STATE OF NEW JERSEY

# REPORT OF THE COMMISSION TO STUDY THE EMPLOYMENT AND COMPENSATION OF AGRICULTURAL LABOR IN NEW JERSEY

TO THE PRESIDENT OF THE SENATE

AND THE SPEAKER OF THE GENERAL ASSEMBLY

(Pursuant to Assembly Concurrent Resolution No. 151 of 1984)

AUGUST, 1985

August, 1985

President of the Senate
Speaker of the General Assembly
Members of the Legislature

Ladies and Gentlemen:

The Commission to Study the Employment and Compensation of Agricultural Labor in New Jersey, created by Assembly Concurrent Resolution No. 151 of 1984 (filed December 18, 1984), hereby respectfully submits its final report.

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# 1. INTRODUCTION

The Commission to Study the Employment and Compensation of Agricultural Labor was established pursuant to Assembly Concurrent Resolution No. 151. In the resolution, the Legislature stated its intention to address the problems of agricultural workers in New Jersey without sacrificing the basic principles underlying the 1984 unemployment compensation reform law.

The commission has determined that of the many serious problems facing the State's agricultural laborers, the most urgent is the severe reduction of the laborers' unemployment benefits under the reform law. If not in some way remedied, the reduction may have a major negative impact on the availability of a reliable and steady workforce in the state's already hard pressed agricultural sector.

The commission has discovered that too little is presently known about farm labor employment and compensation for an authoritative comprehensive analysis of the problems involved or to permit any immediate action assisting the laborers to be more than provisional in nature. Therefore, the commission has chosen to recommend certain minimum essential measures to alleviate the worst of the farm laborers' problems on an interim basis and to recommend the reconstitution of the commission so that it may, with the mandated assistance of the State Department of Labor, develop the detailed factual understanding of the farm labor situation necessary to formulate sound long range policies.

What is included in the following findings is the groundwork on which the commission has based its immediate short term proposals (mainly related to unemployment compensation eligibility) followed by some preliminary observations and possible directions for further study concerning the broader questions in the areas of farm labor compensation and employment.

## 2. BACKGROUND ON THE UNEMPLOYMENT COMPENSATION SYSTEM

### HOW THE SYSTEM WORKS

The federal-state system of unemployment insurance traces its origins to the Social Security Act and the related laws which were enacted as part of the New Deal in 1935. This legislation was intended to encourage the development of state unemployment compensation programs which were broadly compatible with federal law. Today, there are unemployment compensation programs in all fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands, each providing compensation in accordance with its own benefit standards.

The unemployment compensation system is administered by the State under guidelines established by the Federal Unemployment Tax Act (FUTA). The system is funded by two tax systems; one state, one federal. The administrative costs of the system are borne by a tax on employers, imposed by the federal government, of 3.5% of a $7,000.00 taxable wage base (a figure fixed, and amended periodically by federal legislation). Employers who are keeping up with their state tax payments receive a credit against their federal tax obligation, which results in an actual tax of .8% of $7,000.00.

Unemployment compensation benefits are paid by the state from a trust fund derived from contributions from employers and, in some

states, from withholdings from employees' wages. For 1985, the taxable wage base in New Jersey is $10,100.00. Employees in New Jersey have one-half of 1% of $10,100.00 withheld from their earnings. Employees are taxed at rates (ranging up to 7% beginning in 1986) which reflect their past experience with unemployment. Moneys from the New Jersey Unemployment Trust Fund, thus constituted, are transmitted to Washington where they are held in trust, subject to withdrawal by the state as needed to pay benefits. When a state's Unemployment Trust Fund reserves are depleted (either because the level of benefits the state awards is too high in relation to its tax receipts, or because it has endured relatively steep unemployment rates over time), that state may borrow federal funds from the Federal Unemployment Account to meet its benefit obligations.

The federal law is modified from time to time. In the 1970's the federal government began to play a greater role with regard to unemployment compensation benefits. The federally-initiated extended benefits program, which extended the time which benefits could be collected during times of economic downturn, is but one example of this. When the federal government modifies the federal program, states are required to modify as needed their state laws so that they are consonant with the federal provisions. If a state complies with the federal law, private employers in that state are eligible for the previously mentioned tax credit against their federal tax obligation; this credit is available to them only as long as the state in which they do business has an approved state unemployment compensation program. Moreover, any state which does not have an approved program stands to lose federal funding for the administration of the program.

ELIGIBILITY

Under current state laws, to be eligible for unemployment compensation benefits, workers must generally meet five conditions:

1. The individual's latest job separation must have been involuntary.

2. In most jurisdictions, individuals must have been unemployed for a minimum period; often this period is one week.

3. The individual must be able to work and be available to work, providing the work is "suitable work."

4. The prior employment qualifying the worker for benefits must have been subject to an unemployment insurance payroll tax.

5. The employment or wages of the individual during a base period must exceed a specified minimum. Some states specify only a minimum number of weeks, some states specify only a minimum wage, and most states have a combination of weeks and wages.

The fifth eligibility standard listed above is intended to test a worker's attachment to the work force. State standards vary considerably in this respect. In New Jersey, prior to 1984, workers were required to demonstrate their attachment to the work force by establishing 20 base weeks of employment, at a salary of at least $30 per week in a base year, or, in the alternative, by earning at least $2,200.00 in the base year in covered employment.

In 1984, the Legislature enacted a series of changes to the New Jersey unemployment compensation law. Among other things, the Legislature raised the alternative earnings test for eligibility for unemployment compensation from $2,200.00 in a base year to twelve

times the statewide average weekly wage. At present, this amounts to $4,100.00; later this year, an adjustment to $4,300.00 will be made to reflect the increase in the statewide average weekly wage. In addition, to qualify for unemployment compensation by working for a period of 20 base weeks, workers are now required to have earned at least $54.00 (15% of the statewide average weekly wage) during each of those base weeks instead of $30 per week. Beginning October 1, 1985, they will be required to have earned at least $72.00 (20% of the statewide average weekly wage) during each base week.

EXTENSION OF COVERAGE TO AGRICULTURAL WORKERS

Among the most significant modifications in the federal unemployment compensation program over the years has been a gradual expansion of the program to cover a greater percentage of the work force. At the inception of the program in 1935, only about a third of the work force was covered; in 1944 coverage began to be expanded, and by the mid-1970's approximately 87% of the work force was covered by the unemployment compensation system. At present, it is estimated that the fifty-three unemployment compensation programs cover 90% of all employers and 95% of all salaried employees.

In 1976, as part of a series of amendments to the federal unemployment compensation law, unemployment compensation benefits were extended to several classes of workers which had previously not been covered. These included employees of state and local governments, domestic employees, and agricultural workers.

The 1976 amendments to the federal law provided that agricultural workers would be covered if they worked for a farm employer who, during

the current or preceding calendar year, employed 10 or more workers in each of 20 weeks, or who paid $20,000 or more in wages to farm labor in any calendar quarter. In certain cases, crew leaders are viewed as employers if they are registered under the federal Farm Labor Contractor Registration Act of 1963, or if substantially all of the crew members use mechanized equipment. In cases other than these, the farmer is viewed as the employer. Eligibility for farmworkers under the federal act commenced on January 1, 1978.

Accordingly, to comply with this federal legislation, New Jersey amended its unemployment compensation law in December, 1977. P.L. 1977, c. 307, approved by the Governor on December 30, extended coverage to agricultural workers in New Jersey. At the time of its enactment, agricultural workers would have qualified if they earned at least $30 in each week of a 20 base week period, or, alternatively, earned $2,200.00 or more in their base year.

After the 1984 unemployment compensation reform bill was enacted, many agricultural workers were unable to meet the revised eligibility standards. Changing patterns of agriculture in the state, which resulted in a shorter growing season, and the raising of the alternative earnings test from $2,200.00 to $4,100.00 combined to deprive many workers of the benefits which had hitherto been available to them. The New Jersey Legislature responded to this by enacting P.L. 1984, c. 217, which restored the previous $2,200.00 threshold to agricultural workers for a period ending December 31, 1984, thus giving more time for some determination to be made with respect to a permanent solution to the problem.

