

Chapter 8. Labor Intensive Farming: Current and Future Challenges

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Introduction

In 2014 farm managers in New York continued to experience many of the challenges attracting and retaining workers that they did over the past several years. In a recent Cornell survey, New York apple grower's rated labor as their number one management challenge. Undocumented workers continue to play a significant role in agricultural and other business operations throughout the State. Likewise, aggressive immigration enforcement in some areas of the State continues to create anxiety and uncertainty for farm employers and their workers. Advocates for immigration reform had hoped that the House of Representatives would follow the Senate's lead by passing immigration reform legislation before the campaigning for the 2014 mid-term elections. Prior to the November election, the Republican House made no progress on immigration reform legislation. In the absence of immigration reform, farm employers continue to look for legal workforce alternatives and to invest in equipment and facilities that will make them more labor efficient. Still, immigration reform continues to be a top priority for farm employers with labor intensive operations.

Immigration Enforcement on New York Farms

Immigration enforcement activities continue to have a major impact on farms due to New York's international border with Canada. In recent years, there have been reports of increased immigration enforcement on New York farms, particularly dairy farms. An important part of that enforcement increase was the introduction of I-9 audits in 2009. The audit process was implemented in addition to already existing immigration raids and monitoring of businesses that Hispanic workers frequent. In the spring and summer of 2014 there were numerous reports that enforcement actions on New York farms had increased dramatically. These actions raised the concern of many farm employers and the organizations that represent them. As a result of pressure from New York's farming community, Senators and Congressmen from New York brought the concerns of New York dairy farmers to the attention of officials in the Department of Homeland Security. On July 1, 2014, eleven members of New York's congressional delegation sent a letter to the Deputy Assistant Secretary of Immigration and Customs Enforcement (ICE) to express concern over enforcement activities on dairy farms. The letter stated; "we request that ICE improve its communication and cooperation with dairy farmers to lessen the impact on dairy production and the workforce". The letter was signed by U.S. Senators from New York, Charles E. Schumer and Kirsten E. Gillibrand. The letter was also signed by the following members of the U.S. House of Representatives: Chris Collins, Tom Reed, Bill Owens, Dan Maffei, Brian Higgins, Chris Gibson, Sean Patrick Maloney, and Richard Hanna. The effort appears to have met with some success. Two meetings of elected officials and Department of Homeland Security officials resulted in response to the letter. In addition a working group was formed between New York's agricultural community and the Department of Homeland Security to improve lines of communication with the agreement that future

meetings would be scheduled to discuss enforcement related issues. However, until there is a legislative solution to the undocumented worker problem, it seems likely that the farm employers and their works will continue to experience enforcement pressures.

Immigration Reform in the 113th Congress and Beyond

Eighteen months after the U.S. Senate passed the “Border Security, Economic Opportunity and Immigration Modernization Act” by a bi-partisan vote of 68-32, the failure of the House of Representatives to enact, or even vote on any immigration reform proposal has become for many a defining symbol of a broken federal government. With 200 co-sponsors (including two Republican representatives of agricultural districts), H.R. 15, the House companion to the Senate bill (S. 744), failed to muster a “majority of the majority” (117 Republicans); and prospects for reform in the 113th Congress have been declared dead at various times throughout 2014 by Speaker of the House John Boehner and a host of political analysts. This gridlocked situation has left New York fruit, vegetable and grape growers, as well as dairy farmers to deal with continuing, costly labor uncertainty in the form of audits, worker detentions, farm raids and the shifting regulatory challenges posed by the H-2A Program for seasonal workers.

