

**Canada's Seasonal Agricultural Workers Program as a Model of Best Practices in Migrant Worker Participation in the Benefits of Economic Globalization Project**

**"The Canadian and United States Migrant Agricultural Workers Programs: Parallels and Divergence between Two North American Seasonal Migrant Agricultural Labour Markets with respect to 'Best Practices'"**

**Executive Summary**

**Prepared for The North-South Institute**

by

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# **The Canadian and United States Migrant Agricultural Workers Programs: Parallels and Divergence between Two North American Seasonal Migrant Agricultural Labour Markets with respect to “Best Practices”**

## **Executive Summary**

The Canadian Migrant Agricultural Workers Program (CMAWP) and the US H-2A Program were established and designed for identical reasons: to supply temporary foreign agricultural workers from the Caribbean and Mexico to agricultural producers in Canada and the United States during times when domestic labour could not or would not reliably work in agriculture. From identical foundations they have grown to resemble one another in many ways and for many of the same reasons. Yet parallels and differences between the two programs do exist. This report compares and contrasts the Canadian and US programs with the related goals of:

- 1) Describing best practices that have proven to be beneficial to employers, workers, and interested other stakeholders involved in the programs, such as sending country and receiving country government officials, host community members, or growers associations
- 2) Describing aspects of the two programs that have not met the criteria of best practice and
- 3) Recommending ways in which the programs could be improved to rise to the level of best practices

## **Defining Best Practices**

As the above comments suggest, “best practices” are those that meet the needs of workers, employers, and other interested stakeholders in the two programs. As such, best practices strike a fair balance between the labour supply and reliability needs of agricultural employers while providing wages and working conditions for workers that allow them to work safely and improve their economic conditions and the overall life chances of their families. One of the key features of the best practices described in this report is that they have been used by one or more growers, workers, or interested other stakeholders, that they have proven to be effective methods of making the contracts between workers and employers mutually satisfying, that they have been sustained over time, and that they can be replicated elsewhere (Robinson 2003). In short, the best practices described here have been observed in field settings. Best practices occur in each of the following areas: policy, regulatory activity, labour management relations, FVH Employment Practices, and Off-Farm Experiences.

Far more often than being the focus of best practices, most scholarly, media, and political attention directed toward the two programs has highlighted the ways that the programs have developed primarily to benefit agricultural producers, sometimes at the expense of foreign workers and their families. Unfortunately, criticism of the programs that has emerged from such approaches has too often pre-empted productive dialogue regarding working toward building on those best practices that exist while addressing the problem areas that remain. It is also unfortunate that, in both the US and Canadian agricultural labour markets, the principal alternatives to temporary foreign worker programs have been either the use of illegal immigrant workers or various private labour

contracting systems that have generated negative publicity for the farming community. In Canada in particular, as well as in some regions of the United States, temporary foreign worker programs were and still are, in some circles, considered positive responses to the poor wages and working conditions that tend to accompany the hiring of illegal immigrants or use of farm labour contracting.

In considering both criticism and praise of legal temporary foreign agricultural worker programs, it is important to keep in mind the two most basic features of the programs. First, that the programs offer foreign workers access to wages that are far higher than wages they receive in their home countries. Second, agricultural producers in Canada and the United States are able to meet their labour needs with reliable workers during peak labour demand periods. It is these two features that are most beneficial to the principal parties involved—workers and employers—in the programs. At the same time, it is these two features of the program that underlie its most intractable problems.

Although it is much easier to criticize the two programs than locate best practices, in this report the criticism is calculated to be constructive, as a way of identifying areas where minor changes could be made to improve the two programs—changes based on methods that some growers, workers, and government officials have already tried. The two tables that follow compare and contrast the Canadian and US systems in terms of best practices and areas that need additional attention to become best practices in the five areas noted above: policy, regulatory activity, labour management relations, FVH Employment Practices, and Off-Farm Experiences. Explanations of the bulleted points in the tables follow.

**Table 1 Best Practices**

<b>Program Areas</b>	<b>CMWAP</b>	<b>US H-2A Program</b>
<b>Policy</b>	<ul style="list-style-type: none"> <li>• Work authorization as preferred to illegal workers</li> </ul>	<ul style="list-style-type: none"> <li>• Work authorization as preferred to illegal workers</li> </ul>
<b>Regulations</b>	<ul style="list-style-type: none"> <li>• Transferring workers among employers</li> <li>• Strengthening role of government officials</li> </ul>	<ul style="list-style-type: none"> <li>• ¾ work guarantee</li> </ul>
<b>Labour-management relations</b>	<ul style="list-style-type: none"> <li>• Elaborating worker spaces and experience</li> <li>• Providing translation services/ ESL</li> <li>• Personal ties between workers and employers</li> </ul>	<ul style="list-style-type: none"> <li>• Elaborating worker spaces and experience</li> <li>• Providing translation services/ ESL</li> <li>• Providing workers transportation</li> <li>• Personal ties between workers and employers</li> </ul>
<b>Employment practices</b>	<ul style="list-style-type: none"> <li>• Government recruiting results in lower costs to workers and employers</li> </ul>	<ul style="list-style-type: none"> <li>• Use of the Adverse Effect Wage Rate to determine foreign workers' wages</li> <li>• No reports of housing without indoor plumbing or other basic essentials</li> </ul>
<b>Off-Farm experiences</b>	<ul style="list-style-type: none"> <li>• Community interest in workers' welfare</li> </ul>	<ul style="list-style-type: none"> <li>• Community interest in workers' welfare</li> </ul>