## 3. RESTORING BENEFITS TO AGRICULTURAL WORKERS

To assure the continued availability of unemployment compensation benefits to those agricultural laborers who have received them in the past, there appear to be three major alternatives involving possible statutory or other change: increasing the amount for non-cash remuneration credited towards unemployment compensation eligibility, increasing farm wage levels, or reducing the eligibility standards presently in effect.

### NON-CASH REMUNERATION AND ELIGIBILITY

The present New Jersey unemployment compensation law includes non-cash remuneration in the remuneration counted towards the calculation of the alternative earnings test or the base week test for worker eligibility for receiving benefits. In practice, however, such non-cash remuneration is rarely reported in determining benefit eligibility, even though department regulations set minimum dollar values for room and board as follows*:

| | |
|---|---|
| Full board and room, weekly | $65.00 |
| Meals for an entire day | 7.80 |
| Breakfast | 2.30 |
| Lunch | 2.30 |
| Dinner | 3.20 |
| Lodging per week | 28.00 |

Two possible changes would be to require employers to report such remuneration and to emphasize the Legislature's intention to have the principal types of non-cash remuneration presently provided to farm laborers, i.e. housing and transportation, counted in eligibility determinations by expressly listing them to be included in "remuneration."

*The dollar values indicated for room and board do not apply if an employer provides adequate documentation of higher or lower costs for room and board.

An increased emphasis on the reporting of employer-provided housing and transportation may help some farm laborers, but by itself, it will fall short of compensating for the recent modifications of eligibility standards. The addition of perhaps $20.00 to $30.00 per week for housing will not fully offset the increase of the base week requirement from $30.00 to $72.00. The roughly $300.00 cost for air travel for some migrants is not nearly enough to offset the increase of the alternative earnings test from $2,200.00 to $4,300.00.

Thus, modification of the minimum amounts allowable for non-cash remuneration, while helpful, will not by itself suffice.

FARM WAGE LEVELS AND ELIGIBILITY

Because many, and perhaps most, farm laborers are paid the state minimum wage of $3.35 per hour, any change in the minimum wage law would certainly affect the income of farm laborers and to some degree their eligibility for unemployment compensation. But, given the fact that the eligibility income thresholds have been more or less doubled ($30.00 to $72.00 for a base week and $2,200.00 to $4,300.00 for the alternative earnings test), it would probably take a doubling of the minimum wage to fully compensate for the changes in eligibility standards. The effects of such a drastic change in the minimum wage on farms and the rest of the state's economy, as well, would be so great in comparison with the potential benefits (in unemployment compensation) that the commission cannot propose it as a realistic approach to the eligibility problem.

A more conservative proposal might be to extend to farm employers the legal requirement of paying time-and-a-half for any hours worked past 40

per week. While this proposal undoubtedly would not cost farm employers nearly as much as doubling the minimum wage, its cost would still be significant and it would do little or nothing to address the eligibility problem. It would have no effect on a determination regarding base weeks because any week in which a worker gets overtime would already qualify as a base week anyway. With regard to the alternative earnings standard, even if a worker works seventy hours in a week (something he is likely to do for only a few peak weeks of the season), time-and-a-half would increase his earnings by only 21%, which would not come close to offsetting the $2,200.00 to $4,300.00 increase in the alternative earnings threshold.

Therefore, changes in the wage law will not provide a practical solution to the eligibility problem.

MODIFYING THE ELIGIBILITY THRESHOLDS FOR AGRICULTURAL WORKERS

The final and most direct alternative is to change the thresholds for eligibility as they apply to agricultural workers, either by reducing the minimum required earnings or by setting a new standard based on hours worked.

The official compiled data concerning the earnings of farm laborers available at the onset of the commission's work are substantially inadequate for the task of calculating what effect various changes in eligibility standards would have on the availability of unemployment benefits to farm laborers. Ideally, what is needed is the total number of farm laborers eligible for unemployment benefits prior to

the 1984 changes in the law and a breakdown of how many laborers have attained various levels of annual income and various numbers of base weeks. From such data it would be simple to determine the impact of any particular change in income or base week requirements.

Although many state and federal agencies currently issue information regarding farm labor, only the State Labor Department's monthly reports on unemployment benefits recipients is based on information obtained from the unemployed. Unfortunately, those reports aggregate farm laborers with the far more numerous state and local government employees, making the figures of little or no use to the commission. All other state and federal reports on farm labor are based on surveys of the employers instead of the laborers. Consequently, they give information on things like the number of laborers employed at various times and the total amount of wages paid but almost nothing concerning how long each worker worked or how much money each earned during a year.

With these limitations in mind, several things may be said about the farm labor force as a whole. According to U.S.D.A. figures from 1974 to 1981, an annual average of between 10,000 and 12,000 hired workers were employed on New Jersey farms. During those years, employment ranged from winter lows of between 4,000 and 6,000 workers to summer highs of between 18,000 and 23,000 workers. State data for the period from 1979 to the present show, however, that farm employers have only paid unemployment insurance taxes for an annual average of 6,000 to 7,000 of those workers, with a winter low of about 3,000 workers and summer highs

of about 11,000 to 12,000 workers. These figures suggest that farm employers, even prior to the 1984 changes, were at times not required to pay taxes on nearly half of their employees. These employees were not covered under the unemployment insurance system because of the size of their employers' payrolls, although they might have been able to meet the eligibility standards individually.

The number who actually receive unemployment benefits is probably further reduced due to the large numbers of day laborers who, even though their employers may pay the tax on them, work for periods too short to become eligible for benefits. The information reported by farmers is distorted further because they sometimes are compelled to rely on incomplete or inaccurate employment information from contractors and crew leaders who recruit and supervise a substantial share of their labor force. In addition, there are some significant reported instances of certain employers not reporting or paying taxes on workers who should be eligible under the unemployment insurance system.

All of this suggests that there is a fair likelihood that, even under the unemployment insurance law as it was prior to 1984, the majority of the state's farm laborers were not covered under the system.

The commission did succeed in obtaining more relevant information through its communications with farmers, laborers and representatives of their respective organizations. At the commission's public hearing in Hammonton on July 18, 1985, Joseph Garfolo, manager of the Glassboro

Service Association, provided the following information about the number of contract laborers that his association provided to its member farmers in 1983:

TABLE I

| Month | Number of new laborers provided during month | Number of those workers eligible for unemployment benefits under: | |
|---|---|---|---|
| | | 1983 Standards | New Standards |
| March | 84 | 55 | 54 |
| April | 214 | 138 | 103 |
| May | 310 | 266 | 190 |
| June | 345 | 249 | 159 |
| July | 307 | 120 | 12 |
| August | 221 | 62 | 0 |
| September | 66 | 6 | 0 |
| Total | 1,547 | 896 (58%) | 518 (33%) |

Mr. Garfolo emphasized that it is very difficult for workers arriving late in the season to qualify for benefits and that this is through no fault of their own. He recommended that the minimum annual earnings requirement be $2,800.00 or even less and that the minimum number of base weeks be reduced to 14 or 15. While not claiming to speak for all association members, he felt that most would agree with his recommendations, on the condition that stronger measures are taken to assure that any laborer who quits while work is still available be disqualified for benefits. Most other farmers who spoke at the hearing or otherwise communicated with the commission generally concurred with these views.

From the side of the farm laborers, representatives of the Comite de Apoyo a los Trabajadores Agricolas (C.A.T.A.) estimated that less than one in twenty farm laborers earned as much a $4,000.00 per year and, based on a survey of C.A.T.A.'s members, most earned less than $3,000.00 per year. They noted that although their survey indicated that their members worked an average of 23 weeks, for most workers those weeks included at least four or five weeks in which they worked too few hours for the week to qualify as a base week due to weather or other conditions beyond their control. Moreover, the C.A.T.A. members surveyed represent what is probably the most experienced and stable part of the work force -- that part which migrates from Puerto Rico and stays six months of the year to work. In all likelihood, other workers, such as the day-haul workers from the New Jersey region's urban centers, will be more adversely affected by the changes in eligibility standards. C.A.T.A. representatives asked that the thresholds be revised as they apply to agricultural workers, to establish a standard of from 12 to 15 weeks and an alternative earnings requirement of between $2,500.00 and $3,000.00 in annual earnings.

