

TESTIMONY
OF
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BEFORE THE
SENATE COMMITTEE ON
HEALTH, EDUCATION, LABOR AND
PENSIONS

APRIL 15, 2008

Introduction

My name is Reggie Brown. I am the Executive Vice President of the Florida Tomato Growers Exchange (the Exchange). I worked for the Collier County Extension Director for the Florida Cooperative Extension Service in the 1980's. I worked for the Florida Fruit & Vegetable Association as Marketing Director for eleven years before working for the tomato industry. Our members are tomato growers. We harvest generally from November through May. Almost half of all the tomatoes consumed in the United States year-round come from the Sunshine State.

Tomato growers have seen major challenges in recent years from hurricanes, invasive pests and diseases, and increased international competition from Mexico and Canada. The fruit and vegetable industry is a critically important sector of Florida agriculture, which is second only to tourism in importance to the state's economy. According to a 2006 University of Florida study, agriculture, food manufacturing and natural resource industries in Florida directly create more than 400,000 full- and part-time jobs, with a total employment impact of more than 700,000 full-time and part-time jobs. The direct value-added contribution is estimated at \$20.32 billion, with a total impact of \$41.99 billion.

During the winter, Florida competes in the U.S. marketplace with Mexico and Canada. During the six- to seven-month harvesting season, Florida's tomato growers employ more than 30,000 tomato workers.

Just as our growers need the seeds, rain and Florida sunshine, we need the workers to harvest our crops. We value the services of our workers by paying and treating our workers fairly. The fact that thousands voluntarily return to our fields to pick tomatoes year after year, decade after decade, demonstrates that fact.

Background

We are here before this Committee because the Coalition of Immokalee Workers (CIW), a purported Florida labor organization, has leveled accusations at Florida's tomato growers on a number of fronts. We thank you for the opportunity today to state the facts, which stand in stark contrast to the CIW's charges.

In the past several years, the CIW has organized boycotts of major fast-food corporations and demanded that these companies pay an extra penny-per-pound to workers who pick the tomatoes they buy. Two fast-food companies, YUM!Brands and McDonald's, agreed to the deal and in turn have pressured Florida's tomato growers to take on the role of passing the extra payments on to their workers. For a number of sound business and legal reasons, the producers have declined to participate.

In the meantime, the CIW also has accused Florida's tomato producers of slavery, substandard housing, abusive working conditions, and sub-poverty wages. Each claim raised - housing, wages, working conditions, and slavery - are addressed by local, State and Federal laws. We absolutely agree with the Committee that these laws should be aggressively enforced. Our growers comply with all of these laws and many others, too.

My testimony today will refute the false allegations that have been made by the CIW and perpetuated in the media. It also will outline the growers' concerns over the penny-per-pound initiative, explain the technical and legal reasons they have chosen not to participate and suggest better solutions to improve the lives of farm workers.

Slavery

First, let me state unequivocally that Florida's tomato growers abhor and condemn slavery. We are on the same side on this issue. It is outrageous to have slavery happening in Florida or in any other state. However, charges that tomato growers have enslaved workers are false and defamatory. Indeed, in correspondence with Members of this Committee and during meetings with Senators and staff, we have denounced slavery and these unsubstantiated claims. We could not survive without our valued employees.

On numerous occasions, we have asked for any evidence that would substantiate these allegations against growers of Florida tomatoes and have received none. To the best of our knowledge, CIW has not taken any such evidence to the appropriate federal, state or local authorities who are vested with oversight in these matters. If we had any information indicating a grower was involved in slavery, we would immediately turn it over to authorities and assist in prosecution.

There is some confusion involving labor contractors and their relationship with growers. Like the workers, these contractors are employed by the growers. They assemble a crew and bring them to a farm and they as well as the workers are paid directly by the grower. To ensure that the workers are treated fairly and paid directly, growers participate in the SAFE program described in greater detail below. SAFE provides certification by an independent third party that the working conditions are safe and fair for the workers. No other produce group in the country has such a program to help workers.

Like all Americans, we are angered that slavery is even an issue in America in 2008. The reality, however, is that there are indeed cases of slavery and human trafficking occurring in many states today, and that is a tragedy.

Housing

Many of our growers provide free or inexpensive housing that must pass government inspection. Many employers also pay for utilities including gas, electric, water and garbage, even when workers are not picking tomatoes. We are committed to provide positive housing solutions for our workers and their families.

We are not aware of any substandard housing being owned, operated or controlled by any member of our Exchange. I was advised by Members of this Committee of substandard housing in Immokalee, Florida. We requested any specific information that might help us investigate but received none. However, we did contact the Collier County Commissioner for Immokalee and asked that appropriate county agencies query the CIW about any specific cases of substandard housing, follow-up on the complaint and enforce the County's housing code.

