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# WOMEN FARMWORKERS IN CALIFORNIA

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Julie Barreto\*

Women farmworkers are one of the most disenfranchised groups in our society. As Chicanas<sup>1</sup> and as farmworkers, campesinas have few options available to them for improving their standard of living or making meaningful choices about their lives.<sup>2</sup> Agricultural labor in general is not an occupation one enters by choice; people tend to work the fields because of a lack of viable alternatives.<sup>3</sup> Immigration, job discrimination, cultural and language barriers, and lack of education are factors that prevent greater occupational and geographic mobility.<sup>4</sup>

Women farmworkers also contend with an additional element: the raising of children.<sup>5</sup> The traditional concept of the

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1. A recent survey of California women farmworkers revealed that over 90% regarded themselves as Mexican or Mexican-American. CALIFORNIA COMMISSION ON THE STATUS OF WOMEN, *CAMPESINAS: WOMEN FARMWORKERS IN THE CALIFORNIA AGRICULTURAL LABOR FORCE*, A-5, Table 1 (1978) [hereinafter cited as *CAMPESINAS*]. The report provides a good data base of social, economic, and demographic characteristics of California women farmworkers. Interviews were conducted with 400 women and 200 men from Fresno and Imperial counties in California. The data on men was collected for comparative purposes. See generally *id.* at 19-23. The *CAMPESINAS* report provides more reliable statistics than does the 1970 census. For example, in many of the national figures, Mexican, Chicana, and Latina women are categorized as white; in others, the ethnic choice is "Spanish-American," "Spanish-surname," or "Spanish language." ECONOMIC EMPLOYMENT DEVELOPMENT DEPARTMENT, *WOMEN AT WORK IN CALIFORNIA*, 17, 26, 35 (1974) (using statistics obtained from the 1970 U.S. Bureau of the Census Report).

2. *CAMPESINAS*, *supra* note 1, at 8.

3. Approximately 80% of the women interviewed in *CAMPESINAS* expressed a preference for non-agricultural work. *Id.* at A-24, Table 57. If employment conditions were to improve, this figure would drop to approximately 45%. *Id.* at A-25, Table 58. Nationally, women comprise about 15% of all agricultural labor. *SEX DISCRIMINATION IN THE WORKPLACE* 315 (K. Lawrence ed. 1978) (using 1974 statistics obtained from the U.S. Dep't of Labor, Bureau of Labor Statistics). This percentage has been decreasing steadily for the last three decades. The figure is down from 18.9% in 1959. *Id.* at 316. Whereas 1,009,000 women were working in farm labor in 1959, the same source now finds only 460,000. Of all working women, the percentage of those in farm labor has fallen from 4.8% to 1.4%. *Id.* at 314 (using 1974 statistics obtained from the Manpower Report of the President, April 1974).

4. Flores, *Equality*, *REGENERACION*, 1972, at 4-5; *CAMPESINAS*, *supra* note 1, at A-35, Table 85.

5. Approximately 75% of all farmworkers report over two dependents in the family.

mother as the pillar of the family, the parent with the primary responsibility for the children, is not abrogated when she begins work in the field. A woman active in farmworker organization has noted that "in the farmworker community, more than the urban Chicano community, the male/female roles are strictly defined, in spite of the fact that everyone works in the fields together."<sup>6</sup> In 1933, a female farmworker described this double burden:

I am an agricultural working woman. I came to this camp with my husband and baby. I have to get up before the men get up. I feed my baby and then I am supposed to help in the kitchen. If I don't help in the kitchen people will say, 'What kind of woman is she?' Although there is a paid cook I am supposed to help. I have to go out to work with the men at the same time, taking my baby with me. When we finish work at supper-time, I have to do the cooking and wash the dishes. At night when the baby cries I have to be extremely careful because we live in a rooming house and the partition has then [*sic*] walls. Sometimes I have to take the baby outside in order to quiet the baby. Really I am suffering doubly. There must be several thousand women like me in the fields.<sup>7</sup>

An overriding problem for all farmworkers is the lack of a comprehensive state or national policy that addresses their situation and provides for effective implementation of programs geared to farmworker need. Child and health care require particular attention and reform.<sup>8</sup> Housing problems for both migrants and local workers<sup>9</sup> are addressed by a multiplicity of state and

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CAMPESINAS, *supra* note 1, at A-12, Table 20. Thirty-four percent of all women are heads of household. *Id.* at A-6, Table 5. See interview with Jessica Govea, quoted in M. McBANE, HISTORY OF WOMEN FARMWORKERS IN CALIFORNIA (1974) (unpublished thesis in the University of California at Berkeley Chicano Studies Library) [hereinafter cited as Govea interview].

6. Govea interview, *supra* note 5, at 2.

7. M. McBANE, *supra* note 5, at 1.

8. See notes 90-110 *infra* and accompanying text.

9. The housing needs of migrants and local workers reflect the particular characteristics of each group. Migrants, by the nature of their work, rely on housing camps and, when that limited supply is filled, upon makeshift temporary arrangements. For a discussion of housing agencies, see notes 10, 94-95 *infra* and accompanying text. Local workers, on the other hand, are a permanent element of the rural community. V. BRIGGS, JR., W.

county units.<sup>10</sup>

Overlapping jurisdiction and questions regarding the scope of farmworker oriented programs are two of the problems created by a fragmented array of agencies. These problems exist to some extent in many areas of farmworker need and make it difficult for workers to avail themselves of existing resources.<sup>11</sup> Additionally, social and employment services often fail to address identified needs.<sup>12</sup> The confusion over responsibility for providing services is well illustrated with a fundamental aspect of the farmworker condition: health. The evolution and application of pesticide regulations as they apply to farmworkers provide a poignant example of the toll taken in farmworker health when agencies do not adequately perform their protective functions.<sup>13</sup>

The purpose of this paper is to focus attention on the problems faced by women farmworkers in the home and in the fields. The role of women in the farmworkers union and the role of the union in California agricultural history will be briefly explored. Additionally, this paper will begin to define the demography of and special areas of concern to women farmworkers, utilizing statistics from a recent study on women farmworkers conducted by the California Commission on the Status of Women.<sup>14</sup> Finally, pesticide regulation will be discussed in terms of the effect of pesticides on health and of how inefficient regulation affects farmworkers in general and women in particular.

## I. BACKGROUND OF CALIFORNIA AGRICULTURE

To understand the current labor situation, it is helpful to look at the history of California agriculture, migration policy,

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FOGEL, F. SCHMIDT, *THE CHICANO WORKER* 83 (1977) [hereinafter cited as BRIGGS].

10. Jurisdiction over labor camps is in the Department of Housing and Community Development. The Commission of Housing and Community Development adopts and enforces statewide rules and regulations, and establishes conditions for the assumption of responsibility by the city or county. CAL. HEALTH & SAFETY CODE §§ 36050-36072 (West Supp. 1980); CAL. HEALTH & SAFETY CODE §§ 17000-17961 (West Supp. 1980). The Department also works with local agencies to provide cooperatively owned housing, multifamily housing and single family home ownership. 25 CAL. ADM. CODE §§ 7000-7240 (1979). Criteria include adequate location and loan resources. *Id.* § 7216.

11. CAMPESINAS, *supra* note 1, at 13.

12. *Id.* at 13, 15-16.

13. For a discussion of pesticide hazards and attempts at regulation, see Section III *infra*.

14. CAMPESINAS, *supra* note 1.

and past attempts at unionization. Agriculture in California is a nine-billion-dollar industry<sup>15</sup> that originated in the huge Spanish land grants of colonial Mexico.<sup>16</sup> The gold boom of 1848, and the establishment of the transcontinental railroad in 1863<sup>17</sup> opened the territory to land speculators and baron-magnates in the mid-1800's. These investors were faced with ranchos throughout the state of a size previously unknown. As gigantic land holdings were shuffled and changed hands, the huge enterprises that characterize today's growers came into being.<sup>18</sup>

Large property holdings go hand in hand with political power, and the history of agriculture is intimately connected with favorable legislative policies.<sup>19</sup> Farm labor has traditionally been excluded from national labor legislation<sup>20</sup> because the farm has been considered of special importance to the public good.<sup>21</sup> The powerful farm lobby successfully exempted farmworkers from the reaches of the National Labor Relations Act in 1935;<sup>22</sup>

15. N.Y. Times, Dec. 17, 1978, at 81, col. 3.

16. Eight million acres of land passed into the ownership of less than 800 grantees between 1830 and 1846. C. McWILLIAMS, *NORTH FROM MEXICO* 91 (1948).

17. This labor demand accounted for the initial importation of Chinese workers into California. D. MEISTER & A. LOFTIS, *A LONG TIME COMING* 4-7 (1977).

18. Anglo-American immigration engulfed California following 1848. Two years of ruinous drought in the 1860's, and the resultant fall in cattle prices accelerated the transition of rancho power from Mexicans to Anglos. Forty percent of the California land held in Mexican grants was sold to meet costs and expenses involved in confirming land titles after acquisition by the United States. C. McWILLIAMS, *supra* note 16, at 91-92.

19. The Bracero Program is a keen example. See notes 18-31 *infra* and accompanying text.

20. Not until January 1978 were farmworkers entitled to a minimum wage equal to other American workers, 29 U.S.C. § 206(a)(5), and to regular unemployment compensation benefits, I.R.C. § 3306(a)-(c).

21. A subcommittee of the House Education and Labor Committee addressed this notion in 1950:

Agricultural labor has been exempted from all labor relations (laws) ever written. The evidence before the subcommittee shows that it would be harmful to the public interest and to all responsible labor unions to legislate otherwise. The evidence shows that a strike of any serious proportions in agriculture would choke off interstate commerce in necessary food-stuffs, would cause incalculable harm to the public, and would antagonize public opinion in the cause of trade-unionism . . . . The exemption of agricultural labor from the Labor-Management Relations Act is sound . . . .