Another way to help restore benefits to farm laborers is to set a new eligibility threshold for agricultural workers which is based on aggregate hours worked on an annual basis. For example, eligibility could be granted to laborers who worked for 770 hours or more in a year. This would permit a farm laborer to be eligible after working

for a number of hours which is the equivalent of working an average of 38.5 hours per week during the presently required period of 20 base weeks. This, in fact, is greater than the number of hours per week currently worked by many non-agricultural workers, including for example, most state employees. The establishment of this type of additional eligibility requirement for farm laborers would avoid penalizing them for their relatively low hourly wages and would help to prevent more of those earning the minimum wage from becoming ineligible for benefits if the value of the minimum wage continues to decline in comparison with the statewide weekly rate of remuneration.

CONCLUSIONS REGARDING ELIGIBILITY FOR AGRICULTURAL LABORERS

The commission contends that it is an appropriate public policy to establish an alternative eligibility threshold for farm laborers. Throughout the history of the unemployment compensation system, farm laborers have been treated differently than other workers, almost always to the farm laborers' detriment. Excluded entirely from the State's system until 1978, some of them have continued through the present time to be excluded from participation because their employers do not meet standards for participation in the unemployment compensation system (already described) which are more lenient than those for most nonagricultural employers. Likewise, they are excluded from certain protections of the wage and hour law already indicated. It should also be noted that, unlike many other seasonal workers with rela-

tively low wages (such as youth who work in resort areas during their summer vacations), farm laborers usually need their income to support their families, frequently as the heads of households. The severity of the farm laborers' economic situation is suggested by the fact that over 90% of the farm laborers questioned in the C.A.T.A. survey stated that they would not be able to afford to return to work in New Jersey if they lose their unemployment benefits.

The commission holds therefore that to amend the state's unemployment compensation law to provide for the exceptional circumstances of farm laborers will not constitute a sacrificing of the basic principals of the unemployment compensation reform law.

## 4. THE NEED FOR FURTHER STUDY ON OTHER FARM LABOR ISSUES

As noted, the commission has limited its immediate recommendations to measures concerning only the most urgent problems facing farm laborers, but it hopes that these proposed measures will represent only the beginning of agricultural labor reform.

The commission recognizes that efforts to develop effective responses to the many remaining difficulties of farm laborers will require great care because the state's farm employers, as well as employees, have been the victims of substantial economic adversity. To be of long-term value, reforms will have to be based not only on a thorough understanding of the farm laborers' situations, but also on a competent appraisal of the potential costs of the reforms for farm employers and the likely impact on the overall economic health of the state's agricultural sector. Even though New Jersey farmers have not, as a group, suffered to the same degree as farmers in most other regions of the country, they have been subject to significant and growing economic distress in recent years. This is why the commission's recommendations for further study include an emphasis on investigating the effects of various possible changes on farm production costs.

The hardships of farm laborers go beyond what can be solved by unemployment compensation reforms alone. At the core of the problem are pay levels which, while always relatively low, have been declining steadily in real value in recent years. The following table

illustrates the extent to which the real wage for hired farm workers has fallen more than for other workers in the state (during the years in which farm laborers have been covered under the unemployment system).

TABLE II

ANNUAL INCOME FOR NEW JERSEY WORKERS
COVERED UNDER THE UNEMPLOYMENT
COMPENSATION SYSTEM

| TYPE OF WORKER | 1979 (in current dollars) | 1983 (in current dollars) | 1983 (in 1979 dollars) | Change, 1979-1983 (in 1979 dollars) |
|---|---|---|---|---|
| Agricultural Production, Crops and Livestock | $ 8,558 | $ 9,995 | $ 7,316 | -14.5% |
| All Covered Employment | $13,947 | $18,745 | $13,722 | - 1.6% |

Source: New Jersey Covered Employment Trends, N.J. Department of Labor

The real situation for agricultural laborers is probably worse than these figures suggest. As already noted, a large portion of the agricultural laborers, perhaps 40%, are not covered under the unemployment compensation system. Moreover, the wage figures for covered employees do not include large number of laborers with low wages, and they do include supervisory and other more highly paid workers involved in agricultural production who are not actual field laborers.

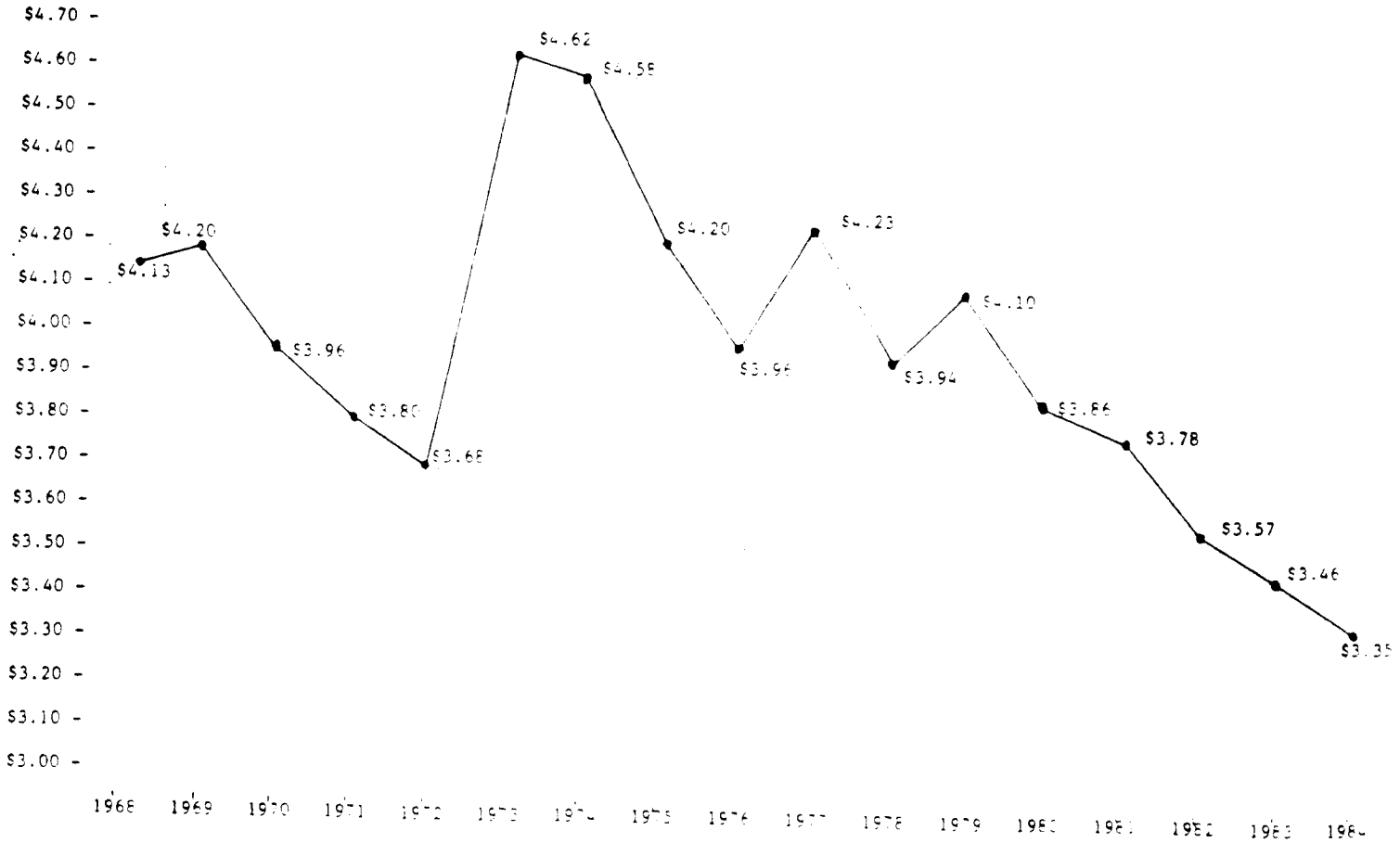
The majority of agricultural field laborers other than grain, nursery and livestock workers (who comprise less than a third of the agricultural production work force) receive the minimum wage or a piece rate

which tends to approximate the minimum wage. Therefore, in order to assess the real wage level of agricultural workers it may be useful to consider what has happened to the value of the state minimum wage during the years that the minumum wage has applied to farm labor.

New Jersey's statutory minimum wage went into effect in 1968 and, unlike that of many states, has always applied to hired agricultural workers. Measured in current dollars the minimum wage was set at $1.40 for the 1968 farm season, raised to $1.50 for the 1969 season, $2.00 for 1973, $2.20 for 1974, $2.50 for 1977, $3.10 for 1980 and $3.35 for 1981. Despite these increases, the minimum wage has been adversely affected by inflation.