On November 4th, Republicans gained eight seats in the U.S. Senate and twelve in the House. Three of the 15 new Republicans in the House will be from New York: Lee Zeldin on Long Island; John Katko in Central New York; and Elise Stefanik in the North Country. The GOP lost three incumbents nationally, for a net gain of 12; a few races had yet to be decided at this writing. The coming changes have not generated optimism among those who have worked to craft effective policy reforms that would improve the outlook for labor intensive farming operations throughout the nation. Of the eight new Republican Senators, for example, only Senator-elect Mike Rounds of South Dakota, through his work as a co-chair of a Midwest task force on immigration reform, demonstrated a grasp of the business and economic dimensions of the issue. Increased border security and “no amnesty” pledges were cornerstones of most of the winning Republican candidates, while others, such as Senator-elect Cory Gardner of Colorado, promoted the piecemeal reform approach favored but not implemented in the House.

| BEFORE THE ELECTION | AFTER THE ELECTION |
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| <p>HOUSE</p> <p>234 Republicans</p> <p>201 Democrats (includes 1 currently vacant R seat, 2 currently vacant D seats)</p> | <p>HOUSE</p> <p>At least 244 Republicans (net gain of at least 12, largest R majority since 1928)</p> <p>At least 184 Democrats 7 races still pending</p> |
| <p>SENATE</p> <p>55 Democrats (including 2 Independents who caucus with Ds)</p> <p>45 Republicans</p> | <p>SENATE</p> <p>53 Republicans (net gain of at least 8, more likely 9)</p> <p>46 Democrats Still pending – Louisiana runoff on December 6</p> |

Source: The New Balance of Power: What the 114th Congress Means for Business: McDermott, Will & Emery, November 2014

Immigration Reform Coalitions

Regardless of mid-term election results and inaction by the current Congress, a wide variety of reform advocacy organizations, driven by diverse needs and goals, have continued to lay the cooperative political and policy groundwork necessary to repair a broken immigration system. Some examples are highlighted below.

The National Immigration Forum persistently brings together leading figures from the political, business (including agriculture), law enforcement and evangelical communities to craft moral, economic and fiscal arguments and consolidate influential support for reform. These arguments have been made through a variety of media, including recent films, such as “*The Stranger*”, commissioned by the Evangelical Immigration Table; economic briefs (*Immigration Reform, Economic Growth and the Fiscal Challenge*) developed by economist Douglas Holtz-Eakin of the American Action Forum; and major projects, such as The *New American Workforce* initiative, which has succeeded already in speeding progress on the path from green card to citizenship for aspiring citizens in seven major U.S. cities. Some of this work appears peripheral to the specific objectives pursued by farm employers and their advocacy organizations. But this work by a diverse community of potential farm employer allies goes on even when Washington is mired in stalemate. Conscientiously cultivating relationships with such diverse, well-connected, well-funded and productive grassroots coalitions can only improve the chances of achieving agricultural goals on immigration.

Leaders of the Agriculture Workforce Coalition (AWC), representing some 70 organizations, from Farm Credit East to Wine America, the National Association of Agricultural Employers, United Fresh and the National Milk Producers Federation, negotiated the agricultural labor and guest worker provisions of S. 744 with Senate leaders and United Farm Workers. The negotiators did great service to the nation by hammering out compromise agreements on divisive, complex issues such as guest worker wage rates, housing requirements and blue card provisions for undocumented farm workers living in the U.S. Once the 113th

Congress comes to a close and leadership changes hands, S.744 will no longer represent a legislative option. To be effective, any future piecemeal or comprehensive reform initiatives would do well to incorporate the products of these unprecedented collaborations on agricultural labor issues into new legislative proposals.

These are only two examples of many active coalitions at work nationally and locally to improve the U.S. immigration system. Given the treacherous terrain over which agribusiness advocates for reform must travel to fix the broken immigration system, alliances designed to reach common objectives offer more effective leverage and better prospects for success in dealing with a challenging political environment.

Executive Action and its Implications

In the vacuum created by congressional inaction since the Senate sent S.744 to Speaker Boehner in June 2013, the Latino community and others (but not all others) with a stake in reform have pressed hard for executive action to solve some of the problems addressed by the unpassed bill. It is unclear how the President might deal with issues related to agriculture, but news reports speculating on the timing and components of an executive order are emerging.

