

Maine Legislature
Joint Committee on Labor and Housing
Testimony of Michael Guare on L.D. 1022, H.P. 0760,
“An Act to Make Agricultural Workers and Other Workers Employees
under the Wage and Hour Laws”
April 7, 2021

Senator Hickman, Representative Sylvester and Members of the Committee:

My name is Michael Guare. I am very happy to be participating in this hearing today and I thank you for the opportunity. I am an attorney at Pine Tree Legal Assistance and for the past 22 years I have been working in our Farmworker Unit providing legal representation to farmworkers in Maine.

As Representative Harnett has already shared with you, farm workers have historically been among the most abused and exploited workers in the United States. There are many reasons for this, including the exclusion of farm workers from much of the federal legislation which protects almost all other workers in the United States, and the heavy reliance by agricultural employers, especially larger agricultural employers, on labor brokers most commonly referred to as farm labor contractors.

While the specific arrangements vary widely between employers and contractors, the basic pattern is that farm labor contractors are paid by fixed-site agricultural employers to recruit, transport, house and supply workers to employers. These arrangements are usually structured in such a way that the contractors are set up, at least nominally, as the sole employers of the workers, allowing the fixed-site employers to shift all legal responsibility to the contractors. Contractors are often under-capitalized and paid in ways which are based on the productivity of the workers on their crews, which creates a system in which the contractors are highly incentivized to cut as many corners as possible and exploit their workers.

Many agricultural employers in Maine are responsible employers, treat their employees well and comply with what laws do apply to farmworkers. Moreover, many agricultural employers in Maine pay their workers at or above our state’s minimum wage, even though farm workers are not covered by the minimum wage or overtime provisions of state law.

In my work I have seen many examples of workers being cheated or underpaid.

Just one example is that I have represented farm workers who were victimized while raking blueberries by a practice known as “over-filling”. Blueberry rakers are usually paid a piece rate for every box of blueberries they fill. There is a standard in the industry for what constitutes a “full” box – *ie*, filled to a flat level about an inch below the top rim of the box. The boxes are constructed in such a way that when they are filled to that level, they can be stacked without the box on top reaching, and thus crushing, the berries in the box below. Over-filling is a practice by which workers are told, by the farm labor contractor in the cases I have seen, to fill their box to the point of over-flowing. The contractor then pours the excess berries into other boxes, but the

worker is paid for only one box. In this way, workers are not paid for approximately 25% of the berries they rake.

As mentioned, those kinds of schemes are not the norm in Maine, but what is important to remember is that because of language issues, cultural barriers and other problems, farm workers have historically been more susceptible to wage abuse than many other classes of workers. In that reality, excluding farm workers from our minimum wage and overtime laws only makes the situation worse. Wages are just as crucially important to farm workers as they are to any other worker. Farm workers have families and financial burdens just like the rest of us. Because they are excluded from our state minimum wage and overtime laws, the only guaranteed minimum wage available to most farm workers is the federal minimum wage of \$7.25 an hour with no overtime because farm workers are excluded from federal overtime provisions. Along with many other states, Maine has made the policy decision that no one can be expected to live on \$7.25 an hour and has created its own minimum wage. As mentioned, many agricultural employers in Maine already pay at or above the state minimum wage. This legislation would simply guarantee that all farm workers would have the benefit of a livable minimum wage.

In sum, there are many good reasons for the legislation proposed by Representative Harnett and I hope the committee will consider it favorably.\

Thank you very much.

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