applies only to women and to minors up to age 21, but for these workers it is all-inclusive; agriculture has never been excluded. Minimum hourly rates are set by the Industrial Commission and are low in comparison with rates set in many other states. As set in 1960 they provide for agriculture 75¢ per hour for women and minors 16 and over and 65¢ per hour for minors under 16.[33] How enforceable are these minimum wage rates?

In the first place, most migrant farm workers are paid on a piece-rate basis. Of course piece rates are common in industry too and do not make an hourly minimum wage unworkable. The simplest way to handle the problem — the method used in enforcing the Fair Labor Standards Act — is to put the responsibility on the employer to divide the earnings of each worker for the payroll period by the hours he worked to determine whether his earnings per hour equalled the minimum hourly rate. Wisconsin, however, has long had a formula which makes it possible to employ some workers at a given piece rate who do not earn the hourly minimum. Under its 1960 orders an employer is deemed to have complied with the order if 65% of the workers in the

plant covered by a given hourly rate, have earned 5¢ above it for all hours worked in a given payroll period. The hourly earnings of the remaining 35% of the workers involved may fall any distance below the hourly minimum wage.[39] This appears to solve the problem of workers whose output is low for any reason. But obviously it assumes that the employer keeps a record of hours worked so that he can convert individual piece-rate earnings into hourly earnings, to make sure that 65% of the workers involved have met the test explained above. In industry, records of hours worked are normally kept. But migrant-using agricultural employers throw up their hands at the suggestion that such records should or can be kept. Even large-scale operators declare it is impossible. Workers, they say, largely go into the fields or orchards when they choose. Are they working? How much time is actually working time?

After the issuance of the 1960 minimum wage rates, various grower groups and the Wisconsin Farm Bureau as their spokesman asked the Industrial Commission to set specific piece rates for various agricultural occupations, such as cherry picking, which would be accepted as meeting the minimum wage. In June 1961 the Industrial Commission modified its minimum wage order by adding the following:

"The Commission may, also, upon the application of an employer or group of employers covered by this section, approve specific piece rates for any particular kind of employment on the basis of such tests or studies as it deems adequate."[40]

This proviso puts the burden on the Commission to decide, when an application is made, what piece rate or rates for a specific agricultural operation will yield earnings in accordance with the formula (5¢ above the minimum to 65% of the women and minors involved). To the extent that such rates are set by the Commission, growers are relieved of the obligation to keep records of hours worked.

To keep track of hours worked by migrants apparently seems to growers everywhere a completely unreasonable requirement. In New York, such a requirement (not part of a minimum wage) was repealed as to piece workers in 1961.[41] In California, the first minimum wage order for agricultural employment, issued in 1961, reflects the same attitude. It provides a minimum hourly rate of $1 for women and for minors over 16 employed on an hourly basis; but for piece-rate workers it provides merely a $4 per day "call in" minimum wage to meet the complaint of workers called to work to find little or none available.[42] It is assumed that if there is picking to do, earnings at piece rates will run far above this minimum. The California Commission refused the suggestion that they should set minimum piece rates; something like 500 piece rates would have been involved.

Another problem in applying a minimum wage to agriculture using migrants was partially sidestepped in the California orders by excluding minors under 16. Growers both in California and Wisconsin declare that much harvesting by migrants is done on a family basis — the children pick into the parents' pails or baskets. Where a piece rate is set under the Wisconsin order, as was done by cherry picking in 1961, the employer is presumably complying with the order so long as he credits the head of the family at the established piece rate for every pail of cherries brought to the weighing station. Yet a man's output is probably greater than a woman's or a child's. How can we tell whether the piece rate yields the hourly minimum for the women and children?

The Wisconsin Industrial Commission has undertaken to determine on request by employers what piece rate will yield the hourly minimum In asking for a piece rate in 1961 the cherry growers offered to make "test runs" which Commission personnel could observe. But test runs cannot be made until the crop is ready to harvest. In fact conditions change from one part of the season to another. A piece rate

adequate at the height of the harvest might well be inadequate in terms of hourly earnings in both the early and late parts of the season. And one year varies from another — a poor crop means that it takes much longer to fill a pail. Piece rates set on the basis of test runs in 1961 may not be appropriate in 1962.

Regardless of these difficulties, the Wisconsin Industrial Commission set a piece rate for cherry picking for 1961 before the picking season started. The rate set was 20¢ per nine-pound pail. During the picking season Commission staff conducted three "test runs' of women and minor pickers. The cherry crop was exceptionally good in 1961 which perhaps accounts for their conclusion that the 20¢ per pail piece rate was more than adequate throughout the season to yield the minimum hourly rates for women and for minors subject to the "65% formula" described above. It remains to be seen whether 20¢ will be adequate another year or whether the Commission will set a higher rate another year, if it appears that the crop will be less abundant.