Working Conditions

Broad charges have been made that workers are being exploited and that Florida tomato growers are not following labor standards. We firmly deny these allegations. Again, we have asked for specific information on where this might be occurring so we could notify the proper authorities. We received no response, nor do we have any other information about worker standards violations.

It is difficult to prove a negative -- that our members are not and have no pattern of exploiting our workers. However, we believe we can in this case offer clear evidence of commitment to providing all of our workers a safe, secure working environment that complies with all laws and standards of performance.

In 2005, we met with officials from McDonald's to discuss how our growers could best show we were improving working conditions for our workers. Based on these discussions with McDonald's and others in the industry, a program was developed that calls for thorough, direct auditing by an independent third party to assure that working standards are met and that workers are receiving the wages to which they are entitled. This program is the first of its kind in the U.S. produce industry. Indeed, McDonald's web site indicates as part of its social responsibility program that it collaborated with us "to improve conditions for farm workers in the Florida tomato industry."

The program is Socially Accountable Farm Employers, or SAFE (www.safeagemployer.org). SAFE is an independent, nonprofit organization that independently audits and certifies fair, legal farm labor practices in the agriculture industry. It is a serious program that addresses important issues such as working conditions and wages. SAFE's certification signifies that a grower has complied with all employment laws and regulations such as the Migrant and Seasonal Worker Protection Act, and that the grower fosters a work environment that is free of hazard, intimidation, violence and harassment.

Wages

Exchange members pay their employees competitive wages. We must, if we are to have workers each season to plant and harvest the crops. Otherwise, workers will go elsewhere. Yet each year thousands of workers return to the region to harvest Florida's tomatoes.

It's important to note that farm workers are seasonal employees who often work for multiple employers during the year, so what a worker might earn on a farm in Immokalee constitutes only part of his or her wages for the whole year.

Tomato harvesters have the opportunity to earn more than double the federal minimum wage of \$5.85 and nearly double Florida's \$6.79 per hour. These are legal, competitive and fair wages. Not only has the minimum wage increased in the past 20 years, the per-bucket rate workers earn has gone up as well. Yes, sometimes workers' hours are cut short because the weather is bad and they can't pick the tomatoes, or there are no tomatoes to be picked. Yet tomato harvesters' wages potentially can exceed by a considerable margin, the hourly wage for most workers at fast-food restaurants.

In addition, the growers comply with all withholding of taxes and payment of FUTA, SUTA and WC contributions according to law.

Based on payroll records our members submitted to the federal government for the last growing season, the average rate was between \$10.50 and \$14.86 per hour for tomato harvesters. We believe it may be higher for the 2007-2008 crop year. Again, these wages will be just a portion of the annual income for harvesters who move on to other crops in other regions.

Penny-per-pound Program

Our Exchange is a voluntary association of tomato growers. As a group, the growers have made a business decision not to participate in the penny-per-pound distribution arrangement, as is their right. My goal today is to explain as clearly as possible the reasons behind that decision.

Because the Exchange's members have not seen the agreements announced by Yum!Brands and McDonald's and don't know the specific details, it is difficult to fully assess the responsibilities, liabilities and impact of CIW's program. However, from a legal standpoint, we have been advised that the potential risks of participating in the penny-per-pound agreement far outweigh any benefit.

At first blush, the penny-per-pound initiative sounds like a positive program. Fast-food chains agree to pay an extra penny for each pound of tomatoes they buy from Florida producers, with that extra penny distributed to the workers who picked them. Ostensibly, the growers would

serve as the conduit through which the harvesters would receive the extra payment. But practically - and legally - speaking, the program is flawed.

For the record, we do not object to the fast-food chains paying extra to the workers who pick the tomatoes they buy. Our members simply do not want to be part of that arrangement.

However, we don't believe it is possible to legally and fairly get the extra payments into the hands of the specific harvesters who pick the tomatoes bought by the restaurants. The root of the problem is this: How can the fast-food chains (or any other company that agrees to the extra penny) accurately identify how many tomatoes come from which producer and which specific employees picked them? It is not possible, so how can they ensure the workers who picked their tomatoes are the ones who receive the additional wages?

A review of the supply chain shows why the Yum!Brands and McDonald's agreements are unworkable.

During harvest, tomatoes that the workers pick are not individually identified or labeled by worker or by customer. At the time of harvest, a tomato picked by a worker could ultimately be purchased by any number of the producer's customers.

Tomatoes are not made available for commercial channels until after they have been washed, graded to federal standards, sized and packed into cartons in a state and federally licensed packing facility. Some tomatoes (on average 20-25 percent) are never purchased because they are "dumped" for failing to meet grade or size standards, or have damage that makes them unfit for sale.

