

Farm Labor Listening Session

The Farm Labor Listening Session began with a presentation by Maureen Torrey Marshall, a New York farmer who grows fresh-market vegetables and also operates a 1,600-head dairy farm. She employs 180 people, mostly working in the packing shed, dairy milking operation and trucking.

Ms. Marshall predicted 2011 will be “a year of enforcement and more enforcement” as far as federal action on immigration, adding “there is no current (immigration reform) legislation coming down the pike. In addition, in the absence of federal action, “the states are adopting their own laws and taking their own actions.” She cited the state law in Arizona as an example.

Ms. Marshall estimated there are 11 million illegal immigrants in the country. With the passage of recent laws aimed at cracking down on illegals, “we have tried since then for a good guest worker program,” but “it is harder and harder to find people.”

Recent changes to the H2A program have brought burdens such as a requirement to hire EVERY U.S. citizen who applies for a job, whether or not they will be a reliable employee. Other fines can be imposed for guest workers returning to their home countries before the expected end date of their employment. Additionally, the employer cannot demand that a potential employee have prior experience or even take a drug test, she said.

Perhaps the most frustrating part of the new rules, Ms. Marshall said, is the requirement that the employer advertise the job opportunities in four newspapers, including one local and three in states to be dictated by the Labor Department. The cost comes to about \$2,500, she said, and the out-of-state ads have yet to result in even one person from those other states (which include Florida) applying for a job at her farm.

Farmers also will need to be careful about how they maintain and file documents provided by guest workers to ensure compliance with guest worker rules. “In Idaho, a farmer was jailed for holding workers’ passports and documents in a safe,” Ms. Marshall said.

While there had been some hope for immigration reform to be addressed in the recent “lame duck” session of Congress, that did not happen and “immigration got pushed to the back burner. “No

comprehensive reform will be addressed until after 2012,” Ms. Marshall said. ”But we need to get some reform on the ag side before then. We just can’t get them to understand that there are not people (in the country) to work on the farms.

Ms. Marshall urged those in attendance to communicate with their U.S. Senators and House members about agriculture’s need for a workable guest worker system regardless of action or inaction on overall immigration reform. “And it’s crucial to let your governors know how important agriculture is to your community and how important this (guest worker issue) is to the success of agriculture,” she said.

She also urged farmers to get in touch with the Agricultural Coalition for Immigration Reform (ACIR) and to make efforts to “tell our story and why we need labor” through the media and in the community. She urged those in attendance to stay in contact with her at: torrey@rochester.rr.com

Ms. Marshall’s presentation was followed by questions and comment from the audience:

Dr. Stephen Dey: In our operation, we have about 45 H2A workers. I feel like a clay pigeon in a skeet shoot being an H2A employer. If 75 percent of the farm labor in our country is illegal, that is a travesty. Would you agree that H2B is more amenable than H2A?

Ms. Marshall: Check out the new H2B, it’s getting just as bad.

Dr. Dey – It seems to me that the state Departments of Agriculture and leadership by the Governor need to become very central on this. What about guest worker programs in other countries? Is Washington cognizant of any that are working?

Ms. Marshall – Canada has a program that seems to be working. And we looked at Costa Rica a few years ago. We asked, “Who does your labor?” and they had a guest worker program where the people were coming mainly from Nicaragua.

Ms. Marshall was asked if payroll services that handle HR matters for farmers take on the responsibility of verifying the legal status of workers

Ms. Marshall -- No, they will not take that burden on. There is a dairy farm near us. They (authorities) are doing silent raids on them now, coming in, asking, Can we see you I-9s? Then they come back and say, you have to get rid of these people. That dairy was told to get rid of 68 out of 69 employees.

Tom Sheppard of Sheppard Farms in Cedarville – On the (requirement to provide) health insurance, if they work 120 days of the year, they qualify as fulltime. One issue that’s glossed over, there are people who worked for a long time. If the immigration people don’t know what’s false, how can they expect us to?

Family members are brought to this country as well. We could have a system where they’re allowed to go home again. We really need something to get done. If a person walks through door and they’re not drunk or stoned at the time, we’ll have to hire them. They just don’t have the work habits.