Hours of work

As for any limit on the hours of work of women or minors such as Wisconsin provides for most other occupations, there is none in agriculture. The women's hour law does not cover agriculture at all, and the child labor order, described below does not limit hours of work.

Child labor

Wisconsin's child labor law covers agriculture to only a very limited extent. To be sure, the state compulsory education law requires school attendance up to age 16 and in effect bars employment during school time. But outside school hours and during vacations, there is no limitation on child labor in agriculture at any age or for any hours — with one rather narrow exception. As described above, the Industrial Commission has had, since 1925, power to regul-

late the employment of children under 16 in certain kinds of agriculture loosely called "commercialized agriculture." To understand the extent of the Commission's power, the provision had best be quoted:

"The Commission shall have power . . . to fix . . . reasonable regulations relative to the employment of children under 16 years of age in cherry orchards, market gardening, gardening conducted or controlled by canning companies, and the culture of sugar beets and cranberries —"[43]

Up to 1960 the Commission had never used this power except for the one order, limited to sugar beets, which was dropped after the Federal Sugar Act was passed. In 1960 the Commission, following a formal request from the Governor's Commission on Human Rights, set 12 years as the minimum age in all the kinds of agriculture to which its power extends. The 1960 order is weak in two respects. There is no requirement for child labor permits for children 12 and over. The long history of child labor laws shows conclusively that a minimum age for employment cannot be adequately enforced without some provision to determine the age of the child. Perhaps in due course this order will be strengthened by the addition of some kind of permit requirement. Another difficulty in enforcement was created by the inclusion of two subsections to meet the grower contention that Texas Mexicans want their young children in the fields with them, not to work, but because they want to keep the family together and there is no one to leave the little ones with. So the order provides that:

"(1) The presence of a child under 12 at the place where his parents or guardian is employed, if merely for the purpose of supervision, is not prohibited by this order, and

"(2) An employer is not deemed to have permitted a child to work at employment prohibited by this order if he has notified his employees of its provisions and has made reasonable effort to enforce such provisions and has not acquiesced in children under 12 performing such work".[44]

It is obvious that the Commission's inspector cannot tell whether or not the children in the field or orchard just stopped working when warned of his coming. And who can say whether the employer "acquiesced"? Yet unless and until we provide summer schools and child-care centers, or wages for men high enough to persuade mothers of young children to stay out of the fields, we shall find it difficult to answer the argument for this weakening of the agricultural child labor order.

Another weakness is the wording of the child labor law itself, which gives the Industrial Commission power to regulate child labor only in specified kinds of agriculture. It happens that the crop which today uses the most migrants in Wisconsin is cucumbers grown for pickling. The cucumber growers allege that the provision in the child labor statute does not cover pickles — though the distinction between pickling and canning is a narrow one.[45]

Thus in 1962 regulation of child labor in commercialized agriculture in Wisconsin consisted of a 12-year minimum age, no limitation on hours of work, no permit requirement to make it possible to determine the actual age of a child, and subsections which make presence at the work place no proof that the child is "working." In short, Wisconsin's regulation of child labor in agriculture adopted in 1960 looks decidedly embryonic. It is much more like the original child labor law of 1877 than like the mature body of child labor regulations which apply to other occupations today. We can only hope that it will not take as long for this embryo to grow to maturity.

In Wisconsin, migrant children are covered by the state compulsory education law and should be in school if they are in the state in spring or fall while the schools are in session. Some growers have done excellently in seeing that the local school accepts the children of their migrant workers. In other places it is generally (though erroneously) believed that the compulsory school law does not apply to migrant

children, and local school officials turn them away. A law was passed in 1961 which provides that school districts operating summer schools will get the same state aid that is available in winter.[46] It is hoped that this financial aid will stimulate the setting up of summer programs in school districts to which migrant families come in summer. An experimental public summer school in Manitowoc County in 1960 and 1961 was highly successful.

On the whole, when we compare Wisconsin's protection of migrant workers from low pay, long hours, and work at too early an age with protection afforded workers in other occupations, we can see how short a distance Wisconsin has come in applying its protective standards to migrants.

Social insurance and public assistance in Wisconsin

Turning to other kinds of legislation: in unemployment compensation, the exclusion of agriculture is complete. In workmen's compensation, it was complete until 1961. In that year the Wisconsin Workmen's Compensation Law was amended to cover the farmer who employs six or more agricultural workers for 20 days or more in a year.[47] This should cover most migrants. It puts Wisconsin into the small group of states which effectively include migrant agricultural workers in their workmen's compensation laws — only nine in number at the end of 1961.[48] The traditional exclusion of agriculture is of course entirely unjustified. As a whole, agriculture is a highly hazardous occupation; probably only excavation and construction rank above it in accident rate. The new Wisconsin provision will still leave the typical Wisconsin dairy farm outside workmen's compensation, but it represents a big forward step, especially for migrant farm workers.