Just after the election, the debate over executive action focused more on the political ramifications of President Obama's taking this step than on the specifics that might be included in a possible executive order. The newly empowered Republican majority in both houses of Congress reacted angrily to the possibility and spoke of measures—cutting off funding, filing a lawsuit similar to the pending action on administration of the Affordable Health Care Act, holding up judicial nominations and omnibus spending bill negotiations—they could take to undo the President's initiative. In attempts to lower the temperature of this high stakes argument, incoming Senate Majority Leader, Mitch McConnell pledged that a government shutdown would not be part of the Republican strategy to oppose executive action on immigration reform; and soon-to-be Minority Leader, Harry Reid urged the President to delay announcement of an executive order until debates on fiscal-year 2015 tax and spending bills had been concluded. Farm organizations have observed the unfolding situation cautiously, understanding the short term benefits in reduced labor and regulatory uncertainty that might help agricultural employers; but also fully aware of the potential damage that yet another “poisoned well” between the Administration and the Congress might do to their constituents. In any case, all parties agree that meaningful congressional action on reform will be necessary to repair, in any sustainable way, the many broken parts of the current immigration system. Those who are optimistic about the prospects for reform in the Republican Congress believe Speaker Boehner's repeated assertions that his conference is motivated to do something, certainly in piecemeal steps, about the immigration challenge. Less hopeful views are based on the long track record of inaction in the House and the fervent voices inside the Republican conference opposing any reform other than additional border security and stricter enforcement of existing laws. If legislative progress is to be made in 2015, it will be initiated in the House of Representatives. In the volatile, potentially toxic environment surrounding the possibility of an executive order, waiting to see formally announced proposals before assessing the merits of and prospects for such proposals appears to be the wisest course.

NY Minimum Wage Increases

The State minimum wage was increased as a part of the 2013-2014 New York State budget in three increments. The wage increased from \$7.25 to \$8.00 per hour on December 31, 2013. It will further increase to \$8.75 on December 31, 2014 and then to \$9.00 per hour on December 31, 2015. The wage increases apply to agricultural workers as well as other workers and will increase labor as a cost of production on many farms. Labor is the single largest cost of production on most farms producing fresh fruits and vegetables. Labor is the second highest cost of production on dairy farms, after purchased feed.

New York Apple Growers Respond to Labor Challenges

A 2013 survey of New York apple growers reveals how the industry continues to change as well as the adjustments growers are making in their labor practices in spite of stalled immigration reform efforts. The 95 growers responding to the survey tended to have larger farms with many (48%) using the H-2A Program. Growers reported that new trellised planting systems are increasing labor efficiency allowing workers to perform pruning, tying and harvest operations from the ground or from a platform. When growers were asked “what are the top three issues for the industry to work on over the next 5 years”, labor related issues came out on top by far. When growers were asked how their businesses have changed or will change as a result of labor pressures the top three answers were 1) design orchards and plating systems to be more labor efficient 2) down size and decrease acreage and 3) rely on the H-2A Program.

Growers were also asked about labor shortages. Thirty-six percent of those surveyed reported that they were short of workers in 2013. The consequences of being short of labor were either leaving apples unharvested or having fruit harvested late and therefore diverted to a lower paying market.

There were many mentions of the H-2A Program in the survey responses. The H-2A Program is a Federal Program that allows farmers to bring in foreign born workers for seasonal jobs. While growers continue to raise concerns about the high costs of the program and the excessive paperwork, many still use it to reduce the risks of not having sufficient labor during critical work periods. In summary, the survey results revealed on apple industry heavily focused on labor efficiency. Growers are ensuring that each worker is as productive as possible by shifting to high density production systems as well as adding labor saving equipment such as platforms.