Kurt Alstede – We were the subject of three-hour inquisition by (Division of) Wage and Labor. They were so far off-base. The message is that H2A is broken, broken by bureaucrats in the Department of Labor. We switched to H2A because wanted a workforce that was beyond reproach. But it just gets more difficult. We have to advertise in New York State, Pennsylvania, and Florida. We don’t get people from those ads, of course. There’s not even enough here at home.

They wanted to know why workers were coming later than the start of the contract period. Well, it takes 90 to 120 days to get all the (processing) done. Some consulates allow copies, some insist on originals. That further slows the process and you’re on “administrative hold.” It takes six weeks to get through all interviews before we could send them the original. It just puts you in the crosshairs even more.

They will argue about what jobs are being performed. You show them in the ad. Yes, I went out of my way to have the ad reflect exactly what we’re doing. That includes driving machinery.

We had H2A guys driving the pick-your-own hay wagon. They say that’s not agriculture. We say it’s harvesting. We’ve been waiting three months now to hear back from them.

On the housing inspections, the state Department of Labor has been very reasonable. It's the federal side that's a nightmare. The issue is not on the state level. We did have one stinkbug up in the corner of a bedroom. They said, "You do understand you have responsibility to exclude insects?" I said, "Yes, that's a stinkbug. They get in. It's not a matter of not having a screen or something."

This borders on harassment. The Guys at Wage and Hour concocted a definition of a seasonal worker. "If you have someone working in seasonal crops, that's enough to trigger a housing inspection." So, if we have a full-time manager who's a citizen and lives on farm, you can inspect the house. They're making work for themselves with these interpretations.

Mark Phillips – I employ 37 H2A employees. The message needs to be heard. The other message is that we really need this program. It is broken and it can be fixed. If common sense prevailed, it could be solved in half an hour. People need to realize that we as an industry need to be competitive. The cost associated with H2A puts us in a higher cost category. The regulations need to be realistic and interpreted with a touch of compassion. They've been out to my place three times in five years. They're justifying their positions.

We also need confidence this system going to work for us, that we're sending our men back to their countries knowing we need them the next year. We need to be confident we're going to get them back.

The reality is that I have a 95-percent return rate. When I drop them off at the farm, these guys know what I expect. They know my operation. There's no supervision needed. They want to work for me, do the best they can, then go home and come back the next year. Every year is a struggle to get through this system. We pay an agency in Texas – \$6,000 a year – to work us through it.

Ms. Marshall – Please forward any personal stories about problems to Al Murray or to me. The most important thing is to unite agriculture. We need to all talk the talk. Hopefully, in the next six to eight weeks, an emergency H2A pilot program will be introduced. We need to massively get out there, let our Senators know, get our Governors engaged, write letters to USDA.

We need it NOW. We can't wait any longer. This affects food safety and the security of our country.

Don Hutchinson, Camden County grange: It seems you're talking about needing a one-stop shop to approve workers. We need to go someplace to deal with one visit, get 1 or 100 workers approved. If take one-stop shopping idea, maybe that would help.

Ms. Marshall: Another message that needs to get out is that three to four more jobs are created for each job my employee does. There's a multiplier effect in the support industries.

Bill Maxwell: I have six H2A workers, and two of them have been with me for 10 years. I want the six guys who come back every year, who know my operation, who know what it takes to make money. Do I really want to someone come up here and start working for me, then I have to tell one of the people who comes back every year no? Then I have the guy from Florida walk away in middle of the year?

Joe Marino: We're a fourth-generation family farm. We employ close to 300 people at max harvest time. My number-one worry every night is whether we'll have the people. Until we straighten out our labor force, and know that when we come to work tomorrow the labor force is going to be with us, I don't know if I want my kids to entertain this as a business. The message is agriculture needs a STABLE workforce. They need to SIMPLIFY this program.

Drew Mattson: – I left the last business I was in, the lawn and turf business, because of all the regulations regulations. I can't believe this industry. You should have the power. If you don't eat, you die. You don't have lobbyists that can get this done? You have the power and you're not using any of it.

Dr. Dey: Where there's smoke, there's fire. We've heard all the negatives. I see a disconnect in the system. So where is it and how do we get to it? Politics are at the heart of the issue. That's one of premier issues. 1.5 to 2 domestic workers for every H2A worker. Maybe recommend, if Govt's is concerned about domestic workforce, create subsidy with a corollary workforce for every H2A worker hired.