Migrants in Wisconsin are very largely excluded from assistance programs available to other workers in case of sickness or other misfortune. Residence requirements bar

help other than emergency help from county welfare departments.

Migrant housing law

As mentioned above, Wisconsin has tried since 1949 to provide one kind of protection much needed by migrants — namely, regulation of their housing. In that year the State Board of Health issued a set of minimum standards for migrant labor camps under its general powers. A special migrant camp law was passed in 1951, strengthened in 1957 and 1961.[48] It applies to camps housing six or more migrant workers. The code sets minimum standards of space per person, ventilation, toilet and washing facilities, water supply, screening, waste disposal, etc. Years of educational work by sanitary inspectors have brought substantial progress, but general compliance is still lacking. Some growers continue to flout the regulations, which are now compulsory. Inspectors must first locate the camps; some are still operated without application for the required certificate or conditional permit. In 1961 the State Board of Health certified 378 camps as meeting its minimum standards and gave conditional permits to 45 more to operate temporarily while making the improvements required. It estimated there were another 50 to 100 camps not registered at all — presumably because the operators knew they could not meet the Board's standards. So even in 1961 a visit to some of the camps where migrants were living could startle the visitor — the living conditions were so far below what one expects to find in Wisconsin today. Large families were crowded into shacks with broken or no screens on the windows, with barely room for some double beds, often broken down, a few nails on which to hang clothes, and a small kerosene stove. Outside there were no receptacles for garbage and the garbage was scattered about. The service building with running hot and cold water required by the code was often

either lacking or out of order. In short, there was a long way still to go in migrant housing.

In summary, much labor and social insurance legislation, both Federal and Wisconsin, exempts agriculture in whole or in part. Further, some legislation which seems to protect migrants does not fit them very well and cannot be adequately enforced due to the peculiarities of the employment situation of migrants. Finally, some special legislation needed because of their special situation has been enacted. But this, too, is difficult to enforce and compliance is probably far below the level achieved for other workers.

Regulations for foreign migrants

In comparison with the body of legislation affecting domestic migrant workers, consider briefly the regulations governing the employment of foreign migrants brought to this country under agreements with Mexico and the British West Indies and the similar terms applying to migrants who came to the mainland from Puerto Rico under the standard contract accepted by the Commonwealth. Under the agreement between Mexico and the U.S.A., contracts between the Mexican migrants and their employers must be made under the supervision of representatives of both governments, and must normally be for not less than six weeks. Work must be guaranteed for three-fourths of the workdays — i.e., six days per week — beginning with the day after the workers' arrival at the place of employment. If work is not available, the Mexican worker must be paid what he would have earned had he worked the guaranteed number of days. Further, subsistence (three meals per day) must be furnished at no cost to the worker whenever he is not afforded the opportunity to work 64 hours or more in a two-week period, at the rate of one day's subsistence for each eight hours or fraction thereof that employment offered is less than 64 hours. Records of hours worked and earnings must be kept. So, his average hourly earnings are avail-

able for use in computing the amount due a Mexican worker when the days of work are short. Wage rates must be not less than those prevailing for domestic workers doing similar work.[50]

The employer of Mexican nationals must furnish workmen's compensation insurance at no cost to the worker and non-occupational accident and health insurance must be available at a reasonable cost to be paid by the workers. Housing and transportation are regulated, with detailed minimum standards specified.[51]

Very similar regulations apply to other foreign migrants and to those Puerto Ricans who are under the standard contract.

While up to 1962 the "prevailing wage" standard may have done little for the foreign migrant, the other items in these agreements provided real protections sadly lacking for domestic migrants. As noted above, few states include agriculture under workmen's compensation. Only one state, California, requires any provision of non-occupational health insurance for farm employees[52] — even with the worker paying for it. Housing and transportation are probably much better regulated for foreign migrants than for Americans — even in Wisconsin. Most important, perhaps, is the work-guarantee given foreign migrants. We don't know how many days of work Texas Mexicans lose in Wisconsin because of bad weather or because the crop is not ready to pick or what-not. This is something which greatly needs investigation. We do know that there is no guarantee of work or pay or subsistence to protect them as "braceros" are protected when they lose earnings for these reasons.

Why Have Migrants Shared So Little In Labor's Gains?

With all the active concern for migrants in so many different groups, why do the results look so meager? Why is their standard of living so far below that of other workers in Wisconsin as well as elsewhere? Why do they seem to be losing in terms of annual income and daily or hourly earnings, a loss not offset by gains of other kinds? There is no one answer to these questions; a few explanations may be indicated.