*Quoted in* D. MEISTER & A. LOFTIS, *supra* note 17, at 78.

22. *Id.* at xi.

this exemption continues today.<sup>23</sup> To the alarm of growers, however, organizing activity occurred throughout the early twentieth century; the war and Depression years showed the greatest unrest.<sup>24</sup> Professional organizers, usually from the East Coast, were unable to overcome the politically powerful growers, or to bring about strong and coherent farmworker representation.<sup>25</sup> The constant flow of Mexican nationals and, in 1935, the even larger migration of Dust Bowl refugees, depressed both wages and further organizational efforts.<sup>26</sup>

In the late thirties, the gearing up of the economy in the face of impending war triggered a labor shortage<sup>27</sup> that resulted in the implementation of the Bracero Program in 1942.<sup>28</sup> Theoretically, Mexican men were imported for seasonal work on crops crucial to the economy only at wages comparable to those paid domestic labor.<sup>29</sup> Not unexpectedly, the prevailing wage soon dropped to whatever braceros would accept for their work.<sup>30</sup>

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23. 29 U.S.C. § 152(3)(1976). Basic coverage at that time would have guaranteed the right to organize, to collective bargaining, and to various mutual protection and assistance activities. 29 U.S.C. § 151 (1976).

24. See generally D. MEISTER & A. LOFTIS, *supra* note 17, at ch. 2 (discussing the 1933 cotton strike in Pixley, California in particular detail.)

25. In 1931 the Communist Party set up the Cannery and Agricultural Worker's Industrial Union (CAWIU), comprised for the most part of volunteer organizers with a union background, but unfamiliar with agriculture. *Id.* at 28-29. The State Chamber of Commerce, together with the grower organization, Associated Farmers, blamed farm labor unrest on the CAWIU and communist agitators. City ordinances virtually outlawed farm organizing and picketing. *Id.* at 39. The CAWIU dissolved in 1955. Any responsibility for subsequent organizing fell to the American Federation of Labor (AFL). Paul Scharenberg, former AFL Treasurer/Secretary in California said, "Only fanatics are willing to live in shacks or tents and get their heads broken in the interests of migratory labor." *Id.*

26. In 1936 an all-white packing house strike in Salinas was crushed by a month of concentrated effort. AFL officials scarcely protested. Two books, *The Grapes of Wrath* by John Steinbeck, and *Factories in the Field* by Carey McWilliams, prompted a series of Congressional hearings into farmworker conditions in 1939 and 1940, but by the time their report was published in late 1942, public interest had dropped. D. MEISTER & A. LOFTIS, *supra* note 17, at 46.

27. E. GALARZA, *FARMWORKERS AND AGRIBUSINESS IN CALIFORNIA 1947-1960*, at 31-32 (1977). This shortage was made especially acute by the internment of Japanese-Americans in the western United States during World War II. J. DUNNE, *DELANO* 46 (1971).

28. This program was an agreement between the U.S. and Mexico respecting the temporary migration of Mexican agricultural workers. Agreement on Migration of Mexican Workers Aug. 4, 1942, United States-Mexico, 56 Stat. 1759 (indexed at 64 Stat. B1149) E.A.S. No. 278, later codified as the Mexican Agricultural Workers Importation Act, ch. 223, 65 Stat. 119 (1951).

29. E. GALARZA, *MERCHANTS OF LABOR* 204 (1964).

30. *Id.* at 206.

This officially sanctioned and plentiful labor supply adversely affected the ability of domestic farmworkers, and women in particular, to find jobs in the fields.<sup>31</sup> This program was wholeheartedly supported by the growers and only reluctantly allowed to lapse in 1964.<sup>32</sup>

Throughout the early sixties, farmworker organizing gained momentum and support. The National Farmworkers Association (NFWA), organized by Cesar Chavez, and the Agricultural Workers Organizing Committee (AWOC), an AFL-CIO affiliate of Filipino workers led by Larry Itliong, directed their efforts toward basic organizational issues.<sup>33</sup> The NFWA was a small but committed group<sup>34</sup> at the time of the first major agricultural labor dispute, begun over the grape harvest in Delano in 1965.<sup>35</sup> The two groups merged in 1966 to form the United Farmworker Organizing Committee under the AFL-CIO.<sup>36</sup> The union was of-

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31. Moreno, *I'm Talking for Justice*, REGENERACION, 1971, at 13.

32. Act of Dec. 13, 1963, Pub. L. No. 80-203, 77 Stat. 363 (1963). Originally intended to be of limited duration, the Bracero Program was extended a number of times due to successful lobbying by agricultural interests. E. GALARZA, *supra* note 29, at 254. Regulations affecting this transition period can be found at 29 Fed. Reg. 1901-02 (1964).

There has been activity to reinstate some form of this legislation. The Guest Worker Bill, based on principles similar to the old Bracero Program, has been introduced by Senators Hayakawa, Goldwater, and Schmitt, and is currently before the Judiciary Committee. *Congressional Record*, S. 1427, 96th Cong., 1st Sess., 125 CONG. REC. 8679 (1979).

33. Better pay was of chief importance. They were fighting for a raise from \$1.20 an hour and 10¢ a box to \$1.40 an hour and 25¢ a box. R. TAYLOR, CHAVEZ AND THE FARMWORKERS 124 (1965).

34. Beyond the core of Cesar Chavez, Delores Huerta, James Drake and various urban liberal sympathizers, the NFWH claimed a membership of 2,000 farmworker families scattered throughout California. *Id.* at 129.

35. Delano, a small town in the San Joaquin Valley in California, became the setting of a hostile five year struggle over union recognition. J. DUNNE, *supra* note 27, at xi. In the spring of 1965, both AWOC and Chicano grapepickers walked off the job in protest of wages below those paid braceros. Domestic workers were receiving 20-30¢/hr. less than the \$1.40/hr. base pay for braceros set by the U. S. Dep't of Labor. *Id.* at 77. Labor disputes continued throughout the summer and by September the UFWOC and the AWOC voted unanimously to strike the Delano growers. *Id.* at 80. The strikers received strong public support through a well publicized secondary boycott of products of non-supportive growers. For five years farmworkers, organizers, and supporters marched in picket lines and withstood the hostility of growers, grower associations, Teamsters, and the then governor of California, Ronald Reagan. D. MEISTER & A. LOFTIS, *supra* note 17, at 155-56. The protracted dispute was resolved following the 1969 harvest only after the growers had absorbed million dollar losses. *Id.* at 162. Base pay, then \$1.65/hr., was raised to \$1.80, to go up to \$1.95 in 1971, and \$2.05 in 1972. Piece rate per grape box was to go up a nickel. *Id.* at 163.

36. J. DUNNE, *supra* note 27, at 155.

ficially recognized as a full-fledged affiliate of the AFL-CIO in 1971 and became popularly known as the United Farmworker's (UFW).<sup>37</sup>

A major reason for the success of Chavez's efforts has been his connection with the ethnic and cultural patterns of California farmworkers.<sup>38</sup> As a farmworker himself he was able to generate trust and commitment where professional union activists had failed. From the beginning, women have had important roles in union activity and have filled key union positions.<sup>39</sup> In order to effectively organize the work force, the union had to cultivate a strong base of support among farmworkers. Union organizers recognized that women had been a significant, often notorious part of the farm labor force<sup>40</sup> and therefore addressed their efforts to the entire family.<sup>41</sup> Ultimately, family participation became the crucial element that delivered a strong union commitment.<sup>42</sup> In the past ten years, the UFW has negotiated contracts that include provisions for a medical plan, grievance procedures, wage scales, labor contractor guidelines, and sanitation facilities.<sup>43</sup>

## II. WOMEN FARMWORKERS TODAY

Women farmworkers have been a significant force throughout the evolution of California agriculture. Concentrated in low paying jobs, they have been working the fields with little support

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37. D. MEISTER & A. LOFTIS, *supra* note 17, at 174.

38. Solis, *Socioeconomic and Cultural Conditions of Migrant Workers*, Soc. CASEWORK, May 1971, at 308, 310.

39. Some of these positions have been filled by Jessica Govea (manager of boycott personnel), Helen Chavez (chief bookkeeper and credit union manager), and Delores Huerta (chief negotiator). One union spokesperson has said "[w]e couldn't have a union without the women." Hoffman, *Women in Huelga*, LUTHERAN WOMEN, Oct. 1971, at 5.

40. Wage and hour differentials between men, women, and children were long a feature of agricultural labor. One woman reports receiving 40¢ an hour in 1948 as opposed to the rate of 60¢ paid men. M. McBANE, *supra* note 5, at 4, Oral Interview. See generally *Rivera v. Division of Indus. Welfare*, 265 Cal. App. 2d 576, 71 Cal. Rptr. 739 (1968) (writ of mandate to enforce orders regulating the minimum wages, maximum hours and working conditions of women and children); R. TAYLOR, *SWEATSHOPS IN THE SUN* (1973).

41. As early as the 1950's, Cesar Chavez insisted the entire family attend the Community Service Organization meetings. Govea interview, *supra* note 5, at 1-2.

42. "It has been that spirit of family that I personally believe has kept us going and has helped us through a lot of very difficult times and difficult struggles." Govea interview, *supra* note 5, at 2. "[T]here tends to be great reliance on family dependency . . . ." Solis, *supra* note 38, at 312.