Farm Labor Management Case Studies

An ongoing Specialty Crops Block Grant project at Cornell uses case studies to improve our understanding of how farm employers manage their human resources under existing federal agricultural labor and immigration policies. In-depth interviews with farm managers were conducted on grape and vegetable production operations in 2014. Aside from descriptions of the size and scope of these farm businesses, questions focused on recruiting and hiring practices, staffing challenges, labor concerns and alternative labor pools. Farmers were also asked about other facets of their business operations that are affected by the environment in which they must make their labor management decisions.

Several more interviews will be conducted in the months ahead, but some key points emerged from the early discussions:

1. These farm operators believe the continuing weight of uncertainty generated by current policy has caused their businesses to miss (or decide against) opportunities for value added enterprises, expansion and even transfer to the next generation.
2. Difficulties in working with the H-2A Program are significant and costly. Whether those interviewed use the program or not, they have a strong desire for a major overhaul of the system; and promising ideas on how this might be successfully done.
3. Some farmers are making major investments in labor-saving technology.
4. Exploration of new sources of agricultural labor is still an experimental process. Results, for example, of using refugees to fill gaps in the available labor supply are mixed.
5. Farmers look to Cornell and Cornell Cooperative Extension to gather and disseminate data and information that will lead to necessary changes in the immigration system and its impact on farm business operations.

2015 Agricultural Labor Outlook

Some agricultural employers will face tighter labor supplies in the year ahead and will continue to make adjustments in their operations. Immigration reform is viewed by many in agriculture as a potential solution to labor shortages. As a result farm employers will continue to follow the national immigration debate closely and will continue their call for immigration reform at the federal level.

Specifically, the following is our outlook for agricultural labor and 2015:

1. **Immigration enforcement actions are likely to continue** - Efforts to open up lines of communication between farm employers and the Department of Homeland Security are seen as a positive step. I-9 audits on farms are expected to continue.
2. **A continued decline in the number of immigrants available to fill farm jobs is expected** – The number of agricultural workers coming to New York from Mexico has declined with tighter border security and more available jobs in Mexico due to an improving economy. In addition, some immigrants who have been here for a number of years and are returning home.
3. **Reliance on the H-2A seasonal worker program will continue** – As long as there is heavy immigration enforcement pressure, fruit and vegetable growers will use the program to ensure that seasonal crop operations are performed in a timely fashion and to avoid crop losses.
4. **Interest in agricultural labor alternatives will continue** – With tight labor supplies and increasing wage rates, farm employers will continue to look for ways to become more labor efficient. Alternatives include robotics and other types of modern equipment to replace some labor. Some farm managers will also look at mechanized row crops such as corn and soybeans.
5. **Farm owners with labor-intensive enterprises will be cautious about expanding** – With labor supplies uncertain and labor costs increasing, farm managers will expand cautiously. Likewise, the next generation of farm managers is likely to consider carefully the risks associated with not having available a sufficient number of qualified workers as they make strategic business decisions.

6. **Farm labor costs will rise with New York State minimum-wage increases** – Between December 31, 2013 and December 31, 2015 farm wages will increase from \$7.25 per hour to \$9.00 per hour increasing the labor bill on many farms.
7. **There will be a continuing search for legal workers** - Some farm employers have experimented with refugees, workers from Puerto Rico, and workers who are in the United States on J-1 training visas as a way to avoid hiring undocumented workers. Those efforts are likely to continue.
8. **Agricultural leaders will continue to advocate for workable immigration reform** – Through the Agricultural Workforce Coalition, agriculture as an industry has taken a united stand on the need for immigration reform. Specifically, agriculture is calling for an adjustment in immigration status for current undocumented workers and a modern guestworker visa program. In addition, the dairy industry is asking to be included in an agricultural guestworker program.
9. **Building political coalitions will be critical** – Immigration reform is more likely to pass if agriculture aligns with business groups, faith groups, Latino groups, and others.