One explanation lies in the traditional American belief, still strong, that agriculture is "different"; so farm workers do not need and farmers cannot and should not be expected to provide the wages, hours, and working conditions now regarded as minimal decency standards in the rest of the economy. For example, it is generally believed that, because of its highly seasonal nature, hours of labor in agriculture cannot possibly be limited in any way, and farmers cannot be expected to pay time and a half for overtime. It is argued that agriculture is inevitably highly seasonal and farmers cannot possibly stabilize employment. How these seasonal workers live the rest of the year is not the farmers' business. Because farm work is out of doors, it is believed that it can't hurt children, however young, or whatever the length of their working day.

Closely related to these assumptions about agriculture is the view that farmers have not shared in American prosperity. Their own "wages" or over-all earnings are too low to permit them to absorb the additional labor cost which higher wages and better conditions for their migrant workers would entail. In a highly competitive sector of the economy, it is said the farmers cannot pass on added costs to the consumer. And anyway, if they could and raised the

price of food, wouldn't that hurt more people than it would help?

Next consider that migrants are not year-around residents n Wisconsin (or any other state). They stay only a few months in the state, often only a few weeks in a locality. So there is a strong reluctance to accept responsibility for them — to spend money, private or public, on their behalf. Many farmers strongly resent being required to build adequate housing, because it will be used for only a short time each year. Many taxpayers are reluctant to see public money spent to give education to migrant children. This applies whether it is spent to enlarge school facilities to make room for migrant children for a few weeks in spring and fall; or to set up summer school programs by which they can make up somewhat for their broken and shortened winter schooling. Texas should provide their schooling; why should Wisconsin? Similarly there is resistance to spending money for relief or medical assistance for migrants in need. They are non-residents, why not just ship them home? In short, many farmers and many taxpayers think that somehow we ought to be able to bring from Texas just "hands" to harvest or cultivate the crops — not whole people, who bring their children along too, with all the various needs these family groups involve.

Actually, just because they are migrants they need special services that residents don't need or perhaps even want — things that cost money, private or public, probably both. For example, if the women are to work in the fields, as they naturally want to with wages so low, what about the babies and young children? There should be day-care centers for them and summer schools for the slightly older children, as already suggested. And what about health services? Foreign governments require a health insurance program for workers coming to the U.S. Local hospitals in Wisconsin, left with the unpaid bills of migrants who became sick here,

are beginning to think some such insurance should be required for domestic migrants. Who should pay for all this?

And migrants need special government regulations, just because they are migrants. Regulation of the trucks and buses in which crew leaders transport them from Texas. There is regulation now by the Interstate Commerce Commission, but not enough money to enforce it. It should be supplemented by Wisconsin regulation as is beginning to be done in some states. Then regulation of the housing provided for migrants is absolutely essential. In Wisconsin (as described above) we have done relatively well on this. But it is hard to convince some users of migrants, and some other people, too, that government should spend money to enforce regulation of migrant housing, and thus add to the farmer's costs, too. They ask whether all Wisconsin residents have running hot water and showers and laundry facilities. Aren't these "do-gooders" pampering the Texas Mexicans who "never had it so good" at home?

So much for attitudes and opinions. Next consider the economics of the situation. At first it seems surprising that market forces do not operate to bring wages and working conditions in seasonal agriculture somewhere near those which prevail in other segments of the Wisconsin economy. This great disparity could not continue without the migrant workers from Texas. Wisconsin residents do not work for these wages or under these conditions. Why do Texas workers come so far to get so little? The short answer is: they are better off than if they stayed at home. The average hourly wage in agriculture in Texas in 1960 was 70¢ per hour; in Wisconsin it was 85¢.[53] About 100,000 Texas Mexicans left their state in 1960 to do seasonal work in the North and West.[54] And why did wages stay so low in Texas? It seems clear that farm labor wages in Texas were held down by the annual importation of Mexican Nationals. In 1960, 103,700 foreign-born workers worked in Texas.[55]

This arrangement for importing Mexican workers is embodied in Public Law 78. This provides for a treaty with Mexico which is supposed to protect both Mexican and American workers. Under the treaty, Mexican nationals must be paid the "prevailing wage for comparable agricultural work in the area" and they may be brought in only if adequate domestic labor is not available. How is a domestic labor shortage determined? Up to 1961 the description given in the report of the President's Commission on Migratory Labor 10 years earlier seemed still valid:

"Farm employers meet in advance of the season and decide on the wage they intend to pay. . . . . Whether the wage agreed upon is sufficient to attract the labor supply needed is apparently not usually considered an important factor in making the decision."[56]

If the domestic supply was not adequate at the wages growers were offering, then the Employment Service under Public Law 78 certified to a labor shortage and Mexican nationals were brought in to meet the labor demand. Thus farmers, in setting a wage for seasonal work, could ignore the good old economic law of demand and supply, because the statute in effect provided an unlimited supply of seasonal labor at whatever price the farmers set. As Secretary of Labor Goldberg testified in June 1961 at a Senate Committee hearing: Domestic migrants "are forced to compete, as are no other workers in the country, with a large body of foreign workers brought into the country yearly with the approval of the National Government and under conditions which could hardly be more effectively designed to add to the depressed economic condition of these domestic workers".[57]

New attempts are being made in 1962 to limit the importation of Mexican "braceros" by a more rigorous interpretation of the wording of Public Law 78 and the treaty with Mexico.[58] How effective the new procedures will prove remains to be seen.