Producers send their harvested and packed tomatoes to their customers, the repacking and distribution companies that supply the fast-food chains. A repacking facility receives tomatoes from any number of producers, and those tomatoes are then co-mingled in large lots.

We believe the suppliers have agreed to participate in the program at the insistence of the fast-food chains. McDonald's indicates on its web site that, "[o]ur suppliers will establish a way for the additional penny per pound to

be given to the farmworkers." Thus, these extra-penny agreements are made among several parties: the CIW, the fast-food chains, and their suppliers.

The critical fact is that no one can identify which worker should receive an additional payment, nor can the correct payment be calculated. And if the extra-penny funds are distributed among all of the workers, the fact is some will be paid too much and others won't get what is due them. This is neither right nor fair.

Additionally, because the extra payments are considered wages, how will the fast-food chains withhold appropriate amounts? How will they pay the required employer contributions for FUTA, SUTA and WC, which can amount to 15 to 20 percent of the wages paid?

The Exchange strongly believes that, because the parties to the agreements know it is impossible to distribute the correct payment amounts to the right workers, the growers' participation would open them up to lawsuits from workers who were knowingly treated unfairly. Workers also could allege that there is/was a scheme to defraud them, and each check issued (allegedly in an incorrect amount) could be a separate bank or wire fraud. This is by definition a RICO case. What's more, RICO allows plaintiffs to bring additional grounds to allege fraud-based activities on whatever size "enterprise" they seek to attack.

In addition to the aforementioned concerns related to the penny distribution, there are additional problems with the program:

We believe if our growers participate they will be placed at a competitive disadvantage in the marketplace. We believe that ultimately fast-food chains and other companies will buy tomatoes elsewhere - most likely Mexico -- because the extra penny makes Florida tomatoes more expensive. If that business shifts offshore, not only will tomato harvesters be without the extra penny, they will be without jobs. The tomato industry will go away, and Florida's economy will suffer.

We also are skeptical of any secret agreement that obligates our growers but prevents them from seeing the details of the agreement. We also believe it is at the very least improper for the CIW on behalf of our workers to enter into an agreement that affects the wages we pay our workers.

In addition, we believe that entering into the CIW's penny-per-pound program would legally tie the growers with each of the other parties to the agreement. In effect, our growers, the CIW, the fast-food chains and their suppliers would be joint employers under the Migrant and Seasonal Workers Protection Act. Thus, there is a risk to the growers for the actions taken by the other participants.

The Exchange's members also are concerned that the extra-penny program constitutes an attempt to restrain trade. The agreements signed so far appear to join independent companies, the customers and their suppliers collectively, who in turn have joined forces to demand growers participate in the Program or risk losing their sales to their customers.

Finally, it is important to note that the CIW is not licensed or registered as a collective bargaining agent as required by law, but as a 501(c)(3) charitable organization whose supporters gain favorable tax treatment under federal law. However, we believe that under the cover of being a social organization hoping to better the life of its farm worker members, the CIW is in fact a "labor organization" as defined under Florida statutes and that certain employees of the CIW are "business agents" as defined under Florida statutes. CIW is organized and acts for the purposes of improving its members' hours of employment, rates of pay, working conditions and grievances relating to employment. What's more, the CIW is attempting to negotiate wage increases for tomato workers by threatening a secondary boycott against the fast-food chains.

Given the fact that the growers are not mandated to participate in the extra-penny program, and based on the facts as we know them, it would not be rational, reasonable or in the best interest of the growers to join the program.

We call upon CIW to take on the task of providing a way for Yum!Brands and McDonald's to distribute monies to its members and workers without involving the growers. CIW, as a representative of its members and workers, should gladly accept the challenge of getting this job done. If it had figured a way to do this, its member and workers would have been receiving checks from McDonald's since last November. Alternatively, like our growers do, McDonald's could contribute to charities that are helpful to CIW's members and workers, and their communities such as Catholic Charities, the University of South Florida Migrant Scholarships, the Redlands Christian Migrant Association and others.

Conclusion

There is no question that harvesting tomatoes is physically demanding work that most people do not want to do. Florida's tomato producers are grateful to have a steady workforce that allows us to provide Americans with a bountiful, nutritious and healthful crop.

We believe that education, improved housing, fair wages and safe working conditions are comprehensive, impactful and long-term solutions to improving the lives of farm workers and their families. We are working toward those goals and invite others to join us.

We have and continue to work with organizations such as Redlands Christian Migrant Association, Catholic Charities, University of South Florida Migrant Scholarships and others so that we can jointly create, develop and execute meaningful programs relating to health care, child care, housing and education so that farm workers and their families have a real chance to achieve the American Dream.

Thank you for giving us the opportunity to present our position on these issues.