TABLE III

THE NEW JERSEY MINIMUM WAGE IN 1984 DOLLARS
FOR THE AGRICULTURAL SEASONS 1968-1984




(Adjustments for inflation based on the national consumer price index.)

Between 1979 and 1983, the value of the minimum wage declined by 15.6%, compared to the 14.5% decline in the average income of agricultural workers shown in Table II for that period. The minimum wage data also show that the decline has been a long-term trend; by 1984, the value of the state's minimum wage had fallen 27.5% from its 1973 peak of $4.62 (in 1984 dollars).

Given these facts, the commission believes that further study of the level of agricultural wages in New Jersey will be useful. At the same time, reforms which may affect farm labor costs should be approached cautiously, in light of the economic pressures experienced by the state's farmers in recent years. Although the number of farms, the acreage of farmland and the average annual size of the hired farm workforce in the state have been fairly stable over the last 10 to 15 years, there are substantial reasons for concern that that stability may be disrupted. Farm production costs have risen in comparison with income and net farm income has declined substantially. The debt-to-asset ratio for the state's farms rose from 9.8% in 1979 to 12.3% in 1983. Increased labor cost may prove especially significant to farmers in this state because labor costs comprise a larger portion of total production costs for the average New Jersey farmer than for the average American farmer. Moreover, if New Jersey farmers responded to higher labor costs by using more labor-saving machinery, it would tend to reduce employment and increase the farmers' need for credit and their vulnerability to higher interest rates.

There are other areas of possible agriculture-related reform of the unemployment compensation system, such as designating farmers, rather than crew leaders, to be the employers of contract laborers and using the same standard for including farm employers in the system as other employers (which is now done in Texas and California, for example). More information, however, is required on the possible impact of such reforms on farmers and laborers alike. Many aspects of farm labor living and working conditions also merit further study and investigation.

## 5. COMMISSION RECOMENDATIONS

As a result of its deliberations, the commission recommends that:

1. The Legislature modify statutory unemployment compensation eligibility standards for agricultural laborers during a two year period. The commission proposes legislation to establish, for two years, eligibility standards which generally would be neither as strict as the standards currently in effect for non-agricultural workers nor as lenient as those in effect prior to the 1984 unemployment compensation reform. To be eligible for benefits, a farm laborer would would be required, during his base year:

a. to meet the standards applicable for non-agricultural workers, or

b. to work 770 hours.

The alternative requirement, to work 770 hours in a year, permits the farm laborer to be eligible after working for a number of hours which is the equivalent of working an average of 38.5 hours per week during a period of 20 base weeks. This.in fact, is greater than the number of hours per week worked by many non-agricultural workers, including, for example, most state employees. This alternative would avoid penalizing farm laborers for their relatively low rate of hourly earnings and would help to prevent more of those farm laborers who earn the minimum wage from becoming ineligible for benefits if the value of the minimum wage continues to decline in comparison with

the statewide average weekly rate of remuneration. The modified eligibility standards would remain in effect for the two year period during which time the commission, reconstituted pursuant to recommendation number 4, would determine appropriate long-term changes in the standards.

2. The Department of Labor require that particular types of non-cash compensation commonly provided to farm laborers (such as free transportation and housing) be included in calculations to determine eligibility to collect unemployment benefits, and that employers report such compensation. While state law currently permits the Department of Labor to do this, the commission urges the department to redouble its efforts to encourage the inclusion of non-cash compensation in eligibility determinations.

3. The Legislature underscore its intention that agricultural workers, like other workers, be eligible for unemployment compensation only when work is not available. The commission proposes that language be added to the existing statute to emphasize that the requirement to work while work is available applies to any farm laborer who is still needed by the farmer, including a contract laborer who has completed the minimum period to fulfill his contract. The present requirement that a worker receiving unemployment be willing to accept suitable work when offered would also apply to contract laborers if the laborers are provided with transportation costs as needed. Standards would be set concerning the amount of work a farm employer would be

required to offer for the work to be regarded as suitable for laborers who must travel long distances. The statute concerning willingness to work has no provision regarding contract laborers in particular; the commission makes this proposal in response to farmer complaints of laborers quitting although work was available.

4. The Legislature reestablish the commission to continue in its task of formulating effective measures to alleviate the problems of farm laborers; that the New Jersey Department of Labor be directed to collect the data needed by the commission to complete the task. The reestablished commission would be given two years in which to develop proposals, as it deems appropriate, in a number of areas, including but not limited to, possible long-term changes in unemployment eligibility standards for farm laborers, and possible changes in the requirements for farm employers to be covered under the unemployment insurance system, in the relationship of crew leaders and contractors to the system, and in the overtime pay law. The commission would also consider possible changes in the minimum wage law, including indexation, and investigate matters relating to the working and living conditions of laborers. In addressing the problems of the farm laborers, any proposed reforms would also be based on consideration of the potential costs to farm employers and the likely impact on the economic health of the state agricultural sector as a whole.

The Department of Labor would be mandated to collect specified information needed by the commission within the first 18 months of the reconstituted commission's two year deadline. The information would include, but not be limited to:

a. The total size of the hired farm labor force in the state and its seasonal variations;

b. A comparison of the number of laborers who should, according to present law, be covered under the unemployment insurance system versus how many are, in fact, covered;

c. A breakdown of how many laborers have attained various levels of annual income and hours worked and various numbers of base weeks;

d. The effect that a range of possible changes in eligibility standards would have on the number of laborers eligible for or receiving benefits and the cost of the changes for farm employers;

e. How many agricultural laborers report non-cash compensation and how many more would become eligible for unemployment benefits if all such compensation was reported;

f. The number of farm laborers working as contract laborers, the proportion of them who are eligible for or receiving unemployment benefits, and how many more laborers would be covered under the unemployment system if the farmers, rather than the crew leaders or contractors, were designated to be the employers;

g. How many additional workers would be brought into the system if the standards for defining a farmer to be the employer were the same as those for most other employers and how much such a change would cost farmers;

h. How much money farm employers pay into the unemployment compensation fund, how much money is paid out to farm laborers, and how those payments would be affected by the various possible changes indicated;

i. The effects that various increases in the general minimum wage level would have on farmworker income and unemployment compensation eligibility and on farm production expenses; the effect that the increases would have on other sectors of the state's work force; and

j. The effects that extending the time and a half overtime pay requirement to agriculture would have on farmworker income and unemployment compensation eligibility and on farm production expenses.

The department would receive an appropriation of $90,000.00 to gather the indicated information, to strengthen enforcement of the requirement that laborers be available for work to be eligible for unemployment benefits, to insure the availability of bilingual unemployment compensation forms, and to implement procedures to accelerate the processing of the unemployment claims of farm laborers.

In addition, $5,000.00 would be appropriated directly to the reconstituted commission for its expenses.

# APPENDIX A

## STATUTES ESTABLISHING THE COMMISSION

## AND EXTENDING ITS REPORTING DATE

# ASSEMBLY CONCURRENT RESOLUTION No. 151

# STATE OF NEW JERSEY

INTRODUCED DECEMBER 6, 1984

By Assemblymen PATERO, FOY, GALLO and BOCCHINI

A CONCURRENT RESOLUTION to create a commission to study the employment and compensation of agricultural labor in New Jersey.