Though Wisconsin in recent years has used relatively few foreign workers, the numbers brought into the U.S. to increase the farm labor supply elsewhere, especially in Texas, obviously affected the situation here. Texas Mexicans came North to work because the wages and other conditions, though low by Wisconsin standards, were better than they could get in Texas.

Ironically, as described earlier in this essay, the Mexican nationals, in fact all foreign migrants, are protected by certain "fringe benefits," including a work guarantee, which are not required for American migrants. So working in Texas, at lower wages than prevailed for similar agricultural work in Wisconsin, these foreign migrants perhaps were actually better off than the domestic migrants who come to Wisconsin from Texas to try to improve their condition.

Why has legislation, state or Federal, done so little to improve the condition of American migrants working in agriculture? Perhaps the basic difficulty lies in the character of the prevailing employer-employee relation. This relation can be described as casual, short time, disorganized, unstructured, and preindustrial. However described, it is so out of date in modern industrial America that conventional protective labor and social insurance laws just don't seem to fit. And the attempts to devise more appropriate laws or regulations have not been very successful.

When Carey McWilliams wrote about the large-scale use of migrants in California agriculture years ago, he called his book by the arresting title "Factories in the Fields." But actually, except for the size of the work force, the elements of industrial organization implicit in the word factory were almost entirely lacking. If the fruit and vegetable fields resembled factories, it was the factories of the very early 1800's, not the factories of the twentieth century. In Wisconsin, though farms using migrants have not reached the size found in California, many of them can also be called

factories, if only the number of workers employed is considered. But the industrial organization or discipline which prevails today in manufacturing, or other kinds of non-agricultural economic activity, is almost completely lacking. This creates baffling problems in applying government protection to these workers.

In the first place, a protective labor law assumes a *known employer* to be responsible for observing its provisions. In the same way a social insurance law assumes a *known employer* to pay his required tax or premium and to deduct and pay in the employee's tax, if any. Yet in the use of migrant labor in Wisconsin (as elsewhere) it is not always clear who the employer is. Is it the farmer on whose land the migrants work? Is it the crew leader who brought them from Texas and who may be paid a lump sum which he distributes among the crew?[59] Or is it the canning or other processing company which provides workers to cultivate or harvest the crop which it has contracted to buy? Or is there possibly no employer at all, as some of the farmers who grow cucumbers in Wisconsin allege? For years, the cucumber pickers' pay has been 50% of the price which the processor pays for the cucumbers. This, according to some growers, makes the pickers not employees, but "independent contractors."

Protective labor laws assume not only known employers, but also known employees. It is the *employee* who must be paid not less than the minimum wage (perhaps with time and a half for overtime). Similarly a child labor law assumes a child who asks to be an *employee*. It then puts the responsibility on the employer to assure himself that the child is not too young to be legally employed at the given job, or, if old enough, works only the permitted hours. For the most part social insurance laws, too, apply to *employees*,[60] and make their *employers* responsible for paying taxes on their behalf.

But where migrants work in agriculture in Wisconsin and elsewhere, the growers frequently allege that they really do

not know just who are their employees. Presence at the workplace, they say, cannot be used as evidence of employment. In cherry picking, for example, the grower pays by the pail and makes no attempt to determine who actually filled it. WSES describes the arrangement in this way:

"In the cherry harvest . . . family members work together as a unit and one payment is made each week to the family head for the total pails picked by the entire family".[61]

Wisconsin cherry growers frequently declare that those who are in the orchard are not necessarily employees. Texas Mexicans want their children with them. They often take even the babies into the orchard — whom would they leave them with in the camp, anyway? Further, we are told we must not assume the women are working all the time; they take time out to nurse their babies, etc. And you can't tell about the children; some may not work at all; most don't work as long as their parents. As for the hours worked, even the men, we are told, set their own hours. Many of them start at daybreak and work till dark to earn as much as possible; others choose to knock off at noon. There is no set starting time and no quitting time.