43. M. McBANE, *supra* note 5, at 43.



beyond the help and reinforcement of their families.<sup>44</sup> Due to cultural and political factors, these women are isolated from the general California population; their lives, for the most part, are guided by the crops and seasonal changes.<sup>45</sup>

#### A. PROFILE

Most women farmworkers are in their twenties and forties, Catholic, and predominantly Spanish-speaking, with one to seven years of schooling.<sup>46</sup> As Chicanas, they are members of California's fastest growing ethnic group<sup>47</sup> and their lives are intimately connected with Chicano culture.<sup>48</sup> One aspect of this culture is the traditional powerlessness of farmworkers. A Chicano sociologist traced the causes of this powerlessness to the farmworkers' 1) mobility, 2) ignorance, 3) vacuum of political education, and 4) lack of organizational skills or money.<sup>49</sup>

The woman farmworker additionally faces assumptions and attitudes that focus on her as a woman. "In the worlds of the barrio and *el campo*, with their limited social options, the role of the woman is often strictly defined. Fewer choices exist."<sup>50</sup> Her role is as the "pillar of family life."<sup>51</sup> While this notion is not

44. Nieto, *The Chicana and the Women's Rights Movement*, 6 C.R. DIG. 36 (1974).

45. Solis, *supra* note 38, at 311; Interview with Julia Palacios, Northern California migrant camp Day Care center Coordinator and Bonnie Gutierrez, migrant camp Health Coordinator, in Berkeley (Jan. 5, 1980) [hereinafter cited as Palacios interview] (notes on file at the Golden Gate University Law Review Office).

46. CAMPESINAS, *supra* note 1, at 5-6.

47. BRIGGS, *supra* note 9, at 5. The CAMPESINAS report found that over 90% of California women farmworkers consider themselves Mexican or Mexican-American. See note 1, *supra*. A 1970 federal report, however, shows only 11,772 "Spanish-American" women "private wage and salary workers" in California agriculture as opposed to 24,171 white women. ECONOMIC EMPLOYMENT DEVELOPMENT DEP'T, WOMEN AT WORK IN CALIFORNIA 35 (1974) (using statistics obtained from the 1970 U.S. Bureau of the Census Report). This discrepancy may be explained in part by the categorization of canning and packing workers under the general heading of agriculture. According to national figures, four percent of all "Mexican-American" women are in farm-related occupations, the highest proportion of any ethnic group. U.S. DEP'T OF HEW, A STUDY OF SELECTED SOCIOECONOMIC CHARACTERISTICS BASED ON THE 1970 CENSUS 73 (1974). See CAMPESINAS, *supra* note 1, at 5-6.

48. Solis, *supra* note 38, at 312.

49. *Migrant and Seasonal Farmworker Powerlessness: Hearings Before the Subcomm. on Migratory Labor of the Senate Comm. on Labor and Public Welfare*, 91st Cong., 1st & 2d Sess. 461-69 (1969) (statement of Ernesto Galarza) [hereinafter cited as *Senate Hearings*].

50. Nieto, *supra* note 44, at 38.

51. *Id.*

restricted to the Chicano culture, it seems to be almost universally acknowledged as a fundamental aspect of Chicano life in spite of the fact that everyone works in the fields together.<sup>52</sup> Some Chicanos perceive the women's movement as divisive and counterproductive to *La Causa*, "a vehicle to entrench and strengthen the majority culture's dominance",<sup>53</sup> while others, in recognition of this concern, try to balance both cultural interests.<sup>54</sup> For many, union activity has been a catalyst for greater self-determination. "In helping to liberate farmworkers from poverty and powerlessness, these women have been liberating themselves from the narrow confines of society's expectations, from the enclosing demands of fathers, husbands, and lovers; but most of all from the bonds of their own uncertainties and fears."<sup>55</sup>

A recent California survey found that a great majority of farmworker women are married; approximately one out of eight is single.<sup>56</sup> Of the total sample, one third considered themselves head of the household and another sixty-three percent considered themselves head of the household with others.<sup>57</sup> Most frequently these women live with five to six dependents,<sup>58</sup> while just over half live with a second wage-earner.<sup>59</sup> The findings show that women in agriculture are not a surplus labor pool, but are working for basic support income. Three-quarters of the sample earn their total annual income in the fields.<sup>60</sup>

## B. EMPLOYMENT

Although women have been an integral and necessary part

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52. Hoffman, *supra* note 39, at 3; Govea interview, *supra* note 5, at 1.

53. Nieto, *supra* note 44, at 39.

54. "Mexican women are identified with problems faced by the whole minority community. They are part of the movement confronting an establishment which consumes them and their families on the labor market . . . . The primary struggle for the liberation of the Chicana is the freedom for the whole family." Flores, *Differences Spelled Out*, REGENERACION, 1972, at 5-7.

55. Hoffman, *supra* note 39, at 5.

56. Of the women interviewed, 71.3% were married, 5.6% were divorced, 3.8% were separated, 51.0% were widowed, and 12.7% were single. CAMPESINAS, *supra* note 1, at A-6, Table 4.

57. *Id.* at A-6, Table 5.

58. *Id.* at A-12, Table 20.

59. *Id.* at A-11, Table 19.

60. *Id.* at A-13, Table 23. Due to the seasonal nature of agricultural work, less than half as many women work during the winter as in the summer. *Id.* at A-18, Table 39.

of organizing efforts, they have not yet attained equality in the fields. Both farmworkers and growers agree that women are paid the same rate for the same job,<sup>61</sup> yet most women are employed in the lowest paying tasks of weeding, sorting, and hoeing.<sup>62</sup> Men dominate the higher paid jobs of irrigating, truck driving, and harvesting.<sup>63</sup>

The result is, not unexpectedly, that women farmworkers earn less than men on a weekly basis.<sup>64</sup> Additionally, as compared with men of the same experience and education, women farmworkers work fewer weeks per year<sup>65</sup> and earn consistently less on an annual basis, often as little as one-half or one-third.<sup>66</sup> A majority of women feel that they are capable of performing the traditionally male jobs and that they either lack training, or have the necessary skills but still are not hired for those jobs.<sup>67</sup>

The income disparity between women and men farmworkers appears to be the result of hiring and training practices and women working fewer weeks per year, rather than a product of unequal pay for similar work. To the extent that child care and other family related needs prevent women from working steadily, these factors bear directly on the level of experience, seniority and income women will be able to attain. The employment status of women farmworkers mirrors the national employment

61. *Id.* at 15. It is instructive, however, that the only respondents who did not agree with this statement were women farmworkers with high education and high work experience. *Id.* at 16.

62. *Id.* at 8. 54.4% of all women work at these tasks. *Id.* at A-20, Table 44.

63. *Id.* at A-20, Table 44. In 1973 there were two women to 1,000 men on the lettuce cutting crew at Interharvest Co., M. McBANE, *supra* note 5, at 30.

64. When working, most women farmworkers make between \$100-125 a week, while men generally make between \$150-200. CAMPESINAS, *supra* note 1, at 33, Table 78.

65. Most women report 10-19 weeks of work in the summer season (the period between April and September) compared to the 20-29 weeks reported by most men. *Id.* at A-18, Table 40. During the winter season women generally work 0-4 weeks compared to the 10-19 weeks worked by men. *Id.* at A-19, Table 41.

66. The average annual income for women farmworkers is less than \$3000. *Id.* at A-3, Table 77. In the CAMPESINAS study, women most frequently report earning \$100-\$124 per week compared to \$150-\$199 for men. *Id.* at A-13, Table 25.

67. Approximately 70% of those interviewed believe themselves capable, yet lacking in training. *Id.* at A-34, Table 81. Approximately 60% believe they are kept from jobs for which they are already trained. *Id.* at A-34, Table 82. A 40 year old mother of 12 put it this way, "I know how to handle a man's job like a man . . ." Cited in Moreno, *supra* note 31, at 12.

situation of all women,<sup>68</sup> with agricultural labor falling within the traditional pattern of subtle, but effective, economic discrimination due to sex.<sup>69</sup>

### C. AREAS OF SPECIAL CONCERN

The lives of most women farmworkers are closely circumscribed by a number of interrelated social and economic factors. A lack of child care facilities and health care, periods of unemployment, and citizenship status are areas of concern that tend to dominate other considerations.

#### *Child Care*

The culture of the woman farmworker in California stresses her role as a parent; traditionally, a big family is encouraged.<sup>70</sup> If she is to work and support that family, however, arrangements must be made for the care of the children. Most often a non-working relative living at home cares for the children.<sup>71</sup> The low income of farmworkers makes it necessary for them to rely on an extended family system of child care; the chief inhibition to the use of day care centers, besides unavailability, is the expense involved.<sup>72</sup>

### A difference between migrant and local workers becomes

68. In all occupations, a woman with four years of college can expect to earn less than a man with an eighth grade education. WOMEN'S BUREAU, EMPLOYMENT STANDARDS ADMINISTRATION, U.S. DEP'T OF LABOR, TWENTY FACTS ON WOMEN WORKERS 2 (1979). Additionally, the gap between the earnings of men and women has steadily widened over the last twenty-five years. WOMEN'S BUREAU, EMPLOYMENT STANDARDS ADMINISTRATION, U.S. DEP'T OF LABOR, THE EARNINGS GAP BETWEEN WOMEN AND MEN 6 (1976).

69. A cause of action under Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, may be feasible in this area. A claimant would first file with the Equal Employment Opportunity Commission and must be prepared to allege individual or employment discrimination because of race, color, sex or national origin. 42 U.S.C. §§ 2000e-2 to e-5 (1976). Employers covered under this section are those in an industry affecting commerce, with 15 or more employees, working each weekday for 20 or more weeks per year. 42 U.S.C. § 2000e(b) (1976).

70. Nieto, *supra* note 44, at 38. Approximately two thirds of men and women interviewed for the CAMPESINAS report responded to questions regarding childcare. CAMPESINAS, *supra* note 1, at A-25, Table 59A. Most farmworkers reported between five and six dependents. *Id.* at A-12, Table 20.

71. *Id.* at 9. Nearly half the men interviewed responded that their wives cared for the children. *Id.* at A-25, Table 59A. Presumably the mothers interviewed relied on grandparents or other family members.