WHEREAS, Agriculture is now and has traditionally been an essential part of the State's economic base, and it is the public policy of this State to ensure the survival of this sector of the economy, particularly in the face of encroaching industrial and commercial development and increasing urbanization; and

WHEREAS, The continuing survival of New Jersey agriculture is dependent upon a steady and reliable supply of labor; and

WHEREAS, The complexity of the problem of the compensation of agricultural laborers, which has been heightened by the increasing urbanization and industrial development in this State, needs to be studied by the Legislature in order to determine what remedial actions it may be necessary to take; and

WHEREAS, It is the intention of the Legislature that the problems of the New Jersey agricultural workers be addressed without sacrificing the basic principles of the recently enacted unemployment compensation reform law, which was a product of cooperation between business and labor; and

WHEREAS, It is the purpose of this resolution to create a commission to study the employment and compensation of agricultural labor in this State to report its findings thereon, and propose a solution to the Legislature; now, therefore,

BE IT RESOLVED *by the General Assembly of the State of New Jersey (the Senate concurring):*

1. There is created a commission to be known as the "Commission to Study the Employment and Compensation of Agricultural Labor in New Jersey," which shall consist of 13 members. Two members of the commission shall be members of the Senate to be appointed by the President thereof, not more than one of whom shall be of the same political party, and two members shall be members of the General Assembly to be appointed by the Speaker thereof, not more than one of whom shall be of the same political party. In addition, the President of the Senate and the Speaker of the General Assembly shall jointly appoint six public members, three of whom shall represent business, including one representative of agricultural business; three of whom shall represent labor, including one representative of agricultural labor. The Commissioner of Labor, the Commissioner of Commerce and Economic Development, and the Secretary of Agriculture shall be members of the commission ex officio. All members of the commission shall serve without compensation. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments were made.

2. It shall be the duty of the commission to inquire into the hiring, employment, and compensation of workers in the agricultural sector of the economy.

3. The commission shall organize within 15 days after the appointment of its members. The commission shall elect a chairman from among its members and the chairman shall appoint a secretary who need not be a member of the commission.

4. The commission may hold public hearings and shall be entitled to call to its assistance and avail itself of the services of such employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for this purpose, and to employ counsel and such stenographic and clerical assistance and incur traveling and other miscellaneous expenses as it may deem necessary in order to perform its duties, and as may be within the limits of funds appropriated or otherwise available to it for that purpose.

5. The commission shall report its findings and recommendations, which shall include draft legislation if the commission recommends that legislation is necessary, to the President of the Senate and the Speaker of the General Assembly no later than March 1, 1985.

## STATEMENT

This concurrent resolution creates a Commission to Study the Employment and Compensation of Agricultural Labor. The commission would be required to study the hiring, employment, and compensation of workers generally in the agricultural sector of the economy and would be required to make recommendations thereon to the Legislature by March 1, 1985.

# ASSEMBLY CONCURRENT RESOLUTION No. 179

# STATE OF NEW JERSEY

INTRODUCED APRIL 15, 1985

By Assemblymen PATERO, FOY and BOCCHINI

A CONCURRENT RESOLUTION to extend the time for the "Commission to Study the Employment and Compensation of Agricultural Labor in New Jersey," created by Assembly Concurrent Resolution No. 151 of 1984, to make its report.

WHEREAS, The time for the "Commission to Study the Employment and Compensation of Agricultural Labor in New Jersey" to make its report as provided in Assembly Concurrent Resolution No. 151 of 1984 has passed; and

WHEREAS, The Legislature still desires that that report be made; and

WHEREAS, The authority of that commission and its charter is still good under Assembly Concurrent Resolution No. 151 of 1984 as adopted on December 17, 1984; now, therefore,

BE IT RESOLVED *by the General Assembly of the State of New Jersey (the Senate concurring)*:

1. The time for the "Commission to Study the Employment and Compensation of Agricultural Labor in New Jersey" to make its report to the Presiding Officer of each House of the Legislature is extended to August 1, 1985.

## STATEMENT

This concurrent resolution extends the time for the "Commission to Study the Employment and Compensation of Agricultural Labor in New Jersey" to make its report to August 1, 1985.

# APPENDIX B

## DRAFT LEGISLATION FOR EFFECTUATING THE STUDY COMMISSION'S RECOMMENDATIONS

R-76
8/14/85

AN ACT concerning agricultural labor, amending R.S. 43:21-4 and R.S. 43:21-5, supplementing chapter 21 of Title 43 of the Revised Statutes and making an appropriation.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. (New section) The Legislature finds and determines that:

a. Agriculture is now and has traditionally been an essential part of the State's economic base, and it is the public policy of this State to ensure the survival of this sector of the economy, particularly in the face of encroaching industrial and commercial development and increasing urbanization; and

b. The continuing survival of New Jersey agriculture is dependent upon a steady and reliable supply of labor; and

c. The complexity of the problem of the compensation of agricultural laborers, which has been heightened by the increasing urbanization and industrial development in this State, needs to be studied by the Legislature in order to determine what remedial actions it may be necessary to take; and

d. It is the intention of the Legislature that the problems of the New Jersey agricultural workers be addressed without sacrificing the basic principles of the recently enacted unemployment compensation reform law (P.L. 1984, c. 24) which was a product of cooperation between business and labor; and

e. The following are valid public purposes and are not regarded by the Legislature as sacrificing the basic principles of the unemployment compensation reform law:

(1) Creating a commission to study the hiring, employment and compensation of agricultural labor in this State, to report its findings thereon, and to propose solutions to the Legislature; and

(2) Enacting temporary measures to assist certain agricultural workers to maintain eligibility for unemployment compensation benefits during the time that the commission conducts its study; and

(3) Making an appropriation to the Department of Labor so that the department may improve the administration of the unemployment compensation program as it concerns agricultural workers and gather information needed by the commission to conduct the study.

2. R.S. 43:21-4 is amended to read as follows:

ALL ROMAN EXCEPT WHERE UNDERLINED

43:21-4. Benefit eligibility conditions. An unemployed individual shall be eligible to receive benefits with respect to any week only if it appears that:

(a) The individual has filed a claim at an unemployment insurance claims office and thereafter continues to report at an employment service office or unemployment insurance claims office as directed by the division in accordance with such regulations as the division may prescribe, except that the division may, by regulation, waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs, and as to such other types of cases or situations with respect to which the division finds that compliance with such requirements would be oppressive, or would be inconsistent with the purpose of this act; provided, that no such regulation shall conflict with subsection (a) of R. S. 43:21-3.

(b) The individual has made a claim for benefits in accordance with the provisions of subsection (a) of R. S. 43:21-6.

(c) (1) The individual is able to work, and is available for work, and has demonstrated to be actively seeking work, except as hereinafter provided in this subsection or in subsection (f) of this section.

(2) The director may modify the requirement of actively seeking work if such modification of this requirement is warranted by economic conditions.

(3) No individual, who is otherwise eligible, shall be deemed ineligible, or unavailable for work, because the individual is on vacation without pay, during said week, if said vacation is not the result of the individual's own action as distinguished from any collective action of a collective bargaining agent or other action beyond the individual's control.

(4) Subject to such limitations and conditions as the division may prescribe, an individual, who is otherwise eligible, shall not be deemed unavailable for work or ineligible because the individual is attending a training program approved for the individual by the division to enhance the individual's employment opportunities or because the individual failed or refused to accept work while attending such program.

(5) An unemployed individual, who is otherwise eligible, shall not be deemed unavailable for work or ineligible solely by reason of the individual's attendance before a court in response to a summons for service on a jury.

(d) The individual has been totally or partially unemployed for a waiting period of one week in the benefit year which includes that week. When benefits become payable with respect to the third consecutive week next following the waiting period, the individual shall be eligible to receive benefits as appropriate with respect to the waiting period. No week shall be counted as a week of unemployment for the purposes of this subsection:

(1) If benefits have been paid, or are payable with respect thereto; provided that the requirements of this paragraph shall be waived with respect to any benefits paid or payable for a waiting period as provided in this subsection;

(2) If it has constituted a waiting period week under the temporary disability benefits law;

(3) Unless the individual fulfills the requirements of subsections (a) and (c) of this section;

(4) If with respect thereto, claimant was disqualified for benefits in accordance with the provisions of subsection (d) of R. S. 43:21-5.