**Table 2 Areas that Need Improvement to Become Best Practices**

<b>Program Areas</b>	<b>CMWAP</b>	<b>US H-2A Program</b>
<b>Policy</b>	<ul style="list-style-type: none"> <li>• Housing inspections are too variable</li> <li>• Consular and liaison officials have limited powers to address worker grievances</li> </ul>	<ul style="list-style-type: none"> <li>• Housing inspections are too variable</li> <li>• Consular and liaison officials have limited powers to address worker grievances</li> </ul>
<b>Regulations</b>	<ul style="list-style-type: none"> <li>• Disconnect between provincial labour law and international agreements</li> <li>• Labour law enforcement highly variable, should be standardized</li> <li>• Enforcement of regulations is too dependent on local agencies</li> </ul>	<ul style="list-style-type: none"> <li>• Labour law enforcement, highly variable, should be standardized</li> <li>• Enforcement of regulations is too dependent on local agencies</li> </ul>
<b>Labour-management relations</b>	<ul style="list-style-type: none"> <li>• Excessive labour control is common</li> <li>• Seniority is not recognized</li> </ul>	<ul style="list-style-type: none"> <li>• Excessive labour control is common</li> <li>• Seniority is not recognized</li> </ul>
<b>Employment practices</b>	<ul style="list-style-type: none"> <li>• Housing is variable, with reports of no indoor plumbing</li> </ul>	<ul style="list-style-type: none"> <li>• Private recruiting results in undue costs to employers and workers</li> <li>• Employers using program to remove seasonal workers from farms during slow periods</li> <li>• Blacklisting of workers by growers association is common</li> </ul>
<b>Off-Farm experiences</b>	<ul style="list-style-type: none"> <li>• Discrimination persists</li> </ul>	<ul style="list-style-type: none"> <li>• Discrimination persists</li> </ul>

More detail on the best practices listed in Table 1 follows, and a more detailed discussion of these practices can be found at the end of the report.

- **The Comparative Benefits of Work Authorization.** As opposed to illegal migration and work in Canada and the United States, legal temporary worker programs provide at least a framework for the active participation of foreign nationals in the receiving nations' economies under conditions where, on paper, they are protected under laws governing the treatment of labour.
- **Community Attention to Foreign Worker Programs.** In both countries, the role of churches, community organizations, labour unions, worker advocates, and others has been in large part beneficial to workers without creating undue burdens on those employers who engage in fair labour practices. These organizations have provided places for workers to socialize and interact with others off the farm and have advised workers of their rights in the two countries.
- **Elaborating and Expanding Foreign Workers' Spaces and Experiences.** To reduce worker isolation and dependence that too often leads to excessive labour control and over-exploitation of foreign workers, some growers have provided workers vehicles, telephones, and translation assistance, as well as assisted them in orienting them to their surroundings.
- **Public vs. Private Recruiting.** As opposed to private systems, public systems of recruitment are by and large fairer and less costly to workers and to growers participating in the program. Private recruiting systems have a tendency, over time, to exact more and more costs of the program from growers and workers.
- **Transferring Workers Among Employers.** In the Canadian program, provisions exist to move workers to other employers during slow periods on the farms for which they were contracted to work. This meets growers' labour needs and gives workers more work and higher seasonal earnings, which is their primary goal.
- **Using a straightforward method of figuring wages for foreign workers.** In the United States, wages are determined by the Adverse Effect Wage Rate (AEWR), or the highest rate necessary to pay offshore workers that will not have an adverse effect on the wages of domestic workers. Annually, the US Department of Labor figures the AEWR as "a rate equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the US Department of Agriculture. How Canadian wage rates are determined is not well-publicized.
- **Standardizing Housing.** In both countries, housing is highly variable. The best housing provides not only for workers' physical needs, but their social and emotional needs as well, offering recreational and common areas and even classes in English.
- **Work Guarantees.** US employers provide a  $\frac{3}{4}$  guarantee: that is, they guarantee to offer workers at least three-fourths of the workdays in their contracts, and to pay them for this time if they cannot offer the work. This helps meet workers' expectations regarding seasonal earnings.
- **Strengthening the Role of Government Officials.** Closer involvement of consular and other government officials to monitor labour law, assure that the proper Canadian authorities enforce regulations that currently exist, and make the terms of contracts clear to workers and employers would benefit all parties. This would also be in line with reducing the roles of private contractors.

- **Providing Translation Services for Mexican Workers**. Employers who hire Spanish-speaking foremen, bring in occasional outsiders to translate, or attempt to speak Spanish themselves, provide workers with a valuable service and enable them to deal with their surroundings—on and off the job—more effectively. In addition, many communities have ESL classes and some employers provide venues for these classes on their farms.

These recommendations are based on practices and policies that have already been discussed or used on farms in Canada, the United States, or both countries. Obviously, from the criticisms levied at the programs here and elsewhere, several other weaknesses in temporary foreign worker programs have emerged. Most of these are listed in Table 2. These offer other ideas for improving the two programs that have not yet been successfully tested in the field, yet it is important here to point to them as problem areas that may be addressed with additional information provided to employers and workers, more regulatory oversight, more effective representation of workers by liaison officers, consulate staff, or labour unions, or other means.

### **Organization of the Report**

This report begins with an overview of the history and policy of the two programs, moves through discussions of current practices and policies and workers' and employers' experiences with the programs, and ends with an in-depth exchange of best practices and research-based ideas for improving the seasonal foreign agricultural worker programs. The section on current practices and policies addresses both policy and regulatory issues, while the sections on workers' and employers' experiences address labour-management relations and employment practices. The four major sections that follow each begin with an overview that compares the Canadian and US programs, highlighting the key points of the section. The concluding section on best practices and research-based ideas for improving the programs, however, speaks to programs in both countries and thus includes no comparative discussion.