72. Seventy-five percent of the women interviewed said they would use a child care center if it was close and affordable. *Id.* at A-26, Tables 61, 62.

apparent here. The local woman worker lives in the area permanently and is better able to buffer a need for child care with family, friends, schools or programs in the community. Her need for comprehensive child care does not appear as dramatic and may, for that reason, go unmet. The migrant woman worker, on the other hand, has an especially acute need for child care as she follows the seasonal crops in search of work. What day care centers do exist tend to address this migrant population.<sup>73</sup> The number of women indicating a need for child care, however, underscores the needs of both migrants and local women.<sup>74</sup>

In order to meet the child care needs of migrants, some day care centers share facilities with migrant camps operated by the State Housing Authority.<sup>75</sup> These camps provide temporary housing to qualifying migrants<sup>76</sup> on a first come, first served basis from May 1 to October 31. On this somewhat restricted scale, day care facilities are provided for children from six weeks to five years old, from the hours of 5 a.m. to 6 p.m.<sup>77</sup> Despite this partial availability of child care for camp residents, access to child care facilities by migrant and locally-based workers remains an area of unmet need.

### *Health Care*

Health care is a critical issue for farmworkers and their families. Often the only thing the campesino owns is his or her body.<sup>78</sup> "Work is an input of muscle and nerve," and the amount and value of the work done depreciates as the body wears out.<sup>79</sup> Senate hearings on migrant and seasonal farmworker powerlessness contain appalling statistics on the health of agricultural laborers. Life expectancy is twenty years less than that of the average American.<sup>80</sup> The infant and maternal mortality, and death

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73. Palacios interview, *supra* note 45.

74. CAMPESINAS, *supra* note 1, at 9; see note 72 *supra* and accompanying text.

75. CAL. HEALTH & SAFETY CODE §§ 36050-36072 (West Supp. 1980). Whereas the camps themselves are operated by the state, the day care centers are operated by a federally funded nonprofit corporation, the Continuing Development Corporation. Palacios interview, *supra* note 45.

76. To qualify as a migrant, the applicant's principal source of income must be derived from agriculture. CAL. HEALTH & SAFETY CODE § 36062 (West Supp. 1980).

77. Palacios interview, *supra* note 45.

78. Senate Hearings, *supra* note 49, at 466 (statement of Ernesto Galarza).

79. *Id.*

80. *Id.* at 4984 (statement of Raymond H. Wheeler).

from influenza and pneumonia soar above national levels; the tuberculosis death rate is three and one-half times the national level.<sup>81</sup> Pesticide exposure is a serious hidden farmworker hazard.<sup>82</sup> "When the dangers of pesticides *are* publicized, it seems that only the effects on consumers or wildlife (or possibly crop dusters) are mentioned. The farmworkers who are in direct contact with agricultural poisons are seldom considered."<sup>83</sup> The lack of statistics on death and injury due to pesticides underscores the vast amount of research that needs to be done in this area.<sup>84</sup>

In light of the foregoing figures, access to health care is critical. Available resources include private medical plans, employment medical plans obtained through unionization and bargaining, public health clinics, and state Medi-Cal. The relative viability of each depends on expense, hours of service, and location. Most farmworkers report that they are responsible for their own health care, either through private insurance plans or because of a lack of any coverage at all.<sup>85</sup> What public health care

81. *Id.*

82. Common symptoms of pesticide poisoning—rashes, headaches, eye irritations and respiratory problems—are difficult to isolate and are often diagnosed as colds, allergies or eczema. Carres, *Less than People*, HUMAN RIGHTS, Spr. 1979, at 20, 47.

83. *Id.*

84. U.S. DEP'T OF HEW, PESTICIDE RESIDUE HAZARD 178 (1976) [hereinafter cited as PESTICIDE HAZARDS]. See notes 120-31 *infra* and accompanying text.

85. CAMPESINAS, *supra* note 1, at 9 and A-27, Table 64. One factor in the lack of adequate medical attention has been tied into Mexican culture. Migrants with close ties or a home base in Mexico are accustomed to traditional folk medicine. In comparison, health services and procedures encountered in California are more impersonal. Palacios interview, *supra* note 45. Problems then go unattended because they are either not identified, or the family resists acknowledging them to the appropriate sources, fearing that it will lose all power to make decisions. Solis, *supra* note 38, at 314.

In 1978 SB 1896 (1978 Cal. Stats. ch. 1331) extended the rural health services development program indefinitely. The bill also required that the program promote nurse practitioners and physician assistants programs for the training and placement of health professionals in designated rural areas. CAL HEALTH & SAFETY CODE § 1187.5(9) (West Supp. 1980). There are currently 12 farmworker health clinics in California operating on a limited budget. Given a farmworker population of 500,000, an annual allocation of 37¢ per farmworker is estimated. CAMPESINAS, *supra* note 1, at 12.

Federally, rural health clinics are affected by recent Congressional action. 42 U.S.C. § 254b (Supp. 1978) provides for the establishment and continuation of federal migrant health clinics. Existing clinics need to expand to include gynecological, ophthalmological and dental care, as well as bilingual staff and flexible hours of operation. CAMPESINAS, *supra* note 1, at A-28, Tables 66, 67. In 1978 the legislative history of P.L. 626, a health funding law, recognized that due to insufficient funding, the migrant health program had been able to reach only 19% of the population it was designed to serve. [1978] U.S. CODE CONG. & AD. NEWS 9134, 9156. The relevant sections of P.L. 626 are codified at 42 U.S.C. §§ 201, 247d, 254b, 218, 300e-14a, 1396b (Supp. 1979).

does exist is structured in ignorance of the special features of rural areas: lack of public transportation, distances, political barriers, and a lack of professional personnel.<sup>86</sup> These factors underscore the general isolation of rural farm labor populations. Until health services are designed to overcome that isolation, medical needs will go largely unmet except in times of obvious and acute crisis.

### *Periods of Unemployment*

Since women currently work less often than men,<sup>87</sup> and the prospect for farm labor jobs is limited,<sup>88</sup> the availability of public assistance is of great importance. Despite this need, only twenty-seven percent of women farmworkers in the California survey report having received welfare benefits when not working, while fully one third reported receiving no assistance while unemployed.<sup>89</sup>

In 1976, unemployment insurance was first made available to California farmworkers.<sup>90</sup> Prior to that time, growers had

86. Solis, *supra* note 38, at 313. In recognition of these barriers to continuing health care, local public health departments may overcompensate. Attempts to inoculate all migrant children have resulted in overimmunization, currently a subject of deep concern. Palacios interview, *supra* note 45.

87. CAMPESINAS, *supra* note 1, at 9.

88. Farm labor is a shrinking occupation. The number of farm laborers, who make up nearly 90% of all agricultural labor, is expected to decline by nearly half (3.1 million in 1972 to 1.6 million in 1985); this represents a somewhat faster rate of decline than in the 1960-1972 period. WOMEN'S BUREAU, EMPLOYMENT STANDARDS ADMINISTRATION, U.S. DEP'T OF LABOR, 1975 HANDBOOK ON WOMEN WORKERS 57-58 (1975). Improved machinery, fertilizer, and seeds have permitted growers to increase production with fewer workers. While the number of farms has declined, the average size has increased. SEX DISCRIMINATION, *supra* note 3, at 325.

The question of state funding for this technological revolution in agriculture is currently being raised in a suit by California Rural Legal Assistance on behalf of several named farmworkers. An injunction is being sought to bar research by the University of California on any agricultural mechanization project that benefits a "narrow group of agribusiness interests with no valid public purpose, contributes to agricultural unemployment or displacement of farmworkers, or the demise of the small family farm, or the deterioration of the rural home and rural life." The suit also seeks to enjoin University officials with economic self-interest in research from participating in decisions regarding the work. A request is made for the retraining and relief of farmworkers displaced by machines that would be financed by the income from the licensing of equipment. *California Agrarian Action Project v. Regents of the Univ. of Cal.*, No. 516427-5 (Cal. Super. Ct., Alameda County, Jan. 17, 1979).

89. CAMPESINAS, *supra* note 1, at A-14, Table 28.

90. CAL. UNEMP. INS. CODE §§ 611-613 (West Supp. 1980). This occupational exten-

been successful in arguing that the seasonal nature of farmwork and annual lay-offs made such an extension impractical.<sup>91</sup> It is specifically during the winter months, however, that field work is rarely available and farmworkers are most in need of unemployment insurance. In 1978, it was reported that 38.5% of a sample of women farmworkers reported receiving unemployment insurance while 46.8% of the male farmworkers reported such assistance.<sup>92</sup> While women farmworkers may be eligible now for public assistance or unemployment insurance, many still will be denied benefits due to strict eligibility requirements, or be unaware of their eligibility and not pursue their rights.<sup>93</sup> Outreach, education, and advocacy are needed to assure this group access to crucial economic assistance.

### *Citizenship Status*

The farmworker's ability and motivation to address social and economic problems are particularly affected by his or her citizenship status. To aliens, the issue of citizenship is of overriding personal importance; to citizens, it is a problem usually affecting a close friend or relative.<sup>94</sup> The threat of deportation shadows all of the undocumented workers' activities. While many California farmworkers are citizens and green card holders<sup>95</sup> (permanent residents who may work and move anywhere in the United States), there is also an unknown number of Mexican nationals working in agriculture without documentation.<sup>96</sup> Figures as to the number of deportable aliens working in the

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sion had been vetoed four times by the then governor, Ronald Reagan. MEISTER & LOFTIS, *supra* note 17, at 218.

91. *Id.* at 217.

92. CAMPESINAS, *supra* note 1, at A-14, Table 28. Prior to the extension of employment insurance, more farmworkers relied on the state welfare program. D. MEISTER & A. LOFTIS, *supra* note 17, at 218.

