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**Legislative Actions on Overtime
Pay and Collective Bargaining and
their Implications for Farm
Employers in New York State,
2009-2010**

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PREFACE

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Abstract

Agricultural workers in most states are exempt from some labor law provisions that apply to employees in most other workplaces. In New York State agricultural labor advocates and farmers have battled politically over this issue for more than four decades. Two of the most contentious issues are collective bargaining and overtime pay. Currently laws for most other workers grant rights to employees who engage in union organizing activities. In addition, most employers are required to pay an overtime rate of time and one half for hours worked over 40 per week. In New York, labor advocates would like to see both of these exemptions for agriculture removed. Eleven states in the United States have laws that protect agricultural workers who wish to engage in collective bargaining and union organizing activities. In addition, four states have overtime pay provisions for agricultural workers.

Introduced in the New York State Legislature in 2009, the Farmworkers Fair Labor Practices Act would have provided farmworkers with collective bargaining rights and overtime pay. It also contained other provisions viewed as having less impact on the agricultural industry. The proposal reignited a contentious debate and political standoff between farm business interests and the state's labor advocates. The bill passed the Assembly on June 8, 2009. Leaders in the Senate had difficulty getting the bill to the Senate floor for a vote. Finally, as part of the 2010 state budget battle, Senator Pedro Espada, Senate Majority Leader, was successful in bringing about a vote. The legislation was defeated by a margin of three votes. Seldom has farmworker rights legislation gotten so close to passing both houses of the New York State Legislature with the prospect the Governor would sign it. The future prospects for overtime pay and collective bargaining rights for New York's agricultural workers will continue to be dependent upon which political party controls the State Senate. The November 2010 elections resulted in the Republican Party recapturing the Senate majority making it unlikely that legislation similar to the Farmworkers Fair Labor Practices Act will be enacted in the near future. Both sides are extremely well organized and it appears possible this standoff could continue for many more years.

Introduction

It has been a longstanding concern of labor advocates in New York State that farmworkers and other groups are exempt from certain provisions of federal labor law. Origins of current U.S. labor laws date back to the post-depression era of the 1930's. Federal labor regulations set minimum standards by which all states must adhere. Individual states then have the right to legislate more stringent requirements. Federal labor laws exempt farmworkers from:

1. Overtime pay by the Fair Labor Standards Act of 1938 (FLSA); and
2. Guarantees of rights to collective bargaining by the National Labor Relations Act of 1935 (NLRA; also known as the Wagner Act).

Employee groups exempt from overtime pay are defined in Section 213 of the FLSA and listed in Appendix 1.¹

The NLRA defines those groups exempt from collective bargaining provisions. Appendix 2 lists these groups.²

Several states have passed legislation that supersedes federal labor regulations. In regard to overtime pay, four states have legislated provisions covering farmworkers. They include California, Colorado, Hawaii and Maryland. Overtime pay provisions in the Commonwealth of Puerto Rico and District of Columbia also apply to farmworkers. Appendix 3 lists brief description of each state's overtime provisions for farmworkers. A 2001 U.S. Department of Labor report estimates that nearly 80% of U.S. workers are guaranteed overtime pay for work beyond 40 hours a week.³

In regard to collective bargaining, rights for farmworkers have been legislated in eleven states. They include Arizona, California, Hawaii, Indiana, Kansas, Louisiana, Maine, Massachusetts, Nebraska, New Jersey, Oregon, and Wisconsin. Appendix 4 lists the legislation citation for those states with collective bargaining, right to work and/or labor dispute provisions that apply to agricultural workers. It is estimated that about three-quarters of the U.S. workforce have some form of collective bargaining rights from federal, state or local statutes.⁴ However, only 12.3% of U.S. wage and salary employees belong to a union. Among states, New York has the highest union membership rate (25.2%) and second highest number of unionized workers (2.0 million) after California.⁵

Recent Legislative and Advocacy Efforts in New York State

Over the past several decades, the legislative docket in Albany included many bills proposing to regulate the farm employer-employee relationship beyond federal requirements. Historically, the Democratic-led Assembly has passed many of these bills. Until 2010, companion bills introduced in the previously Republican-led Senate were rarely moved out of the Labor Committee, reflecting a longstanding stalemate between farmworker and labor advocates and farm business interests in the State.