At a Senate hearing in June 1961 the executive secretary of "Michigan Field Crops," an association of growers, gave a similar description of how Texas Mexicans work. He said their foreign workers were paid by the hour and supervised in groups of 25. But domestic migrants, he declared, could not be paid on an hourly basis, and he explained why:

"It just is not possible, he said, to pay family type labor unsupervised by the hour. You have no idea how they work. You do not know how many there are — how many in the field, when they start and when they stop. . . . some of them are younger people, some women, some of whom are old people who do not want to work all day or cannot work all day, but can contribute something to the family income". He concluded that if they had to pay domestic migrants on an hourly basis *"we could not employ them — that is all".*[62]

Any other employer of hundreds or even dozens of workers would think it impossible to run his business that way. Even if he pays wages on a piece-rate basis, he pays to individuals and thinks it necessary to keep track of their hours of work. He knows that children must not be permitted to work if they are below a given age. He objects to the presence of non-workers or quasi-workers in the workplace. He recognizes the necessity of having supervisors who keep track of what is going on. The workers are checked in and out, by time clock or otherwise, and the hours between are assumed to be hours of work.

In the preceding section of this paper, some of the effects of this unstructured employment relation were indicated. This lack of structure is to large extent responsible for the unsatisfactory character of Wisconsin's agricultural child labor order and for the probable failure to collect OASDI tax from over half the domestic migrants in the U.S. Further it should be noted that where, as in cherry picking for example, the wage is paid to the head of the family for the work of the whole family, the enforcement of an hourly minimum wage for each individual worker is actually impossible. What difficulties are created in providng workmen's compensation will come to light in Wisconsin when the new law takes effect. In view of the uncertainties as to who is the employer of the migrant in a given situation, there will undoubtedly be questions as to who should buy the required insurance. If a child is injured in the field or orchard, a question may well arise as to whether or not the accident occurred "in the course of employment" and hence whether it is or is not compensable.

It is really immaterial whether the lack of structure or the diverse and confusing forms of the employment relation are due to the desires of the workers or the growers. It may be true, as growers often allege, that Texas Mexicans, or at least some of them, like to be free to start and quit work when they choose and to have their children in

the fields with them, whether they work or not. But it is also true that the farmers who need and use migrants have largely failed to assume the responsibilities assumed by employers in other segments of the economy. Further it seems clear that they have not provided wages or working or living conditions which Wisconsin residents will accept. That is why they have to turn to migrants. Strong public sentiment has developed for government action on behalf of these migrants, because they do not seem able to secure improvement in their conditions by their own efforts. But it appears that effective government action will not be possible without better structuring of the employment relation in the kind of agriculture which uses migrant labor. We need some clarification of law and fact as to who employs whom. For protective labor legislation and social insurance laws can only function by putting certain responsibilities on known employers in relation to their known employees.

Conclusion

From the point of view of its organization, or the relation of its workers to its employers, agriculture is perhaps going through a transitional period between what in manufacturing was called the "handicraft stage" and the "factory stage." In England and to some extent in the U.S., this transition in manufacturing was a period of confusion and of worsening conditions for the workers.[68] Perhaps something analogous is happening in American agriculture today.

Agriculture in the U.S. is far advanced in technology. In fact it has in recent years moved much faster in mechanization and increased productivity than any other segment of the economy. But some crops still need hand labor, especially in harvesting. It is believed in Wisconsin that residents of the state will not do that kind of back-breaking "stoop labor." Perhaps they would, if wages were more nearly comparable to wages in non-agricultural work. But believing as they do, Wisconsin food processors and farmers have contrived in various ways to secure a seasonal labor force willing to do "stoop labor" at wages and under conditions well below those prevailing in other segments of the economy. The domestic migrants involved do not number more than about 12,000 in Wisconsin; about half a million in the U.S. as a whole. Perhaps the miracles of technology will shrink these figures rather rapidly in the near future. But as of 1961 the number was large enough to cause concern in those who like to think of the U.S. as an "affluent society." And if most of these "stoop labor" jobs do disappear in the next few decades, they will leave behind an ugly residue of children grown into adults with so little education that they will be unable to function in the modern economy.

As the President's Commission on Migratory Labor concluded in 1951:

"The issue . . . is job standards . . . . Public policy must encourage farm employers to build reliable jobs for reliable people, not to maintain obsolete and intolerable standards. The management of our farms must learn to do what management in industry and commerce have done. . . . We must build toward an agriculture that will yield a decent American income for those who provide labor"."

A decade later, action still needs to be taken in Wisconsin as elsewhere to implement that policy. We need laws and regulations specifically adapted to the special problems involved. If we seek to follow in "John R's" footsteps, we must try to find out more about what is actually happening and why. This should help us devise more effective government action to better the condition of agricultural migrants.

Footnotes

[1]Now 103.77 (2) of the Wisconsin Statutes.

[2]Biennial Report of Wisconsin Industrial Commission for 1924-26, p. 38.