93. See note 103 *infra* and accompanying text.

94. Solis, *supra* note 38, at 311-12; Palacios interview, *supra* note 45.

95. Of the farmworkers interviewed in CAMPESINAS, 28.5% held green cards, 1.7% had work visas, and 42.2% were U.S. citizens. CAMPESINAS, *supra* note 1, at A-6, Table 6. In 1974 there were 3.9 million permanent residents in the U.S. of whom 23% were Mexican. A periodic Immigration and Naturalization Service count of Mexican commuters found that 39% of those holding green cards were working in agriculture. BRIGGS, *supra* note 9, at 85.

96. In the CAMPESINAS report, 25.6% responded "no" to the question of citizenship. This group does not include those with green cards or work visas, and therefore presumably represents the percentage working without any papers. CAMPESINAS, *supra* note 1, at A-6, Table 6.



United States vary greatly.<sup>97</sup>

Like the braceros, aliens are a fluid labor supply that has a depressing effect on the domestic labor pool.<sup>98</sup> Workers with a home base in Mexico enter the domestic labor market and earn wages considerably higher than they could earn in Mexico.<sup>99</sup> Because of higher wages and possible deportation these workers tend not to express dissatisfaction with living and working conditions. Language and cultural barriers reinforce isolation from both rural and domestic migrant communities.<sup>100</sup> The UFW has recognized this area of conflict. In 1970 Cesar Chavez stated that

[i]f we could get the illegals out of the grape fields and if we could get the illegals out of the lettuce fields the growers would have to come and meet with us in 24 hours . . . We do not blame the illegals - who are our brothers and sisters - because they are only the tool used by others to try and destroy our movement. But their pressure hurts the aspirations of all farmworkers for a decent life, a decent job and a decent wage.<sup>101</sup>

A subsequent UFW resolution agreed to oppose the employment of aliens as replacements for strikers, rather than to flatly oppose their entry.<sup>102</sup>

Farmworkers without documentation rarely have access to necessary social services. Rural health clinics, public assistance, and unemployment insurance are available only to legal residents, visitors, or citizens.<sup>103</sup> For a major emergency, Medi-Cal

97. The Immigration and Naturalization Service has estimated that for each alien deported, five remain working in the U.S. BRIGGS, *supra* note 9, at 89. 710,000 Mexicans comprised 90% of all deported aliens in 1974. *Id.* at 82.

98. "They are all competing with one another for farm jobs . . . *locales*, wetbacks, and green carders are more separated from one another by such competition than they are bound by common cultural traits." *Senate Hearings*, *supra* note 49, at 462 (statement of Ernesto Galarza).

99. Solis, *supra* note 38, at 311.

100. *Id.*

101. Cesar Chavez quoted in D. MEISTER & A. LOFTIS, *supra* note 17, at 208.

102. Additionally, the union supports attempts to organize undocumented workers as if they had entered legally. *Id.*

103. Requirements for participation in rural health clinics were discussed in Palacios interview, *supra* note 45. Welfare eligibility rules are found at CAL. WELF. & INST. CODE § 10050 (West 1972). Unemployment insurance eligibility is set out in CAL. UNEMP. INS. CODE § 621 (West Supp. 1980). An alien in the country unlawfully may be

funding has been allocated in isolated instances, but only in a lump sum payment to the institution providing the needed service.<sup>104</sup> While some of these problems are being addressed at the bargaining table, that avenue is circumscribed by union priorities and the hazards of negotiation.<sup>105</sup> Undocumented farmworkers are often inhibited from seeking available services or using available union and state grievance procedures by threat of retaliation and exposure.<sup>106</sup>

A consideration of issues affecting women farmworkers points up areas of unmet need and of services failing to provide adequate protection and support. What public services are available appear to be unresponsive to daily needs and likely to provide services only in crisis situations.<sup>107</sup> Problems are perpetuated rather than solved by a lack of coherent policy on the part of existing agencies, and poor communication between those agencies and the people they affect.<sup>108</sup> An examination of pesticide regulation affecting California farmworkers provides insight into the nature of policy conflicts preventing efficient utilization of potentially useful resources.

### III. THE PESTICIDE PROBLEM AND WOMEN FARMWORKERS

Agricultural labor is one of the three most hazardous industries in the country;<sup>109</sup> only construction and mining have a greater proportion of fatal accidents.<sup>110</sup> Indeed, while the actual

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considered not "available" for work. The Employment Development Dep't. may require an alien applying for benefits to provide evidence that the Immigration and Naturalization Service is aware of his or her presence in the U.S. as a condition to receiving benefits. *Alonso v. State*, 50 Cal. App. 3d 242, 123 Cal. Rptr. 536 (1975).

104. Palacios interview, *supra* note 45.

105. D. MEISTER & A. LOFTIS, *supra* note 17, at 228.

106. Palacios interview, *supra* note 45.

107. Solis, *supra* note 38, at 313.

108. Communication problems are reflected in the agency attitude that migrants are to blame for not availing themselves of existing resources. *Id.*

109. *Oversight Hearings on Farmworker Occupational Safety and Health Before the House Comm. on Education and Labor*, 92d Cong., 2d Sess. 216-18 (1972) (statement of Miriam Guido, Migrant Legal Action Project) [hereinafter cited as *House Hearings*].

110. Agricultural labor - 67 deaths per thousand; Construction - 72 deaths per thousand; Mining - 100 deaths per thousand. N. ASHFORD, *CRISIS IN THE WORKPLACE* 521 (1976). The incidence rate of all types of agricultural disease and injury in 1970 was two and one-half times the rate for all California industries. Pesticide Workshop, *supra* note 84, at 126. Nationally, while agricultural labor comprises only 4.5% of the workforce, it

number of farmworkers has decreased over the past twenty-five years, farmworker deaths and injuries have been on the rise.<sup>111</sup> Despite these alarming figures, agriculture is not included within the Target Industries Program of the Occupational Safety and Health Administration [OSHA].<sup>112</sup>

Agricultural work hazards are generally of two major types: machinery and tool-related, or pesticide-related. While death and injury due to farm equipment are immediate and observable, the pesticide problem is much more insidious. Pesticides were traditionally presumed safe until specific research data demonstrated the need for regulations.<sup>113</sup> The burden of proving that a pesticide is dangerous is difficult to meet, and experience has shown that the most harmful are withdrawn from the market only after demonstrable damage has been shown.<sup>114</sup> A persis-

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accounts for 17% of the deaths and 10% of all disabling work injuries. N. ASHFORD, *supra*, at 521 citing statement by George C. Guenther, Ass't. Secretary of Labor for Occupational Safety and Health, before the House Subcomm. on Agricultural Labor regarding Occupational Safety and Health (Sept. 25, 1972).

111. National Safety Council figures show that while the number of farmworkers decreased by 50% between 1953 and 1973, the 2,300 farmworker deaths reported in 1971 were a 10% increase over 1961. *Id.* at 522.

112. U.S. DEPT'S OF LABOR, OSHRC, AND HEW, THE PRESIDENT'S REPORT ON OCCUPATIONAL SAFETY AND HEALTH, 34-35 (1973). An official reason given for this omission from the OSHA program was that enforcement would be impossible until meaningful standards are developed for the industry. *House Hearings, supra* note 109, at 7-8 (statement of George C. Guenther, Ass't Sec'y of Labor for Occupational Safety and Health).

113. A prime example of this is the dichloro-diphenyl-trichloroethane (DDT) controversy. DDT is the most thoroughly studied chemical poison and has been the primary target of pesticide critics. H. WELLFORD, *SOWING THE WIND* 332 (1972). In 1969 it was banned for domestic and some commercial use after lengthy research. 34 Fed. Reg. 18,827 (1969). Even when pesticide hazards are well documented, as with DDT, regulation and enforcement follow protracted procedures. *See generally* Kay, *Brief Overview of the Toxicological and Epidemiological Background to the Detection and Prevention of Cancer in Agricultural Workers*, 1 *CANCER DETECTION AND PREVENTION* 107 (1976); *Senate Hearings, supra* note 49, at § 6A (pesticide hazards). In 1972 many commercial crops were still being treated with DDT. The EPA banned 99% of domestic DDT use effective Dec. 31, 1972. 37 Fed. Reg. 13,369 (1972). *See* discussion at notes 168-77 *infra* and accompanying text. *See generally* N. ASHFORD, *supra* note 110, at 527.

114. Typical of this deference to pesticide use is a recent federal district court refusal to enjoin the proposed spraying of 2,4-D on 2,700 acres of public lands in Oregon on grounds that the Environmental Impact Statement lacked "direct evidence." *Southern Or. Citizens v. Andrus*, [1979] 10 *ENVIR. REP.* (BNA) 1351 (D. Or., Sept. 22, 1979). In construing the National Environmental Policy Act, one court has held that the existence of an adequate research program is a prerequisite to agency action; the program must reflect a diligent research effort, undertaken in good faith, which utilizes effective methods and reflects the current state of the art of relevant scientific discipline. *Environmental Defense Fund v. Hardin*, 325 F. Supp. 1403-04 (D.D.C. 1971).

tent hurdle in the attempt to restrict the use of harmful pesticides is the absence of definitive data.<sup>115</sup> The argument of the chemical industry that no emergency exists has overridden the adoption of even temporary standards.<sup>116</sup>

Pesticides are essentially poisons that are absorbed orally, through inhalation, or by direct contact with the skin.<sup>117</sup> Farmworkers are exposed to pesticide application or pesticide residue on the foliage of treated crops and in the dusty soil of the fields on a continual seasonal basis.<sup>118</sup> Work in such close contact has been linked to genetic changes in living tissue showing effects on the fetus as well as on the worker.<sup>119</sup> Farmworker children living near the fields are also susceptible to danger from exposure.<sup>120</sup>

Women farmworkers have particular interest in demanding effective pesticide regulation. Physical impairment induced by pesticide poisoning intimately affects the lives of women farmworkers. Women still bear primary responsibility for the health of family members and the care and rearing of children. It is primarily the employment of women that is curtailed by these demands, thus perpetuating their cycle of poverty.