(e) *(1)* With respect to a base year as defined in subsection (c) of R. S. 43:21-19, the individual has established at least 20 base weeks as defined in *paragraph (1) of* subsection (t) of R. S. 43:21-19, or, in those instances in which the individual has not established 20 base weeks, the individual has earned $2,200.00 for benefit years commencing prior to October 1, 1984; and, *except as otherwise provided in paragraph (2) of this subsection*, for benefit years commencing on or after October 1, 1984, the individual has earned 12 times the Statewide average weekly remuneration paid to workers as determined under R. S. 43:21-3(c), raised to the next higher multiple of $100.00 if not already a multiple thereof, or more in the individual's base year. or paragraph (3)

*(2) Notwithstanding the provisions of paragraph (1) of this subsection, for benefit years commencing on or after October 1, 1984 and before January 1, 1985, an unemployed individual claiming benefits on the basis of service performed in the production and harvesting of agricultural crops shall, subject to the limitations of subsection (t) of R. S. 43:21-19, be eligible to receive benefits if it appears that the individual has established at least 20 base weeks as defined in paragraph (2) of subsection (t) of R. S. 43:21-19 or, in those instances in which the individual has not established 20 base weeks, the individual has earned $2,200.00.*

(3) Notwithstanding the provisions of paragraph (1) of this subsection, for benefit years commencing on or after October 1, 1985 and before October 1, 1987, an unemployed individual claiming benefits on the basis of service performed in the production and harvesting of agricultural crops shall, subject to the limitations of subsection (i) of R.S 43:21-19, be eligible to receive benefits if during his base year as defined in subsection (c) of R.S. 43:21-19, the individual:

(A) has established at least 20 base weeks as defined in paragraph (1) of subsection (t) of R.S. 43:21-19; or

(B) Has earned 12 times the Statewide average weekly remuneration paid to workers, as determined under R.S. 43:21-3(c), raised to the next higher multiple of $100.00 if not already a multiple thereof, or more; or

(C) Has performed at least 770 hours of service in the production and harvesting of agricultural crops.

(1) (1) The individual has suffered any accident or sickness not compensable under the Workers' Compensation Law (Title 34 of the Revised Statutes) and resulting in the individual's total disability to perform any work for remuneration, and would be eligible to receive benefits under this chapter (R. S. 43:21-1 et seq.) (without regard to the maximum amount of benefits payable during any benefit year) except for the inability to work and has furnished notice and proof of claim to the division, in accordance with its rules and regulations, and payment is not precluded by the provisions of R. S. 43:21-3 (d); provided, however, that benefits paid under this subsection (1) shall be computed on the basis of only those base year wages earned by the claimant as a "covered individual" as defined in R. S. 43:21-27 (b); provided further that no benefits shall be payable under this subsection to any individual:

(A) For any period during which such individual is not under the care of a legally licensed physician, dentist, optometrist, podiatrist or chiropractor;

(B) (Deleted by amendment, P. L. 1950, c. 90.)

(C) For any period of disability due to willfully or intentionally self-inflicted injury, or to injuries sustained in the perpetration by the individual of a crime of the first, second or third degree;

(D) For any week with respect to which or a part of which the individual has received or is seeking benefits under any unemployment compensation or disability benefit law of any other state or of the United States; provided that if the appropriate agency of such other state or of the United States finally determines that the individual is not entitled to such benefits, this disqualification shall not apply;

(E) For any week with respect to which or part of which the individual has received or is seeking disability benefits under the temporary disability benefits law;

(F) For any period of disability commencing while such individual is a "covered individual" as defined in subsection 3 (b) of the temporary disability benefits law (P. L. 1948, c. 110).

(2) Benefit payments under this subsection shall be charged to and paid from the State disability benefits fund established by the temporary disability benefits law, and shall not be charged to any employer account in computing any employer's experience rate for contributions payable under this chapter.

(g) Benefits based on service in employment defined in subparagraphs (B) and (C) of R. S. 43:21-19 (i) (1) shall be payable in the same amount and on the terms and subject to the same conditions as benefits payable on the basis of other service subject to the Unemployment Compensation Law; except that notwithstanding any other provisions of the Unemployment Compensation Law:

(1) With respect to service performed after December 31, 1977, in an instructional, research, or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(2) With respect to weeks of unemployment beginning after September 3, 1982, on the basis of service performed in any other capacity for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if benefits are denied to any individual under this paragraph (2) and the individual was not offered an opportunity to perform these services for the educational institution for the second of any academic years or terms, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this clause;

(3) With respect to those services described in paragraphs (1) and (2) above, benefits shall not be paid on the basis of such services to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such period or holiday recess;

(4) With respect to any services described in paragraphs (1) and (2) above, benefits shall not be paid as specified in paragraphs (1), (2), and (3) above to any individual who performed those services in an educational institution while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing those services to one or more educational institutions.

(h) Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive ~~sport~~ sports seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

(i) (1) Benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time the services were performed and was lawfully present for ~~purposes~~ the purpose of performing the services or otherwise was permanently residing in the United States under color of law at the time the services were performed (including an alien who is lawfully present in the United States as a result of the application of the provisions of section 203 (a) (7) or section 212 (d) (5) of the Immigration and Nationality Act); provided, that any modifications of the provisions of section 3304 (a) (14) of the Federal Unemployment Tax Act as provided by Public Law 94-566, which specify other conditions or other effective dates than stated herein for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under State law as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act, shall be deemed applicable under the provisions of this section.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of alien status shall be made except upon a preponderance of the evidence.

(j) Notwithstanding any other provision of this chapter, the director may, to the extent that it may be deemed efficient and economical, provide for consolidated administration by one or more representatives or deputies of claims made pursuant to subsection (i) of this section with those made pursuant to Article III (State plan) of the Temporary Disability Benefits Law.

3. R.S. 43:21-5 is amended to read as follows:

43:21-5. An individual shall be disqualified for benefits:

(a) For the week in which the individual has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual *becomes reemployed and works four weeks in employment, which may include employment for the federal government, and* has earned in employment at least six times the individual's weekly benefit rate, as determined in each case.

This subsection shall apply to any individual seeking unemployment benefits on the basis of employment in the production and harvesting of agricultural crops, includ-

ing any individual who was employed in the production and harvesting of agricultural crops on a contract basis and who voluntarily left work without cause attributable to the work following his completion of the minimum period of work required by the contract.

(b) For the week in which the individual has been suspended or discharged for misconduct connected with *the* work, and for the five weeks which immediately follow that week (in addition to the waiting period), as determined in each case. In the event *the* discharge should be rescinded by the employer voluntarily or as a result of mediation or arbitration, this subsection (b) shall not apply, provided, however, an individual who is restored to employment with back pay shall return any benefits received under this chapter for any week of unemployment for which the individual is subsequently compensated by the employer.

*If the discharge was for gross misconduct connected with the work because of the commission of an act punishable as a crime of the first, second, third or fourth degree under the "New Jersey Code of Criminal Justice," N. J. S. 2C:1-1 et seq., the individual shall be disqualified in accordance with the disqualification prescribed in subsection (a) of this section and no benefit rights shall accrue to any individual based upon wages from that employer for services rendered prior to the day upon which the individual was discharged.*

*The director shall insure that any appeal of a determination holding the individual disqualified for gross misconduct in connection with the work shall be expeditiously processed by the appeal tribunal.*

(c) If it is found that the individual has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the director or to accept suitable work when it is offered, or to return to the individual's customary self-employment (if any) when so directed by the director. The disqualification shall continue for the week in which the failure occurred and for the three weeks which immediately follow that week (in addition to the waiting period), as determined:

(1) In determining whether or not any work is suitable for an individual, consideration shall be given to the degree of risk involved to health, safety and morals, the individual's physical fitness and prior training, experience and prior earnings, the individual's length of unemployment and prospects for securing local work in the individual's customary occupation, and the distance of the available work from the individual's residence. In the case of work in the production and harvesting of agricultural crops, the work shall be deemed to be suitable without regard to the distance of the available work from the individual's residence if all costs of transportation are provided to the individual and if, in the case of an individual who must live in a place other than his residence to perform the work,

the amount of work offered is deemed by the director to be great enough to ensure that the compensation for the work will exceed by a reasonable amount the living costs incurred by the individual during the entire period of time in which he must live in a place other than his residence to be able to perform the work.

(2) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) if the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (c) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) If it is found that this unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment or other premises at which the individual is or was last employed. No disqualification under this subsection shall apply if it is shown that:

(1) The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(2) The individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute; provided that if in any case in which (1) or (2) above applies, separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each department shall, for the purpose of this subsection, be deemed to be a separate factory, establishment, or other premises.

(e) For any week with respect to which the individual is receiving or has received remuneration in lieu of notice.

(f) For any week with respect to which or a part of which the individual has received or is seeking unemployment benefits under an unemployment compensation law of any other state or of the United States; provided, that if the appropriate agency of the other state or of the United States finally determines that the individual is not entitled to unemployment benefits, this disqualification shall not apply.