[3]This attempt to limit the children's hours of work sounds reasonable. But then (and even now) limitation of hours in agriculture was unrealistic and very difficult to enforce.

[4]It was thus a forerunner of the present child labor in agriculture provision of the Fair Labor Standards Act (enacted in 1949).

[5]For the full wording of the order see Biennial Report, *op. cit.*, p. 39.

[6]George Hill: Texas Mexican Migratory Agricultural Workers in Wisconsin, Ag. Ext. Station Stencil Bul. 6, 1948, p. 4 and Salick, Long and Sorden, *The Wisconsin Farm Labor Program, 1943-47*, mimeographed report published 1948 by Agricultural Extension Service, College of Agriculture, The University of Wisconsin.

[7]Wisconsin State Employment Service Fact Sheet, "Migratory Workers in Wisconsin, 1961."

[8]*Ibid.*: It should be noted that the WSES count includes migrant workers in "seasonal food processing" —i.e., in freezing, canning and pickling plants. But nobody knows what figure should be subtracted to get the figure for field workers only.

[9]*Children in Migrant Families*, a report to Committee on Appropriations, U.S. Senate by U.S. Department of Health, Education and Welfare, Social Security Administration Children's Bureau, December 1960, p. 59.

[10]See the findings of a study made in Wisconsin in 1960 as part of a research project of the University School of Education financed by the U.S. Office of Education, reproduced, p. 349 of Hearings April 12 and 13, 1961 before SubCommittee on Migratory Labor of Senate Comm. on Labor and Public Welfare, 87th Congress, 1st Session. Many other studies showing similar retardation could be cited.

[11]U.S. Department of Agriculture, Agricultural Marketing Service *Farm Labor*, release of January 10, 1961, p. 15.

[12]*Hired Farm Workers in the United States*, U.S. Department of Labor, Bureau of Employment Security, June, 1961, p. 32.

[13]Figures from Statistical Department of Wisconsin Industrial Commission.

[14]U.S. Department of Agriculture Economic Research Service Bulletin #238, *Hired Farm Working Force of 1959*, p. 43, Table 29.

[15]Figures furnished by Statistical Department of Wisconsin Industrial Commission.

[16]*Hired Farm Working Force of 1959* op. cit p 42 Table 27

[17]*The Wisconsin Farm Labor Program, 1943-1947* by Salick, Long and Sorden, Appendix C, p. 15, published by Wisconsin Agricultural Extension, The University of Wisconsin.

[18]As described below, one small exception should be noted: the Federal Sugar Act limits hours for children 14 to 16 years old to eight per day, but it is doubtful whether any attempt is made to enforce this rule.

[19]*Employment and Earnings of Migrant Farm Workers in New York State,* New York Department of Labor, Publication No. B-116, August 1960, p. 9.

[20]Migratory Labor Hearings Sub-Committee on Migratory Labor of Committee on Labor and Public Welfare, U.S. Senate, 86th Congress, 1st Session, August, September, October 1959, p. 320.

[21]*Programs of National Organizations for Migrant Farm Workers* and Their Families. U. S. Dept. of Labor Bureau of Labor Standards Bulletin 236, December 1961.

[22]Though California has no State Committee on migrants, it has taken much legislative and administrative action which benefits migrants: agriculture is covered by Workmen's Compensation, there is a camp housing law, and in 1961 California for the first time set minimum wage rates for women and minors over 16 in agriculture and brought agricultural workers under its disability insurance law.

[23]Data on these Committees from Bulletin 215 of Bureau of Labor Standards, U.S. Department of Labor, 1960.

[24]In 1959 the Wage Hour Division found 4,389 children working in agriculture in violation of the Act, the great majority of them under 14. They reported that "illegal employment of children under 16 years in agriculture constitutes the most numerous type of violation covered by the child labor provisions of FLSA" see *Child Labor Today* as reported by Wage and Hour and Public Contracts Division, 1959, p. 3.

[25]See discussion of Wisconsin provision below, p. 31.

[26]*Social Security Farm Statistics, 1955-1959 of the U.S. Department* of Health, Education and Welfare — Social Security Administration BOASI, August 1961, p. 1:

> *"The number of farm employers filing annual social security earnings reports for their workers remained stable at about 500,000 during the 1955-59 period. The numbers of workers reported also remained nearly constant at about 1.9 million."*

[21]*The Hired Farm Working Force of 1959*, Agriculture Information Bulletin 238, Economic Research Service, U.S. Department of Agriculture, p. 7.

"The total number of workers with 25 or more days of farm wage work during the year decreased very slightly to 3.2 million in 1959."

[22]*Hired Farm Workers in the United States*, U.S. Department of Labor, Bureau of Employment Security, June 1961. Introduction.

[23]At this time (early 1962) figures are not available to make this comparison for 1961, but in view of the difficulties indicated it is unlikely that the gap has been narrowed substantially.