#### A. EFFECTS OF PESTICIDES

"A large number of pesticides has been found carcinogenic in laboratory animals, but the target organs have not yet been identified . . . For this reason, and because searching epidemio-

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115. See Kahn, *Pesticide Related Illness in California Farm Workers*, 18 J. OCCUPATIONAL MED. 693 (1976); Comment, *Farmworkers in Jeopardy*, 5 ECOLOGY L.Q. 73 (1975); N. ASHFORD, *supra* note 110, at 525.

116. PESTICIDE HAZARDS, *supra* note 84, at 179.

117. *Senate Hearings*, *supra* note 49, at 3740 (statement of Allen B. Lemmon, Assistant Director of the California Dep't of Food and Agriculture).

118. Kahn, *supra* note 115, at 693.

119. Pesticides are being stored in the fetus as early as the fourth week of gestation. *Senate Hearings*, *supra* note 49, at 3855.

120. It has been suggested that the younger the person (or fetus), the more apparent will be the effects of pesticides. *Id.* Additionally, the milk of nursing mothers contains more than 100% of her daily ingested DDT. *Id.* at 3881.

A five-year study of the potential pesticide hazards to children working the fields has recently been announced by the EPA and the Dep't of Labor. The study will emphasize the adequacy of protection to children, with their smaller body size and different metabolic rate, as provided by standards based upon exposure to adults. S.F. Chronicle, Mar. 18, 1980, at 18, col. 5.

logical studies have not been mounted, incontrovertable evidence of human ill effects has not yet been brought forward."<sup>121</sup> The difficulty in conducting the necessary studies is acknowledged within the scientific community,<sup>122</sup> but initial findings on pesticide effects are being made.

Since DDT was banned in 1972,<sup>123</sup> several other major classes of pesticides have been promoted by chemical interests in the agricultural community. A major group of pesticides is the chlorinated hydrocarbons. This type of poison can survive in human tissue for years without further contact.<sup>124</sup> Pesticides in this family have been linked to the ovarian menstrual functions and childbearing disorders. Specifically, this includes spontaneous abortion, eclampsia, stillbirth, birth defects, and the premature bursting of the amniotic sac.<sup>125</sup> They have also been identified as causing mutation, sterilization, and death.<sup>126</sup>

A second major class of pesticides is the organophosphorous compounds.<sup>127</sup> Most studies have concentrated on this most widely used branch of the pesticide family. They have been

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121. Kay, *supra* note 113, at 107.

122. PESTICIDE HAZARDS, *supra* note 84, at 180.

123. 37 Fed. Reg. 13369 (1972). Current DDT tolerance levels provide primarily for residue resulting from DDT presence in the soil or atmosphere. 40 C.F.R. § 180.147 (1979).

124. Kay, *supra* note 113, at 114. Residues become increasingly concentrated as they move up the food chain, reaching their highest concentrations in fish, birds and humans. Butler, *Monitoring Pesticide Pollution*, 19 *BIO-SCIENCE* 889 (1969).

125. *Senate Hearings, supra* note 49, at 3886. Vies, *Some Data on the Status of the Sexual Sphere in Women Who Have Been in Contact with Organochlorine Compounds*, 32 *PEDIATR AKUSHERSTVO HINEKOL* 48 (1970) cited in V. HUNT, *OCCUPATIONAL HEALTH PROBLEMS OF PREGNANT WOMEN* at xxvi (1975). Among the most infamous of this group is DDT. Although chlorinated hydrocarbons are being phased out in the United States, there remains a substantial market abroad in countries lacking comprehensive pesticide standards. PESTICIDE HAZARDS, *supra* note 84, at 9. Material distributed outside the United States is not subject to EPA regulations and the makers of pesticides are free to export abroad. 40 C.F.R. § 162.5(4) (1979). The export exemption has been linked to the finding that the content of DDT in the blood of the people of Nicaragua and Guatemala is over 30 times higher than the U.S. average. Weir, Shapiro, & Jacobs, *The Boomerang Crime*, *MOTHER JONES*, Nov. 1979, at 40, 43.

126. Genetic hazards due to chlorinated hydrocarbons were recognized as early as 1970. S. REP. NO. 91-596, 91st Cong., 2d Sess. 5180 (1970). See note 146 *infra* and accompanying text for a discussion of genetic risks.

127. These include Parathion, Malathion, Aldrin, Endrin, Paraquat, 2,4-D, 2,4,5-T, Cyanide, and Formaldehyde.

linked to cancer<sup>128</sup> and are chemically similar to nerve gas,<sup>129</sup> causing headache, fever, nausea, convulsions, long-term psychological effects, or death.<sup>130</sup> Like the chlorinated hydrocarbons, these pesticides show evidence of mutagenicity and teratogenicity, causing spontaneous abortions and developmental malformations directly upon the fetus.<sup>131</sup>

Organophosphorous compounds suppress cholinesterase levels in the blood, with effects ranging from no symptoms at all to life-threatening illness.<sup>132</sup> Like all pesticides, they are absorbed through the skin, by inhalation, and through occupational exposure.<sup>133</sup> Those working in crops with the greatest amount of handwork — citrus fruits, olives, grapes and cotton — show the greatest suppression of cholinesterase levels.<sup>134</sup> In addition to these studies on low-grade concentrations and residues of pesticides, overt and dramatic episodes of farmworker poisoning occur sporadically in California.<sup>135</sup>

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128. Kay, *supra* note 113, at 114.

129. These poisons affect the level of red blood cells and plasma cholinesterase which control the body's involuntary nerve responses. N. ASHFORD, *supra* note 109, at 524.

130. S. REP. NO. 91-596, 91st Cong., 2d Sess. 5180 (1970).

131. V. HUNT, *supra* note 125, at 64. The Environmental Protection Agency (EPA) recently enacted a temporary emergency suspension of 2,4,5,-T and Silvex following a "statistically significant higher incidence of spontaneous abortions . . ." in the community of Alsea, Oregon. 44 Fed. Reg. 15,874 (1979). The suspension was the result of investigation and efforts of a woman who had suffered a miscarriage in 1975 following the spraying of 2,4,5,-T and Silvex. The suspension followed initial findings by the EPA that no cause and effect situation existed between the spraying and rate of miscarriage. Edmunds, *Bonnie Hill's Fight Against Herbicide 2,4,5,-T*, Ms., Feb. 1980, at 30. This incident did not involve farmworkers, yet it emphasizes the potential hazard to all persons living within a chemically treated environment.

132. Kahn, *supra* note 115, at 694. Chronic exposure causes neuromuscular impairment with serious deterioration of strength and hand-to-eye coordination. Jager, Roberts & Wilson, *Neuromuscular Function in Pesticide Workers*, 27 BRIT. J. INDUS. MED. 273 (1970). Additionally, narcolepsy, disturbed memories and dermatitis have been reported. Comment, *supra* note 114, at 84.

133. R. Ray, *Occupational Exposure to Organophosphate Pesticides among Agricultural Workers and their Families 7* (1977) (unpublished thesis in the University of California at Berkeley Chicano Studies Library).

134. *Id.* at 87. This study detected no correlation between cholinesterase levels and gender. *Id.*

135. Occasionally episodes of pesticide poisoning are dramatic enough to be reported in the local press and to warrant investigation by the California Department of Public Health. Kahn, *supra* note 115, at 693. In 1978, 14 migrant children were treated for pesticide poisoning after nearby fields were sprayed with organophosphorous compounds. Irving, *Children Poisoned: Modesto Pesticides Case Coming to Trial*, S.F. Sunday Examiner and Chronicle, Nov. 25, 1979, at 13, col. 1. This incident was the basis of a suit against the grower and crop dusters brought by California Rural Legal Assistance on

## B. PROBLEMS WITH ENFORCING PESTICIDE REGULATIONS

Effective enforcement of pesticide regulations has been hampered by a lack of coherent policy on the part of the administering agencies. Despite the acknowledged hazards, the farmworkers' need for a safe workplace free from hidden and insidious threat of pesticide poisoning remains unmet.

### *Federal Jurisdiction*

Workplace health and safety issues fall within the ambit of the Occupational Health and Safety Act.<sup>136</sup> In the area of pesticide regulation, however, a protracted struggle over jurisdiction has ensued between OSHA and the Environmental Protection Agency (EPA). The conflict centered on the power to establish re-entry times, the period that must elapse after pesticides have been applied before a worker can re-enter the field.<sup>137</sup> OSHA originally issued temporary emergency re-entry times in 1973,<sup>138</sup> but internal and Congressional pressures prompted their suspension two months later.<sup>139</sup> Amended temporary standards were is-

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behalf of the migrant children. *Id.* The case was subsequently settled. Information obtained from Joyce Carrillo, attorney for plaintiff.

The long term effects of chronic exposure to small doses of pesticides (low-grade residue poisoning) harbor a more insidious threat. As one researcher put it, "If fieldworkers were dropping like flies all over the state, we wouldn't need any monitoring projects." PESTICIDE HAZARDS, *supra* note 84, at 180. Many years can separate the cause from the effect. H. WELLFORD, *supra* note 112, at 189, thus compounding statistical underreporting.

136. The secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the best extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.

29 U.S.C. § 655(b)(5) (1970).

137. These figures substitute for actual calculation of pesticide concentration on crops. N. ASHFORD, *supra* note 110, at 523.

138. OSHA acted under threat of suit for failure to provide farmworkers with safe and healthful working conditions. *Id.* at 527. The resultant standards can be found at 38 Fed. Reg. 10,715 (1973).

