

JUSTICE FOR FARMWORKERS



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NEWS RELEASE

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Today's sham Ag Committee hearing is latest abuse of process in obstructing farmworker rights

This morning, farmworkers and their allies face a Hobson's Choice: participate in a Senate Ag Committee hearing designed to smear and mischaracterize the Farmworkers Fair Labor Practices Act, or refuse to accept what little time we were offered by the Committee in their effort to legitimize the hearing. Those who would continue to deny farmworkers the rights and protections enjoyed by other workers have done all they can to incite us to boycott Monday's hearing, but we will not take the bait. We will instead bear witness to what is the latest in a series of abuses of Senate process.

Farmworkers have been excluded from labor law for over seventy years. We believe that providing farmworkers basic rights is the just thing to do. We further believe that our opposition's apocalyptic prognostications about the demise of farming that would result from passage of the bill are without foundation. As much as we could make our case on merit—as we have since the early 90's—we would like to address the cynical and illegal process that has ushered the bill to this juncture.

A Subversion of Senate Rules

In the late fall of 2009, we were asked by the Senate leadership to meet with the New York Farm Bureau and Senator Aubertine, listen to their objections, and seek middle ground. While wary that the Farm Bureau would use the opportunity to sabotage the prospects of delivering basic rights to farmworkers, we nonetheless went forward in good faith. Over the course of many meetings, we agreed to an overhaul of the bill that included major concessions toward the industry's position, such as limiting collective bargaining protections to the largest 4% of farms in NY and raising the overtime threshold to well above that which applies to other industries. (For details summarizing the changes, see the Memorandum in Support, A.1867-b/S.2247-b, below.) The amended bill was printed in January and placed on the Labor Committee's first agenda. Once it was approved there, it next would have been moved to Codes. Instead, at the request of Sen. Aubertine, the bill was transferred to the Ag Committee, a committee which lacks subject matter jurisdiction over the bill. The Ag Committee has subject matter jurisdiction over Ag and Markets Law and General Business Law, whereas the bill only amends Labor Law,

Workers' Comp Law, and Public Health Law. This decision by the Senate leadership sets a dangerous precedent by allowing an individual member to flout Senate rules in order to stall the progress of a bill he opposes.

Assuming for the moment that the referral had been legal, according to Senate rules, a bill on secondary referral must be considered and returned "forthwith." It has been over a month. The bill sponsors have asked the Ag Committee, which has met several times, to give its recommendations and release the bill.

The essential questions are these: When do Senate rules matter? Only in non-controversial situations? Why did we all invest so much interest in rules reform this past summer, if the rules could later be set aside to avoid political inconvenience? If a compromise bill sponsored by 28 senators and supported by a bipartisan majority cannot get a floor debate and vote, what does that say about democracy in New York State?

The Senate, with the exception of a few notable members, has betrayed farmworkers.

A Sham Hearing

On February 4, the Ag Committee announced they would hold a hearing on March 1 on the bill. We had every reason to believe that the hearing was mere pretext for further stalling, but decided we would continue the dialogue, even though our good faith had been betrayed so many times before. We called and emailed the committee director numerous times beginning February 5. When she finally called us back Friday, the 19th, it was to inform us that **the Ag Chair had selected those who would be allowed to give oral testimony one week from Monday, and that furthermore, the witnesses' names would not be shared.** The Campaign was told that at least one farmworker had been invited—but he was selected by an ag company media spokesperson.

No one that may contradict the desired narrative will be allowed to testify:

- no farmers that support farmworker rights
- no un-coerced farmworkers (nor does it appear that farmworkers—many of whom could not come for lack of a day off—could have testimony video-taped and played for the committee)
- no experts that would offer rebuttal testimony to the NYFB's hyperbole, i.e. hard evidence that agriculture can thrive while respecting worker rights

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During the more than 15 years since the late Sen. Olga Mendez brought these issues before the Senate, this bill has been closely studied and subjected to hearing after hearing. Nevertheless, we expect that the industry lobby will continue to use their stated need for hearings, studies, etc. as pretext for further delays. At some point, we all must say: Enough stalling. Enough perversion of the process. Let Farmworkers have their vote on the Senate floor.

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Justice for Farmworkers, Memorandum in Support, A.1867-b/S.2247-b

Following extensive consultation with all interested parties, the amended **Farmworkers Fair Labor Practices Act (S.2247-b)** will strengthen NY agriculture while making substantial progress toward the just and dignified treatment of farmworkers. The amended bill thoughtfully accommodates the concerns raised by the New York Farm Bureau, while leaving intact the bill's integrity and purpose. Having concluded this exhaustive dialogue, we support the Legislature moving decisively toward enactment of this bill into law.

In the spirit of cooperation and with an eye toward progress, the Justice for Farmworkers Campaign supports the bill's amendments:

- Collective bargaining protections are limited to workers on farms with sales exceeding \$650,000—exempting over 96% of farms and covering only agribusinesses.
- The overtime threshold (i.e. the number of hours of straight pay before time-and-a-half kicks in) is increased from 40/week and 8/day to 60/week (55/week beginning in 2013) and 10/day, and on the 7th consecutive work day.
- Farms employing piece-rate workers are given special attention. Only 1.5 times the minimum wage will be required for overtime hours, rather than 1.5 times the worker's regular rate.
- "Cooling off" periods of 21 days are required during peak harvest times when a strike or lockout could cause irreparable harm.
- Existing unemployment tax liability on guestworker wages is eliminated entirely, resulting in \$1 million or more in annual savings for New York farmers.
- Small farms are allowed continued exemption from workers compensation and unemployment insurance tax liabilities.
- "Family" is defined as broadly as possible and exempted from coverage under the Act
- The bill's effective dates are pushed back.

As is self-evident, the amendments are quite substantial. For example, moving the overtime threshold in this way will mean that the extra work farmworkers most commonly perform (between the 40th and 60th hour of work) will continue to be compensated at straight time, with no overtime premium. Only after an additional 2 hours per day or 20 per week will workers begin to receive time-and-a-half. Moreover, the amendments also demonstrate particular sensitivity toward small family farms.

We support the amended Farmworkers Fair Labor Practices Act. We hope that all interested parties will now act in good faith as New York takes this major step toward justice and equality for all workers