[24]*Social Security Handbook*, based on regulations in effect January 1, 1960 section 731, or U.S. Code Title 42 Sub-Chapter II paragraph 409 (2) and paragraph 410 (0).

[25]*Ibid.*

[26]U.S. Sugar Act Public Law 140 82nd Congress as amended by Public Law 545, 84th Congress, 2nd Session, Section 301 (a).

[27]*Ibid.* (c).

[28] From Administrator for Wisconsin, Leo Ley.

[29]Public Law 78, 82nd Congress as amended, Standard Work Contract, Article 7 and Joint Operating Instructions No. 1.

[30]*The Migratory Farm Labor Problem in the United States*, Sub-Committee on Migratory Labor, September 1961, p. 19. A report together with individual views to the Committee on Labor and Public Welfare, U.S. Senate, 1961.

[31]Annual Report of the Bureau of Employment Security, U.S. Department of Labor — Fiscal Year 1960, p. 82.

[32]Wisconsin Administrative Code, Ind. 72.04.

[33]*Ibid.* Ind. 72.02 (4).

"Where payment of wages is made upon a basis or system other than time rate, the actual wage shall not be less than provided for in this order, but if the piece rates paid for any particular kind of work yield to 65% of the women and minors employed thereon 5¢ per hour more than the minimum hourly rates prescribed in paragraph (1) then such piece rates are deemed adequate for such employees and differences between earnings at these rates and the prescribed hourly rates do not have to be made up by the employer."

[34]*Ibid.* Ind. 72.04 (3). Effective July 1, 1961.

[35]New York Sessions Laws of 1961, Ch. 300.

[36]California Industrial Welfare Commission Order No. 14-61.

[37]Wisconsin Statutes 103.77 (2).

[38]Wisconsin Administration Code Ind. 70.16.

[26]They also claim that the adult migrants who harvest cucumbers are "independent contractors," not employees, because their pay is set as one half of the price paid for the cucumbers. If the adult migrants are not employees, it might be claimed that the migrant children work for their parents and hence are not subject to any order issued under the child labor law. This claim is possible because the Act contains a provision that children working on a farm for their parents are not subject to it. Wisconsin Statutes 103.67 (4). However this provision would not seem to apply to migrants. It reads: "Nothing in 103.64-103.82 shall be construed to apply to the employment of a minor engaged in domestic or farm work performed outside school hours in connection with the minor's own home and directly for his parent or guardian."

[27]Wisconsin Session Laws 1961, Ch. 572.

[28]Wisconsin Session Laws 1961, Ch. 387.

[29]Alaska, California, Connecticut, Hawaii, Massachusetts, Ohio, Puerto Rico, Vermont, and Wisconsin.

[30]Wisconsin Session Laws 1961, Ch. 470, Wisconsin Statutes 146.19.

[31]Public Law 78, 82nd Congress, as amended, Migrant Labor Agreement of 1951, as amended, Standard Work Contract as Amended, published by Bureau of Employment Security, U.S. Department of Labor, October 1959. See especially Article 16 of the Agreement and Article 10 of the Standard Work Contract. Special contracts for four-week periods may be permitted, but then 160 hours of work must be guaranteed which would amount to eight hours per day on five-sixths of the work days.

[32]*Ibid*: see Art. 19 of the Agreement and Art. 2, Art. 3, Art. 7 of the Standard Work Contract.

[33]California Legislature Assembly, Bill 1663, 1961.

[34]*Hired Farm Workers in the U.S.*, Bureau of Employment Security, U.S. Department of Labor, June 1961, p. 25. (See also U.S. Department of Agriculture, Agricultural Marketing Service release "Farm Labor," January 10, 1961, p. 15).

[35]*Ibid.*, p. 30

[36]*Ibid.*, p. 37.

[37]*Migratory Labor in American Agriculture*, 1951, p. 59.

[38]Hearing June 12 and 13, 1961 before Sub-Committee of U.S. Senate Committee on Agriculture and Forestry, 87th Congress, 1st Session, p. 105.

[39]For a brief discussion of this see above, p. 26.

[40]This is said to be rare in Wisconsin — more common in some other states.

[7]OASDI *now* does make provision for the self employed — a category singularly inappropriate for migrant farm workers for several reasons.

[8]*Migratory Labor in Wisconsin Agriculture 1959* — WSES, p. 13.

[9]Hearings June 12 and 13, 1961 on Extension of Mexican Farm Labor Program before Sub-Committee of U.S. Senate Committee on Agriculture and Forestry, 87th Congress, 1st Session, p. 98.

[10]*Cf.* Commons, John R., "American Shoemakers" in *Labor and Administration.*

[11]Report of the President's Committee on Migratory Labor, 1951, *Migratory Labor in American Agriculture,* p. 24.