139. An initial report by the Subcommittee on Pesticides of OSHA's Agricultural Advisory Committee was unable to recommend field re-entry times due to insufficient data. N. ASHFORD, *supra* note 110, at 523. Upon issuance of the temporary standards, the subcommittee chairman reiterated the subcommittee finding that no emergency existed with respect to occupational exposure to organophosphorous pesticides and that there was no justification for such standards. A second pesticide committee established by the

sued that eliminated nine of the twenty-one previously covered re-entry times.<sup>140</sup> In late 1973, however, the EPA claimed "primary responsibility for establishing the standards concerning occupational safety arising from the use of pesticides."<sup>141</sup> In 1972 the EPA released a series of field re-entry times much less stringent than even the amended OSHA standards.<sup>142</sup>

Major differences between the two agencies may account for divergent re-entry figures and degrees of enforcement. Whereas the Occupational Safety and Health Act is essentially a "worker's Bill of Rights,"<sup>143</sup> the EPA is dedicated to primary consideration of the environment as a whole, and worker safety is but one element to be considered. Farmworkers currently comprise the only category of employee in which toxic substances in the workplace are not federally regulated by OSHA.<sup>144</sup>

### *California Enforcement*

Pursuant to Federal OSHA language, California established a State OSHA to regulate and enforce workplace health and safety issues.<sup>145</sup> At the state level, regulation and enforcement are again divorced from coverage with other occupational hazards; jurisdiction lies within the California Department of Food and Agriculture.<sup>146</sup> California pesticide regulations enjoy a

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National Institute of Occupational Safety & Health and the Council on Environmental Quality duplicated the earlier findings. N. ASHFORD, *supra* note 110, at 527; S. 1888, 93rd Cong., 1st Sess. (1973); H.R. 8860, 93d Cong., 1st Sess., 119 CONG. REC. 20575 (1973). See *Florida Peach Growers' Ass'n, Inc. v. United States Dep't of Labor* [1973-1974] OSH Cas. (CCH) 21781 for a good discussion of the chronological events.

140. 38 Fed. Reg. 17,214 (1973).

141. A mandatory injunction was sought by the Organized Migrants in Community Action, Inc. (OMICA) v. Brennan, No. 75-54 (D.D.C. dismissed Oct. 29, 1974). Following EPA preemption, however, defendant's motion to dismiss was granted. See Comment, *supra* note 115, at 81-82. Preemption was upheld on the basis of 29 U.S.C. § 653(b)(1) (1975): "Nothing in this chapter shall apply to working conditions of employees with respect to which other Federal [agencies] exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health." Such authority was found under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 135-150jj (1975), which had been suggesting pesticide regulations through instructions on product labels.

142. The new EPA times of 24-48 hours were a mere duplication of the preharvest interval set for the consumer purchaser. At the time of EPA preemption, original OSHA standards for the same pesticides were 2-14 days. Comment, *supra* note 115, at 79.

143. *Id.* at 121.

144. 40 C.F.R. § 170.1 (1979).

145. CAL. LAB. CODE §§ 6300-6700 (West Supp. 1980).

146. CAL. AGRIC. CODE §§ 12751-12999 (West Supp. 1980).



reputation as the most stringent in the nation.<sup>147</sup> California is the only state to establish its own re-entry intervals and to address all aspects of pesticide regulation with singular specificity.<sup>148</sup> However, in spite of applicable law, pesticide regulation is not effective when not carefully enforced.<sup>149</sup>

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147. PESTICIDE HAZARDS, *supra* note 84, at 178; N.Y. Times, Oct. 13, 1978, at 77.

148. See 3 CAL. ADM. CODE §§ 2330-2490.3 (1979). This title addresses all aspects of worker safety, including specific definitions and explanations of "field re-entry safety intervals," *id.* § 2476(g)-(i); the procedure to be followed in each instance of pesticide poisoning, *id.* § 2477(c); protective clothing requirements, *id.* § 2477(h); and the posting of bilingual warnings in the fields, *id.* § 2480.

149. The Environmental Assessment Team reported that the Department of Food and Agriculture (DFA) and the county commissioners failed to adequately (1) document their decisions and reasoning, (2) provide for public input, (3) determine the need for pesticide use, and (4) consider alternative methods of pest control. REPORT OF THE LEGISLATIVE ANALYST TO THE JOINT LEGISLATIVE BUDGET COMM., ANALYSIS OF THE BUDGET BILL 1226 (1979-80).

Recognizing that individual Environmental Impact Reports for each application of restricted pesticides could cripple agriculture, compromise legislation was adopted in 1978. DFA was instructed to construct a statewide pesticide regulatory program that would safeguard public health and the environment without the requirement of individual Environmental Impact Reports. The 1978 Senate Bill No. 2003 provides for comprehensive examination of all stages of pesticide use. Certification of the system must use "an interdisciplinary approach [to] ensure the integrated use of the natural and social sciences in decisionmaking." CAL. PUB. RES. CODE § 21080.5(d) (West Supp. 1980). Additionally, county commissioners will be required to determine whether feasible alternatives and mitigation measures to reduce adverse pesticide effects exist. An internal appeals process is provided. 1978 Cal. Stats., chs. 308, 760 (codified in relevant portion at CAL. PUB. RES. CODE §§ 21080, 21080.5, 25519 (West Supp. 1980)). Implementation of the comprehensive regulatory system has been deferred until the legislature allocates funds. The Chairman of the Joint Legislative Budget Comm. requested that the Department of Finance not approve the additional funding for fiscal year 1980-81 pending a committee hearing. On Jan. 2, 1980, DFA withdrew its funding request for 1980-81. REPORT OF THE LEGISLATIVE ANALYST TO THE JOINT LEGISLATIVE BUDGET COMM., ANALYSIS OF THE BUDGET BILL 1335 (1980-81).

SB 1404 is currently before the Senate. It would repeal current CAL. PUB. RES. CODE § 21080.5 (West Supp. 1980) and require the Director of DFA to reinstate the pesticide regulation in effect prior to Dec. 31, 1979. Enactment would repeal the more stringent regulatory program awaiting appropriation. The California Department of Food & Agriculture recently published the results of a study begun in 1976 to assess the pesticide regulatory system in California. ENVIRONMENTAL ASSESSMENT TEAM, CAL. DEP'T OF FOOD & AGRICULTURE, REPORT ON THE ENVIRONMENTAL ASSESSMENT OF THE PESTICIDE REGULATORY PROGRAM (1979) [hereinafter cited as ASSESSMENT REPORT]. The report, inspired by the state Attorney General, 59 Op. Cal. Att'y Gen. 300 (1976), was undertaken because it was found that the existing regulatory system did not meet the California Environmental Quality Act, CAL. PUB. RES. CODE §§ 21000-21176 (West Supp. 1980). On the whole, the Environmental Assessment Team was highly critical of existing regulation procedures and comments upon the report were invited from interested parties. Volume five reports those comments and the Assessment Team evaluations.

Regulation of pesticide use in California has devolved upon the fifty-four local county agricultural commissioners, each of whom is appointed by the county board of supervisors.<sup>150</sup> An evaluation of the enforcement history of County Agricultural Commissioners conducted by the California Department of Food and Agriculture, found that the major problems with pesticide regulation in California are the reluctance of the commissioners to fully implement existing law<sup>151</sup> and the incidence of underreporting by farmworkers.<sup>152</sup>

The reluctance of the commissioners to vigorously enforce pesticide regulation is illustrated throughout the local level, and includes their failure to hire bilingual staff<sup>153</sup> despite the fact that most California farmworkers are Mexican or Chicano,<sup>154</sup> and by an enforcement process that consists of an interview with the offender, a warning, and perhaps cancellation of the pesticide use permit.<sup>155</sup> The evaluation found that many commissioners believe the interview is a drastic step and that the concern it brings about is, by itself, sufficient punishment.<sup>156</sup> Also, whereas 355 permits were cancelled in 1977, 288 were reissued the following year in time for the harvest.<sup>157</sup>

The report acknowledged that California's exemplary pesticide regulations are subject to a severe resource limitation. Any enforcement effort is almost totally dependent on (1) voluntary compliance by the persons subject to the law, and (2) the willingness of victims of illegal action to come forward with evidence of violations.<sup>158</sup> This inadequate level of enforcement has led

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150. CAL. AGRIC. CODE § 2121 (West 1968).

151. In 1976, the County Agricultural Commissioner's Association adopted a resolution urging the Director of the Department of Food & Agriculture to "curtail further proliferation of the rules and regulations pertaining to pesticide use and worker safety . . ." because they felt California regulations exceeded those of all other states, threatened agricultural production and failed to consider the "economics and limitations of modern science." Letter from California Rural Legal Assistance to the Environmental Assessment Team (Jan. 1, 1979), reprinted in ASSESSMENT REPORT, *supra* note 149, at 570 [hereinafter cited as CRLA letter].

152. See notes 165-167 *infra* and accompanying text.

153. 5 ASSESSMENT REPORT, *supra* note 149, at 22.

154. See note 47 *supra*.

155. 4 ASSESSMENT REPORT, *supra* note 149, at 6.6-4; 3 CAL. ADM. CODE §§ 2451, 2452.5 (1973, 1979).

156. 4 ASSESSMENT REPORT, *supra* note 149, at 6.6-41.

157. *Id.* at 6.6-38.

158. 4 ASSESSMENT REPORT, *supra* note 149, at 6.6-50. The following comment by a

some to suggest a jurisdictional transfer of pesticide regulation from the Department of Food and Agriculture to the Cal OSHA Department of Industrial Relations.<sup>159</sup> "This . . . transfer . . . makes sense because it would consolidate all worker protection activities under one agency . . . which already has jurisdiction over agricultural safety and non-pesticide-related health hazards."<sup>160</sup>

While various worker-oriented groups<sup>161</sup> favor a jurisdictional change to the Department of Industrial Relations, the Department of Food and Agriculture and the Department of Industrial Relations do not agree. The Department of Industrial Relations believes that despite problems in enforcement, "primary enforcement should remain within the county agriculture commissioners because of their broad base of experience with agricultural problems. There are also more county agricultural commissioners than there are Cal OSHA inspectors available for such enforcement activity."<sup>162</sup> Under the expressed agency attitudes, a jurisdictional transfer appears unlikely.<sup>163</sup>

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major grower is instructive in regards to the notion of voluntary compliance: "We are all in favor of education and knowledge; however we will not tolerate regulating our farming operation." Letter from Lou D'Arrigo Brothers Company of Cal. to the Environmental Assessment Team (Dec. 12, 1978) reprinted in ASSESSMENT REPORT, *supra* note 149, at 1001.