(g) (1) For a period of ~~——————~~ *one year* from the date of the discovery by the division of the illegal receipt *or attempted receipt* of benefits contrary to the provisions of this chapter, as the result of any false or fraudulent representation; provided that any disqualification may be appealed in the same manner as any other disqualification imposed hereunder; and provided further that a conviction in the courts of this State arising out of the illegal receipt *or attempted receipt* of these benefits in any proceeding instituted against the individual under the provisions of this chapter or any other law of this State shall be conclusive upon the appeals tribunal and the board of review.

(2) A disqualification under this subsection shall not preclude the prosecution of any civil, criminal or administrative action or proceeding to enforce other provisions of this chapter for the assessment and collection of penalties or the refund of any amounts collected as benefits under the provisions of R. S. 43:21-16, or to enforce any other law, where an individual obtains or attempts to obtain by theft or robbery or false statements or representations any money from any fund created or established under this chapter or any negotiable or nonnegotiable instrument for the payment of money from these funds, or to recover money erroneously or illegally obtained by an individual from any fund created or established under this chapter.

(h) (1) Notwithstanding any other provisions of this chapter (R. S. 43:21-1 et seq.), no otherwise eligible individual shall be denied benefits for any week because the individual is in training approved under section 236 (a) (1) of the Trade Act of 1974, P. L. 93-618, 19 U. S. C. 2296, nor shall the individual be denied benefits by reason of leaving work to enter this training, provided the work left is not suitable employment, or because of the application to any week in training of provisions in this chapter (R. S. 43:21-1 et seq.) or any applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work. §

(2) For purposes of this subsection (h), the term "suitable" employment means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974, P. L. 93-618, 19 U. S. C. 2102 et seq.), and wages for this work at not less than 80% of the individual's average weekly wage, as determined for the purposes of the Trade Act of 1974.

*(i) For benefit years commencing after June 30, 1984, for any week in which the individual is a student in full attendance at, or on vacation from, an educational institution, as defined in subsection (y) of R. S. 43:21-19; except that this subsection shall not apply to any individual attending a training program approved by the division to enhance the individual's employment opportunities, as defined under subsection (c) of R. S. 43:21-4; nor shall this subsection apply to any individual who, during the individual's base year, earned sufficient wages, as defined under subsection (e) of R. S. 43:21-4, while attending an educational institution during periods other than established and customary vacation periods or holiday recesses at the educational institution, to establish a claim for benefits. For purposes of this subsection, an individual shall be treated as a full-time student for any period:*

*(1) During which the individual is enrolled as a full-time student at an educational institution, or*

*(2) Which is between academic years or terms, if the individual was enrolled as a full-time student at an educational institution for the immediately preceding academic year or term.*

4. (New section) There is created a commission to be known as the "Commission to Study the Hiring, Employment and Compensation of Agricultural Labor in New Jersey," which shall consist of 13 members. Two members of the commission shall be members of the Senate, to be appointed by the President thereof, not more than one of whom shall be of the same political party, and two members shall be members of the General Assembly, to be appointed by the Speaker thereof, not more than one of whom shall be of the same political party. In addition, the President of the Senate and the Speaker of the General Assembly shall jointly appoint six public members, three of whom shall represent business, including one representative of agricultural business; and three of whom shall represent labor, including one representative of agricultural labor. The Commissioner of Labor, the Commissioner of Commerce and Economic Development, and the State Secretary of Agriculture shall be members of the commission ex officio. All members of the commission shall serve without compensation. Members who are legislators shall serve only as long as they hold the legislative seat they held at the time of the appointment. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments were made.

5. (New section) It shall be the duty of the commission to inquire into the hiring, employment and compensation of agricultural labor in this State and make such legislative proposals to the Legislature as it may deem necessary. In making its inquiries and formulating its proposals, the commission shall take into consideration, as it deems appropriate, recommendations of the "Commission to Study the Employment and Compensation of Agricultural Labor in New Jersey" submitted to the President of the Senate and the Speaker of the General Assembly pursuant to Assembly Concurrent Resolution No. 151 of 1984.

6. (New section) The commission shall organize within 15 days after the appointment of its members. The commission shall elect a chairman from among its members and the chairman shall appoint a secretary who need not be a member of the commission.

7. (New section) The commission may hold public hearings and shall be entitled to call to its assistance and avail itself of the services of such employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for this purpose, and to employ counsel and such stenographic and clerical assistance and incur traveling and other miscellaneous expenses as it may deem necessary in order to perform its duties, and as may be within the limits of funds appropriated or otherwise available to it for that purpose.

8. (New section) The commission shall report its findings and recommendations, which shall include draft legislation if the commission recommends that legislation is necessary, to the President of the Senate and the Speaker of the General Assembly no later than October 1, 1987.

9. (New section) The Department of Labor shall take any actions as the commissioner deems necessary to improve the administration of the unemployment compensation program as it concerns agricultural workers. The actions shall include, but not be limited to, the following:

a. Strengthening the enforcement of the provisions of subsections (a) and (c) of R.S. 43:21-5 concerning the disqualification of applicants for benefits as the provisions apply to agricultural workers.

b. Making bilingual forms available for all non-English speaking agricultural workers applying for or receiving benefits; and

c. Implementing procedures to accelerate the processing of the unemployment compensation claims of agricultural workers, including workers who live outside the State.

10. (New section) The Department of Labor shall gather information needed by the "Commission to Study the Hiring, Employment and Compensation of Agricultural Labor in New Jersey," created pursuant to section 4 of this act, for the conduct of its inquiry and the formulation of its proposals, and to provide the information to the commission not later than April 1, 1987. The information shall include, but not be limited to:

a. The total size of the hired agricultural labor force in the State and its seasonal variations;

b. An estimate of the number of agricultural workers who should, according to present unemployment compensation law, be participating in the unemployment compensation program and who are not participating;

c. A breakdown of how many agricultural workers have attained various levels of annual income and hours worked and various numbers of base weeks;

d. The effect that a range of possible changes in unemployment compensation eligibility standards would have on the number of agricultural workers eligible for or receiving benefits and the cost of the changes for agricultural employers;

between an amount equal to 36 times the weekly benefit amount and the amount actually received does not exceed $180.00. In this case, the benefit is reduced by $1.00 for every $36.00 earned under the normal eligibility amount.

Connecticut

To qualify for unemployment benefits, a worker must earn 40 times his benefit rate. The benefit rate is computed by taking 1/26 of the total wages paid in the base period; this rate must not be less that $15, nor more than 60% of the statewide average weekly wage.

e. The number of agricultural workers reporting non-cash compensation and the number who would become eligible for unemployment compensation benefits if all non-cash compensation was reported;

f. The number of agricultural workers working as contract laborers, the proportion of those workers who are eligible for or receiving unemployment compensation benefits, and the number of those laborers who would be covered under the unemployment compensation program if the farmers, rather than the crew leaders or contractors, were in all cases designated to be the employers;

g. The number of additional workers who would be covered under the unemployment compensation program if the standards for defining a farmer to be the employer were the same as those for other employers and the amount of money such a change would cost farmers;

h. The aggregate amount of money farm employers pay into the unemployment compensation fund and the amount of money which is paid out from the fund to agricultural workers on an annual basis, and how those payments would be affected by the various possible changes indicated in this section;

i. The effects that various increases in the required minimum wage level for all workers would have on agricultural worker income and unemployment compensation eligibility and on farm production expenses, and the effects that the increases would have on worker income in other sectors of the State's workforce; and

j. The effects that extending the statutory time and a half overtime pay requirement to agriculture would have on agricultural worker income and unemployment compensation eligibility and on farm production expenses.

11. There is appropriated to the Department of Labor the sum of $90,000.00 from the General Fund to effectuate the purposes of sections 9 and 10 of this act. There is appropriated to the Commission to Study the Hiring, Employment and Compensation of Agricultural Labor in New Jersey the sum of $5,000.00 from the General Fund to effectuate the purposes of sections 4, 5, 6, 7, and 8 of this act.

12. This act shall take effect immediately. Sections 4,5,6,7,8 and 10 of this act shall expire on January 1, 1988.

STATEMENT

This bill creates the Commission to Study the Hiring, Employment, and Compensation of Agricultural Labor; enacts temporary measures to assist certain agricultural workers to maintain eligibility for unemployment compensation benefits during the time that the commission conducts its study; and directs the Department of Labor to collect information needed by the commission and to improve its administration of the unemployment compensation program as its concerns agricultural workers. Ninety thousand dollars is appropriated to the department and $5,000.00 to the commission to effectuate the purposes of this bill.