The first State Assembly and Senate bills granting collective bargaining rights to and requiring overtime pay for farmworkers were introduced in 1994 and 1995, respectively. In 2000, these two bills were combined with several other provisions into comprehensive farm labor legislation referred to as the Farmworker Fair Labor Practices Act. Appendix 5 outlines the legislative history of these bills. Since first introduced, collective bargaining has passed the Assembly five times and overtime pay provisions have passed six times.⁶

Historically, political support for farm labor issues in New York falls primarily along party lines. Typically, Republicans oppose legislation that increase labor costs for farm employers. Democrats typically support legislation that gives farmworkers more rights and benefits. In addition, to political party positions, upstate-downstate perceptions of farmworker issues further confound efforts to bring farm labor and farmer advocates to consensus. Appendix 6 illustrates political affiliation of representatives in the state legislature by upstate and downstate regions in 2010. In the Assembly, downstate Democrats (representing districts in the five boroughs of NYC or whose district lie primarily in Rockland, Putnam or Westchester Counties) outnumber downstate Republicans by nearly 17 to 1. In Assembly upstate districts (north of Rockland, Putnam and Westchester Counties) and Long Island, Republicans outnumber Democrats by only a slight margin. In the Senate, downstate Democrats outnumber downstate Republicans by about 4 to 1. Upstate Republicans outnumber Democrats by more than 3 to 1. It is important to note that for purposes for this discussion, we have included Long Island with the upstate districts due to its agricultural importance in the state.

The November 2008 elections resulted in a change of the majority party in the state Senate. Democrats took a one-member majority after being in the minority for more than four decades. After a tumultuous leadership struggle during most of 2009, the Democratic Senate leadership began to actively promote positions taken by labor advocates in support of farmworker rights. Appendix 7 provides a chronology of significant events in 2009 and 2010 surrounding the Farmworkers Fair Labor Practices Act.

The issues of overtime pay and collective bargaining for farmworkers came to the forefront with the reintroduction of the Farmworkers Fair Labor Practices Act in 2009 (A1867 and S2247). As stated in the justification of S2247, the legislation seeks to “grant farmworkers the basic labor rights long enjoyed by other public and private employees in our state.” The overtime provision in the bill called for time and half after 40 hours a week. Collective bargaining rights would be extended to workers on all farms, regardless of size.

The Farmworkers Fair Labor Practices Act sponsored by Assemblywoman Nolan, D-Queens, worked its way through the Assembly Labor, Codes and Ways & Means Committees. The bill passed the full Assembly on June 8, 2009. The Senate companion bill, S2247, sponsored by Senator Onorato, D-Queens, passed the Senate Labor Committee on June 1, 2009. But it was not moved to the Senate floor for a full vote. The newly Democratic-led Senate instead found itself in a leadership struggle, paralyzing its ability to make legislative progress.

In spring and summer 2009, several editorials appeared in influential New York City newspapers calling upon the State Senate leadership to move the legislation forward. The May 15, 2009 editorial in the New York Daily News highlighted the involvement of Kerry Kennedy, daughter of slain Presidential candidate, Robert F. Kennedy, at an Albany rally in support of the legislation. Quoting her father, she urged both chambers of the legislature to pass the legislation.⁷ Two editorials in the New York Times, April 5 and again in September 8, 2009, reiterated in their headlines that justice on the farm is 70 years overdue.^{8,9}

The new majority leader, Senator Espada, D-Bronx, viewed the legislation as an equal rights issue. During his political career he had been a strong advocate for the medically underserved, school children, working families, and crime victims. On Friday, August 21, 2009, accompanied by the television media, he attempted to enter a Sullivan County duck farm and talk with farmworkers as a show of support for the legislation. The visit resulted in a heated argument with the farm's manager and Espada was not allowed to enter the farm. On its editorial page the New York Daily News supported Espada's efforts saying "The workers toil endless hours under horrendous conditions with no overtime pay, no days off and no way to better themselves because the state constitutional right to organize and bargain collectively doesn't apply to farmworkers. This is the unconscionable state of affairs that The News has been fighting to change--a fight Espada has now joined fully".¹⁰ Agricultural leaders were angered by the one-sided coverage of the farm visit and the deliberate attempt to gain wide media exposure.

During the fall of 2009 Chairman of the Senate Agriculture Committee, Senator Darrel Aubertine, D-Cape Vincent, conducted a series of roundtables in six locations throughout the state. One of the Senator's stated goals for these meetings was to discuss impacts the Farmworkers Fair Labor Practices Act would have on New York farm businesses. Further, Senator Aubertine wanted to give farmers the opportunity to offer alternatives including substantial revisions to the current proposal. The roundtables concluded with a hearing on agricultural issues in Watertown, New York on November 19, 2009.

