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Testimony of Rep. Thom Harnett introducing
**LD 151, An Act To Protect Farm Workers by Allowing Them To
Organize for the Purpose of Collective Bargaining**
before the Joint Standing Committee on Labor and Housing

Good morning, Senator Hickman, Representative Sylvester and members of the Labor and Housing Committee. My name is Thom Harnett and I represent the residents of District 83, which includes the Town of Farmingdale and the City of Gardiner. I am here today to introduce **LD 151, An Act to Protect Farmworkers by Allowing Them to Organize for the Purpose of Collective Bargaining.**

Historically, agricultural workers, or “farm workers”, have been specifically excluded from basic labor laws that protect most workers. Currently, in 2021, Maine farm workers are still not considered “employees” under state law. By way of example, they are not covered by Maine’s laws regarding minimum wage and overtime. This is a basic protection afforded almost every working person in Maine and is particularly important and meaningful to working people who find themselves on the low end of the wage scale. What is even more remarkable is that farm workers are considered essential employees by both the state and federal government yet are not even considered as *employees* under Maine’s labor laws. Think about that for a moment-how can a farm worker be considered an essential employee at the same time they are purposefully excluded from the legal definition of an employee? This bill answers that question: if they are essential employees, they are employees and should be treated as such under all Maine labor laws.

There are many reasons that farm workers have been treated as “less than” in Maine, in almost every other state and under federal law. Farm workers, particularly migrant farm workers who travel from state to state to harvest the crops that feed us, are generally people of color, sometimes from other countries and, in many cases, do not speak English as their native language. They are ripe for exploitation and generally do not make waves. They do backbreaking manual labor for long hours, work that local people would never consider doing. They work far from their homes, and their temporary homes while in Maine are often connected to their jobs because their employers need them here.

Challenging one’s working conditions in that environment is fraught with personal and economic danger. If you lose your job, you lose your home. You then find yourself in a terrible

predicament- unemployed, homeless and alone in a place where you are not welcome. Given those realities, is it at all surprising that farm workers have been unable to individually change these centuries-old labor practices and fight against the lack of legal protections to wages and benefits that most workers take for granted?

Migrant farm workers in particular cannot be here to tell their life stories to this Committee because it is not the growing or harvesting season in Maine, and if it were they would be working. Right now, they are working wherever the work is available.

Couple that with the fact that neither state nor federal laws protect farm workers who might want to form a union, collectively bargain, or even talk to their fellow workers about improving their working and living situations, and it is easy to see why the lives and working conditions of these workers have changed little since Edward R. Murrow's *Harvest of Shame* was produced and televised in 1960, over 60 years ago. Unlike almost every working person in Maine and throughout the United States, farm workers can still be fired for just talking about their working and living conditions and bringing those concerns to their employers. If they simply talk to their co-workers about seeking to change their wages or working conditions, they can lose their housing and lose their jobs while thousands of miles from their homes. Those firings have been and remain *legal* even though I believe they are both immoral and unjust.

Non-farm worker employees who are not represented by a union have significant rights under the National Labor Relations Act. Specifically, the National Labor Relations Board protects the rights of employees to engage in “concerted activity,” which is when two or more employees take action for their mutual aid or protection regarding the terms and conditions of their employment. A single employee may also engage in protected concerted activity if he or she is acting with the authority of other employees, bringing group complaints to the employer’s attention, trying to induce group action or seeking to prepare for group action. If farm workers do any of those things, they can be summarily fired, and that firing would be legal in Maine.

A few examples of the legally protected concerted activities that non-farm workers can engage in are:

- Two or more employees addressing their employer about improving their pay;
- Two or more employees discussing work-related issues beyond pay, such as safety concerns, with each other; and
- An employee speaking to an employer on behalf of one or more co-workers about improving workplace conditions.

Farm workers do not have this basic protection, and, in my experience, this is one of the main reasons their lives remain so difficult and their earnings so low.

I first worked with and for farm workers over 40 years ago. In the summer of 1980, I interviewed for my first job as an attorney with Farmworker Legal Services of New York. For my second interview, I went to the first migrant labor camp I had ever seen. It was a life changing experience and a night I will never forget. This labor camp was less than 30 miles from where I grew up. Until that night I had no idea that hundreds, indeed thousands of people lived and

worked in such poverty and in housing conditions that I had no idea existed and that I had never thought could exist in our United States of America. But they did. They still do. Farm workers are often hidden from view. Their temporary homes in labor camps often cannot be seen from the road. They live in isolation, alone.

I worked for about nine years for my farm worker clients in New York. While I won some cases, I lost many more as well. In fact, there were many cases I could not even bring. I repeatedly found that the living and working conditions that were unimaginable then and now were also *legal*. My clients never had a seat at the table when the laws, the rules of the game, were written. I promised my clients, many of whom became dear friends, that I would try to change that someday. I continue to try to keep that promise

After moving to Maine and joining the Office of the Attorney General in 1989, I had the opportunity to work for farm workers again at DeCoster Egg Farms in Turner. I visited the workers in Turner many times because they were not allowed to receive visitors of their choosing in their homes in the employer owned and managed trailer park. Their employer forbade it and threatened to fire them if they spoke to doctors, nurses, lawyers, priests, ministers, educators, Assistant Attorneys General, and social workers, to name a few. Their employer also threatened to have their visitors arrested if they visited the workers in their homes. In many instances, law enforcement officers were called to enforce DeCoster's *No Trespass* policy and did so.

I vividly recall one rainy night when I was with a lawyer from the Farm Worker Unit of Pine Tree Legal Assistance in one of the trailers at DeCoster explaining to workers their legal rights regarding this draconian policy. One of the workers, who had been looking out the window, rushed towards us with fear in his eyes. In broken English he told us a supervisor was coming and that I and Pine Tree's lawyer had to hide in a closet. He said if the supervisor found us in their home, the workers would lose their jobs and we might be arrested. We stayed in the closet for less than ten minutes. It felt like an eternity, but when it was over I got to go home. The workers, on the other hand, had no choice but to stay and continue to live in a state of fear so they could support themselves and their families.

I was proud that Maine won its lawsuit on behalf of the workers against DeCoster, and that his *No Trespass* policy, along with his pattern of enforcing it through threats and intimidation, were found to violate the Maine Civil Rights Act. That was a significant victory, and for a while farm workers were in the news in Maine. During this time they were not invisible. This committee in the 1990s was so appalled to learn about this treatment of farm workers that it took some limited action. However, that action, which included recognizing some organizing rights for the farm workers at DeCoster, was very limited in scope and did nothing for workers at other farms. Sadly, this legislation, as it pertained to organizing, was subsequently repealed when DeCoster sold his farm to a multinational food conglomerate. Good law apparently should not stand in the way of a corporate sale.

This bill if enacted will allow Maine to lead and to begin to try to right the historical wrongs I have just shared with you. Farm workers, who travel thousands of miles from their homes to feed us, deserve nothing less than the legal protections afforded to all other working people. The

treatment of field workers as people less deserving of basic labor protections in the eyes of the law is nothing less than a vestige of slavery. Current law perpetuates and abets institutional and systemic racism. We have the chance to do better as a Legislature, as a people and as a state. Passing this bill could be the first step in making that a reality.

I thank you for your time and attention and would be happy to answer any questions.