The department would be required to provide the information to the commission by April 1, 1987 and the commission would be required to report its findings and recommendations to the Legislature by October 1, 1987.

The bill is based on the final recommendations of the Commission to Study the Employment and Compensation of Agricultural Labor in New Jersey, created by Assembly Concurrent Resolution No. 151 of 1984.

# APPENDIX E

## COMMENTS ON REPORT AND DRAFT LEGISLATION

## BY CHARLES SERRAINO, COMMISSIONER OF LABOR

STATE OF NEW JERSEY
DEPARTMENT OF LABOR

CHARLES SERRAINO
Commissioner

CN 110
TRENTON, NEW JERSEY 08625-0110

August 28, 1985

Gregory L. Williams, Research Assistant
New Jersey State Legislature
Office of Legislative Services
Room 103, State House Annex
CN-042
Trenton, New Jersey 08625

Dear Mr. Williams:

The Department has reviewed the draft legislation which was based on the recommendations of the Commission to Study the Employment and Compensation of Agricultural Labor.

Overall, the legislation appears to adequately reflect the Commission's recommendations. However, we do have the following comments with respect to the proposed language in certain sections of the bill.

Pages 3 and 4 (Section 2)

This language appears to be adequate to meet the objectives of the Commission in establishing a third eligibility test for individuals involved in the production and harvesting of agricultural crops.

Pages 6, 7, and 8 (Section 3)

The proposed amendment to subsection (a) does not clearly specify the Commission's objective to disqualify an individual who fails to accept an offer of continuing employment following the completion date of the contract. We would suggest that the following language be substituted.

This subsection shall apply to any individual claiming unemployment benefits on the basis of employment in the production and harvesting of agricultural crops including any individual who was employed in the production and harvesting of agricultural crops

on a contract basis and who has refused an offer of continuing work with that employer following the completion of the minimum period of work required to fulfill the contract.

The proposed amendment to subsection (c) (suitable work) addresses the issue of an offer of work to an individual who is residing at a distance from the work location. We concur with the first half of the new paragraph which deals with suitability in terms of cost of transportation being provided to the individual. However, we believe that the second part of the paragraph is too broad and would create significant problems for the Division of Unemployment and Disability Insurance in determining whether the job offer was suitable.

We would prefer to define suitability in accordance with the terms and conditions of the individual's base year employment. If the job offered provides similar terms and conditions (wages, housing, board, etc.) to those provided by the claimant's base year employer(s), it would be considered suitable work and failure to accept the job would result in disqualification. Conversely, if the conditions are not comparable the offer would not be considered suitable work and no disqualification would be imposed.

We recommend that the following language be included as the amendment to subsection (c).

In the case of work in the production and harvesting of agricultural crops, the work shall be deemed suitable without regard to the distance of the available work from the individual's residence if all costs of transportation are provided to the individual and the terms and conditions of hire are comparable to the terms and conditions of the individual's base year employment.

Page 12 (Section 9)

Subsection (b) states that bilingual forms be made available for all non-English-speaking agricultural workers. We recommend that this statement be amended to read "all Spanish-speaking agricultural workers."

Pages 12, 13, and 14 (Sections 10 and 11)

Section 10 of the bill directs the Department of Labor to undertake extensive data gathering and analysis of various

aspects of the agricultural labor market, including statistics on income, wages and employment and assessments of the impact of changes in the UI law, the minimum wage and overtime provisions. This is to be turned over to a reconstituted study commission by April 1, 1987. Section 11 appropriates $90,000 to the Department for data gathering and also to enable the Department to institute various administrative improvements related to farm workers.

The Department has serious concerns about the feasibility of gathering all of the information listed and carrying out all of the impact analyses within the time and budget allowed. Much of the information will have to be compiled through detailed surveys that will be very difficult considering the fluidity of the agricultural labor market. Some data may simply not be available even through surveys. Also, some of the data demands are ambiguously stated and will have to be clarified before an assessment of feasibility can be made. In particular, the analyses required under subparagraphs b, e, and f would be extremely difficult to accomplish given the constraints discussed above. Moreover, it can be expected that the new study commission to be appointed as a result of this legislation may want additional or somewhat different information.

To ensure that the research undertaking will be both feasible and consistent with the needs of the reconstituted study commission, it is recommended that the draft bill be changed to state the research directive in more general terms and that the Division of Planning and Research be given the opportunity to participate with the commission in outlining a specific research plan at the outset of its deliberations.

10. (New Section) The Department of Labor is directed to gather information needed by the "Commission to Study the Hiring, Employment and Compensation of Agricultural Labor in New Jersey," created pursuant to Section 4 of this Act, for the conduct of its inquiry and the formulation of its proposals, and to provide the information to the commission not later than April 1, 1987. Information requirements shall be delineated by the commission, taking into consideration, as it deems appropriate, the research recommendations of the "Commission to Study the Employment and Compensation of Agricultural Labor in New Jersey" submitted to the President of the Senate and the Speaker of the Genral Assembly pursuant to Assembly Concurrent Resolution No. 151 of 1984. This information shall be sufficient to make reasonable estimates of the impact of the following on farm worker unemployment compensation eligibility and on farm production expenses:

a. A range of possible changes in unemployment compensation eligibility standards;

b. An extension of unemployment compensation coverage standards to make them the same for farmers as for other employers;

c. A range of possible changes in the minimum wage level; and

d. Extension of the time and one-half overtime pay requirement to agriculture.

This change will enable the Division of Planning and Research to work directly with the commission in formulating a research program that is cost-effective, technically feasible, consistent with resource constraints and tailored to the new commission's needs as it sees them as it lays out its own agenda.

Sincerely,

COMMISSIONER

# APPENDIX C

## FARM LABOR UNEMPLOYMENT

## COMPENSATION IN SELECTED STATES

New York

New York has recently changed their requirements for qualifying for unemployment compensation. At present a worker must have worked for 20 base weeks at a salary of at least $80.

In calculating the alternative earnings, workers are permitted to include the reasonable value of meals, lodging "and other advantages provided." The state sets a minimum amount of $1.00 per meal and $20.00 per week for lodging. The amount claimed may be greater, or less, than that amount if it is documented. These amounts are not restricted to agricultural workers, but apply to all workers who are similarly situated.

California

California has relatively liberal eligibility standards for collecting unemployment compensation benefits. Workers must work either 8 base weeks or earn $1200 in a base period. California has large numbers of agricultural workers who collect unemployment compensation benefits. In calculating the alternative earnings, workers are permitted to include the value of remuneration other than wages. If this is fixed by contract, the contract amount governs. If not, it is calculated on the basis of actual cost or a minimum amount established by the Department of Labor.

Florida

Florida has an eligibility standard of 20 base weeks at an average weekly wage of $20.00. Room and board may be calculated as part of the remuneration. Lodging is calculated on the basis of one-half the fair market value. The state establishes a minimum schedule for board, as follows:

| | |
|---|---|
| Breakfast | $1.00 |
| Lunch | $2.00 |
| Dinner | $3.00 |
| Three meals/day | $6.00 |

If an amount is specified in a labor contract, the amount of the contract governs.

Florida has had crop freezes for the past two years. In response to this, the Florida Legislature passed a temporary law, which expires November 1, 1985, which establishes an eligibility standard of 12 base weeks. Under this law, a person who worked 10 to 20 weeks may draw 10 weeks of benefits.

Delaware

To qualify for unemployment benefits in Delaware, a worker must have earned 36 times their weekly benefit amount. The weekly benefit amount is computed by taking 1/78 of the total wages paid during the three quarters of the workers's base period in which his wages were the highest; the benefit amount must be not less than $20, nor more than 66 2/3% of the statewide average weekly wage. If a worker earns less than that amount, he may receive benefits if the differential

between an amount equal to 36 times the weekly benefit amount and the amount actually received does not exceed $180.00. In this case, the benefit is reduced by $1.00 for every $36.00 earned under the normal eligibility amount.

Connecticut

To qualify for unemployment benefits, a worker must earn 40 times his benefit rate. The benefit rate is computed by taking 1/26 of the total wages paid in the base period; this rate must not be less that $15, nor more than 60% of the statewide average weekly wage.