

Farm labor solution critical

Just before the November elections, there was a flurry of farm labor-related activity in Washington, D.C. As it turns out, it had little to do with the elections, but farm groups were meeting and talking to prepare for the arrival of the 113th Congress in January. They hope to propose labor reform legislation and get it passed, no matter how the elections changed the face of Congress.

"The labor issue has risen above all others," said Diane Kurtle with the U.S. Apple Association. "It's a matter of farm business survival."

New Congress will be pressed to allow agriculture legal guest workers.

by Richard Lehnert

A key catalyst for the activity was an internal report developed by a working group within the American Farm Bureau. Other groups, including the U.S. Apple Association, believe that the Farm Bureau can provide important leadership because of its broad membership base that includes specialty crops growers who need seasonal labor, as well as farmers of all kinds.

Kristi Boswell, a member of the Farm Bureau's Washington staff, said it started with a change in Farm Bureau policy last January to support visa portability. A working group was formed and met to develop a broad outline of what it wants reform legislation to do.

No formal proposal was distributed to the media or to farm groups. It was not supposed to be cast in stone, but was meant to be presented to other farm leaders for discussion, Boswell said. A meeting of leaders, organized by Farm Bureau, was scheduled a week before the elections to discuss it.

American Farm Bureau President Bob Stallman outlined the proposal in his November column, "The Ag Agenda."

GAO REPORT documents, but doesn't fix, H-2A

Adding new fuel to the growing fire over farm labor reform, the Government Accountability Office issued a report in September describing the H-2A program as time-consuming, complex, and challenging. While there are an estimated 1.5 to 1.75 million migrant and seasonal farmworkers in the United States each year, H-2A supplied its greatest number of workers in 2008—about 64,000—and despite efforts to improve its processes, mustered only 55,000 in 2011.

The vast majority of H-2A workers come from Mexico, and nearly half of those are processed through the Monterrey consulate in Mexico. There, they are fingerprinted and photographed before the Department of State issues a visa. The department approved 94 percent of all who requested visas in 2011, the GAO report said. Yet it was not clear why this pipeline of workers functioned so poorly, except that three U.S. agencies—Labor, State, and Homeland Security—all have authority that is not coordinated and relies on lots of paper handling.

In 2011, 63 percent of employer applications were issued deficiency notices from the Department of Labor, questioning their applications. That was up from only 15 percent in 2008, and had increased greatly in 2009 and 2010 as well. The Department of Labor has begun to use e-mail in communicating with farmer applicants.

In its conclusions, GAO said, "Many employers said Labor's implementation of new regulations has made the application process more difficult, resulting in delays and costly appeals."

"The H-2A application process consists of a series of sequential steps conducted by varied agencies, no one of which bears responsibility for monitoring or assessing the performance of the process as a whole. Negotiating this largely paper-based process can be time consuming, complex, and challenging for employers."

"The associated difficulties can impose a burden on H-2A employers that is not borne by employers who break the law and hire undocumented workers."

As immigration rules are tightened and the economy improves for U.S. workers, more employers may need to use the H-2A program to obtain foreign workers, the report said. This potential influx of new users could exacerbate existing problems if changes are not made to improve the application process.

In commenting on the GAO's release of the "long-awaited report on the dysfunctional H-2A agricultural guest-worker program," Frank Gasparini, executive vice president of the National Council of Agricultural Employers, said:

"Although they did include a good review of the failures and difficulties for users, we are somewhat disappointed that the report does not include more detail on what (and how) federal agencies could take positive action to make the program serve growers as Congress intended."

—R. Lehnert

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"What Farm Bureau is bringing to the discussion is a plan that we think will accommodate all agriculture—from a grower who needs to hire harvesters for only a few days, to a dairy that needs a work force 365 days of the year," he wrote.

"The crux of Farm Bureau's plan is to establish and implement a new visa program that would give both employers and employees stability and flexibility into the future, while also addressing the current work force that has contributed to our farms and communities. Both elements are necessary to provide a long-term, stable, and legal work force."

Boswell said the intent is not to reform the H-2A program, which has been fraught with so many problems, but to build on the traditional migrant stream farmers have used for many years.

The idea would be to discipline the system, so that migrant workers would have visas, but they could move with the work. Under the H-2A program, workers are tied to one farm and have a contract for a fixed season of work.

Kurtle said the goal is to present Congress with a new, cohesive program that would incorporate the best of the Ag/OBS proposal that was broadly backed by specialty crops grower groups several years ago.

That legislation was introduced in the U.S. Senate in 2007 and was introduced in both houses in the 111th Congress, but, after the House of Representatives changed so dramatically after the 2010 elections, it was not even introduced in the House for the 112th Congress.

The Farm Bureau plan, Stallman said, "would allow key migrant workers—those who have been working in U.S. agriculture for a defined period, as well as those who are in management and other key positions at a farm—the ability to stay in the United States and continue to work in the agriculture sector."

"Farm Bureau's plan would remedy many of H-2A's failings by offering real-world solutions that better meet both employers' and workers' needs. Over time, as farmers begin using the new visa program, we imagine H-2A will become obsolete," Stallman wrote.

While there has been much debate about how to deal with undocumented workers and whether they should have a path to citizenship, Farm Bureau's position has been, simply, that farmers need labor and Americans have shown no great interest in taking farm jobs.

Farmers want a legal guest-worker program that allows workers to come across the border, work, and go back, which is what many workers want to do, Stallman said.

Frank Gasparini, executive vice president of the National Council of Agricultural Employers, said agricultural groups are probably closer together now than they've ever been on labor issues. "It's not all finished yet, but the goal is to be as together as we all were on the child labor issues a year ago," he said.

Agriculture is so diverse, he said, it is hard for them to speak with one voice. Growers of commodity crops, for example, who farm large acreages with machines and hire very little labor, were concerned about farmers who hired illegal workers, and did not favor any kind of amnesty or path to citizenship for them.

"They don't understand that a single family can't pick 100 acres of apples without hiring labor," he said.

Gasparini also noted that Ag/OBS, as a proposal, "is probably past its prime, and it's time for a new proposal." But at the core, the goals remain obtaining legal status for current workers and assuring the future flow of guest workers into and out of the country legally, he said. ●