159. *Id.* at 22.

160. Letter from the Labor Occupational Health Program to the Environmental Assessment Team (Jan. 1, 1979), reprinted in 5 ASSESSMENT REPORT, *supra* note 149, at 22 [hereinafter cited as DOL letter].

161. The UFW, California Rural Legal Assistance, and Labor Occupational Health Program, among others, cite the stricter enforcement procedures available to the Department of Industrial Relations as a necessary reason for the jurisdictional change. 5 ASSESSMENT REPORT, *supra* note 149, at 22. Additionally, the Department of Industrial Relations has the authority to utilize a full range of sanctions. CAL. LAB. CODE § 6423 (West Supp. 1980). In 1977 over \$1,000,000 was collected for employer violations of worker safety rules. CRLA Letter, *supra* note 151, at 578.

162. DOL letter, *supra* note 161, at 22.

163. According to Jake McKenzie, Chief of the Pesticide Section of the Cal. Department of Food & Agriculture, "We can show we're not in the hip pocket of the ag-chemical industry. We have been taking an increasingly balanced view of the ways pesticides are regulated in this state." N.Y. Times, Dec. 17, 1978, at 85, col. 3. In support of this new attitude, the Department of Food & Agriculture recently announced the dedication of a new million dollar laboratory. The culmination of a ten year project, the facilities include a pesticide formulation laboratory, a pesticide residue laboratory, and a worker safety laboratory, in addition to two fully equipped mobile laboratories. News From the CDFA, Oct. 30, 1979, at 1, col. 1 (release #79-159).

*Underreporting*

All occupational injuries and diseases lasting longer than one day must be reported by the employer and physician in the first report of work injury, and "in no case shall the treatment administered for pesticide poisoning or for a condition suspected as pesticide poisoning be deemed to be first aid treatment."<sup>164</sup> The high incidence of agricultural death and injury primarily reflects reported accidents with machines and trucks.<sup>165</sup> Official statistics reflect only those cases of pesticide poisoning acute enough to warrant a first report of work injury; however, most overt and low grade pesticide poisonings go unreported.<sup>166</sup> The number of officially reported cases may be as low as one or two percent of the actual number of pesticide incidents,<sup>167</sup> although this figure may rise along with increased public awareness of pesticide hazards. Although pesticides do not account for a large number of reported occupational injuries, the long term risks of exposure to low levels of pesticides are, and will continue to be, incalculable for many years to come.<sup>168</sup>

Agricultural laborers are covered under the California Workers' Compensation law.<sup>169</sup> In 1975, the Legislature specifically amended the definition of employee to include aliens.<sup>170</sup> This made workers' compensation available to a significant portion of farmworkers previously exempted. Eligibility for workers' compensation first requires notice to the employer,<sup>171</sup> which gives rise to a primary obligation of the employer to arrange for initial medical treatment.<sup>172</sup> Of officially reported incidents of

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164. CAL. LAB. CODE § 6409(e) (West Supp. 1980). These reports are required to be filed with the Department of Labor Statistics and Research. *Id.*

165. PESTICIDE HAZARDS, *supra* note 84, at 126.

166. In 1976, California official reports verified 156 instances of pesticide residue poisoning of field workers. 4 ASSESSMENT REPORT, *supra* note 149, at 6.8-25. In addition, 36 cases were reported by workers exposed to pesticide drift. *Id.* In one sizeable fieldworker exposure incident involving 118 systemic illnesses, only six individual physicians reports were received by the Department of Labor Statistics and Research. *Id.*

167. Kahn, *supra* note 115, at 695.

168. 4 ASSESSMENT REPORT, *supra* note 149, at 6.8-39.

169. With the repeal of the former chapter 9 of the Labor Code, effective Sept. 1959, all agricultural employment was brought under the compulsory provisions of worker's compensation. 1959 Cal. Stats., ch. 505 § 2.

170. CAL. LAB. CODE § 3351 (West Supp. 1980).

171. CAL. LAB. CODE §§ 5400-5401 (West 1971), § 5402 (West Supp. 1980).

172. *Simien v. Industrial Accident Comm'n*, 138 Cal. App. 2d 397, 291 P.2d 451 (1959). The employer is required to provide information on workers' compensation to

pesticide illness, very few are ultimately treated under worker's compensation benefits.<sup>173</sup>

A number of factors may account for underreporting. Because pesticide poisoning does not always result in clear signs of serious illness,<sup>174</sup> particular symptoms may not be recognized and therefore not reported.<sup>175</sup> A second factor is cultural—farmworkers tend to be inwardly directed toward the family and resist acknowledging problems until the physical pain is unbearable.<sup>176</sup> A chronic low-grade reaction may not be acute enough to overcome this reluctance.

Certainly the biggest obstacle to obtaining workers' compensation for pesticide related injury is that of proof. A claimant seeking compensation must show that the condition is caused by occupational exposure to pesticides, rather than through any other source.<sup>177</sup> The lack of epidemiological research makes such proof quite difficult. The problem is compounded by the seasonal nature of farmwork. Both working in and living near sprayed areas cause residue poisoning,<sup>178</sup> but workers' compensation is limited to employees.<sup>179</sup> This underscores the need for strict enforcement of existing pesticide regulations by the county agriculture commissioners as well as further research on the potential hazards of pesticides currently in use.

### *Union Activity*

The United Farm Workers union has been reluctant to rely upon the history of pesticide regulatory enforcement at the hands of the county agriculture commissioners. Rather, union

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new employees either at the time of hiring or by the end of the first pay period. CAL. LAB. CODE § 3714 (West Supp. 1980).

173. Of 279 workers reporting a pesticide-related medical visit in 1969, less than 6% stated they were treated under workers compensation. Kahn, *supra* note 115, at 695. A 1973 study conducted in Monterey and Stanislaus counties found that about 70% of the farmworkers interviewed had never heard of workers' compensation, and only 8% knew what it was. *Id.* at 696.

174. See discussion at notes 121-132 *supra* and accompanying text.

175. PESTICIDE HAZARDS, *supra* note 84, at 126.

176. Solis, *supra* note 38, at 313-14.

177. NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, U.S. DEP'T OF HEW, A GUIDE TO THE WORK-RELATEDNESS OF DISEASE 3 (1976).

178. R. Ray, *supra* note 133, at 27.

179. CAL. LAB. CODE § 3351 (West Supp. 1980).

### Women's Law Forum

negotiators have written comprehensive health and safety requirements into union contracts and rely upon internal union procedures and powers for enforcement.<sup>180</sup> Typically, contract clauses establish re-entry times and completely ban any poison which presents extreme danger to the worker.<sup>181</sup> The fact remains, however, that only a handful of farmworker contracts are union negotiated.<sup>182</sup> This indicates that stronger efforts to unionize must be made before farmworker health and safety goals can be achieved.

#### IV. CONCLUSION

Women farmworkers in California are an historically mistreated group whose needs often go undocumented and unmet. As a sub-group of farmworkers, a sub-group of women, and a sub-group of Chicanos, campesinas encounter patterns and attitudes of discrimination addressed to each of these larger groups. The social and economic needs of these women are most apparent in areas that traditionally have been defined as their appropriate sphere: child care, family health, and housing. The lack of supportive services in rural agricultural areas limits the woman farmworker's ability to work in the fields and reinforces her sense of isolation from the rest of society.

The basic concerns of campesinas are heightened by the ever present danger of pesticide exposure. Pesticide enforcement lags primarily because of two things. First, the state of epidemiological research rarely proves a sufficiently direct causal link between the poison and the effect, which inhibits the promulga-

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180. "The issue of health and safety of farmworkers in California and throughout the United States is the single most important issue facing the United Farmworkers Organizing Committee . . . . The Committee is attempting to solve this pervasive problem by the collective bargaining process." 115 CONG. REC. 28578-79 (1969) (statement of Cesar Chavez). The lack of mutual cooperation between the union and the CDFA has been cited as hampering agency efforts. 4 ASSESSMENT REPORT, *supra* note 149, at 6.8-40.

181. Completely banned pesticides include 2,4-D, 2,4,5-T, DDT, Aldrin, Dieldrin, and Endrin. One typical contract establishes a re-entry time for parathion of 21 days, or for essential work, within five days if conducted with protective clothing. N. ASHFORD, *supra* note 110, at 531. This contract allows the grower to determine other re-entry levels after consultation with the Union's Health and Safety Committee. *Id.* The times are to be guided by state and federal recommendations, also taking into account "recognized experts in the field." Recognized experts in the field may include pesticide salespeople and others with a vested interest. *Id.*

182. N. ASHFORD, *supra* note 110, at 529. CAMPESINAS, *supra* note 1, at A-22, Table 50.

tion of regulations. Secondly, authorities charged with enforcing pesticide regulations in existence appear uncertain about their role in connection with the chemical industry, and reluctant to identify themselves as protectors of occupational health in agriculture. Lack of effective enforcement of pesticide regulations underscores the political powerlessness of farmworkers and leaves unfulfilled the worker's right to a safe and healthful workplace.

In addition to more responsive programs and stricter enforcement of pesticide regulations, women farmworkers must be provided access to full employment opportunities in the fields. Increasing equality of opportunity between women and men farmworkers should be translated into a union priority. Without increased earning potential, a woman's economic dependency is entrenched, and the chance to increase control over her own life is lost.