The Watertown hearing focused on three panels. The first addressed the current dairy crisis relating to low milk prices. The second panel focused on the Farmworkers Fair Labor Practices Act and the concerns of farm employers. The third panel consisted of farm labor advocates including several farmworkers who expressed their strong support for the proposed legislation. The hearing included many traditional arguments on each side of the issue. Those who spoke for agriculture, including New York Farm Bureau President Dean Norton, raised serious concerns about how the bill would increase farm labor costs at a time when many agricultural producers face rising production costs and low product prices. Farmworker and labor advocates continued to make the argument that agricultural workers deserve the same rights as other workers and that passage of this type of legislation is decades overdue. Particularly emotional was the testimony of farmworkers who reported low pay and difficult working conditions. Approximately 40 interested parties attended the hearing.

A week later on Thanksgiving Day, an editorial opinion by Kerry Kennedy, appeared in the New York Daily News. Entitled, "This must be New York's final harvest of shame: Let us finally protect exploited farmworkers," the editorial alleged near-slavery conditions on New York farms. It recounted the history of denying New York's farmworkers basic rights and called for a vote on the Farmworkers' Fair Labor Practices Act in the Senate.¹¹ Ms. Kennedy has a long history of human rights work nationally and internationally. The New York farming community was outraged at Ms. Kennedy's allegations.

In a December 2009 special session, the majority leader, Senator Espada, pushed for a full-Senate vote on S2247 as a condition for passing budget reduction legislation. However, several upstate Senate Democrats would not support his efforts to move the bill to a floor vote.

Meetings and discussions between farmer and labor interests were held in late December, resulting in amended bills, S2247-B introduced in the Senate on January 8, 2010 and A1867-B introduced in the Assembly on January 6, 2010. Significant changes to the overtime pay and collective bargaining provisions included:

- Changing the standard workday and workweek from 8 to 10 hours per day and from 40 to 60 hours per week, respectively, with the weekly workweek dropping to 55 hours in 2013; and
- Applying collective bargaining rights only to farms with gross sales greater than \$650,000 during the previous calendar year instead of all farms, providing for conflict resolution procedures, and placing contingencies on strike or lockout actions.

Though considered an acceptable compromise by labor interests, farm advocates maintained the amended legislation remains an unfair economic burden to New York farms and a hindrance to the upstate economy. Most states do not have the requirements being proposed in the bill. According to the 2007 Census of Agriculture, labor costs on New York farms are already 56% greater than the U.S. average, \$13.82/\$100 produce sold vs. \$8.88/\$100 produce sold. Though no independent economic analysis of the proposed legislation has been conducted, Farm Credit East estimates decreases in Net Farm Cash Income (net income after taxes available for the farm family to pay their own living expenses, repay debt, and reinvest into the business) between 20 to 50% in good years and 40 to 80% in difficult years.¹²

S2247-B passed the Senate Labor Committee on January 20, 2010 with 9 votes in favor, 3 against and with 4 members moving the bill forward without expressing an opinion. The bill was to be taken up next by the Senate Codes Committee. A request by Senator Aubertine to Senate leadership to allow the Agriculture Committee consideration of the bill was granted on January 21, 2010. One would think that legislation regulating farm labor would naturally be considered by a chamber's Agriculture Committee. However, since the Farmworkers' Fair Labor Practices Act changes state Labor Laws and not

Agriculture & Markets Law, no jurisdiction existed for Agriculture Committee consideration. The move was unusual and unexpected by many. Senator Aubertine has been a staunch and vocal opponent of the Farmworkers Fair Labor Practices Act maintaining his fellow Senators need to fully understand the potentially devastating unintended consequences of the legislation. Reports of the surprise move were carried in upstate newspapers. Farm business interests were pleased the bill would be “placed under one more microscope before possible approval.”^{13,14} An editorial in a New York City newspaper the following day alluded to deeper political motives for the move by Senate leadership. “Sampson is terrified that Aubertine could lose to a Republican in the fall, so he chose to let Aubertine’s panel smother the bill.”¹⁵ Senator Aubertine promised to thoroughly explore the facts on both sides of the issue and believed this could best be accomplished through an Agriculture Committee hearing.

On March 1, 2010 a hearing of the Senate Agriculture Committee was held in Albany to gather further testimony on the proposed Farmworkers Fair Labor Practices Act. More than two dozen individuals testified on various aspects of the legislation. The hearing lasted almost 8 hours. The atmosphere in the room reflected the anxiety and frustration of this decades-old standoff between two very passionate and well-organized interest groups.

Farmers and farm business interests represented most of the estimated 200 individuals present at the hearing. New York Farm Bureau President Dean Norton and a number of farm employers again emphatically stated that the proposed legislation would dramatically drive up labor costs at a time when farmers are already struggling financially and it would put farmers out of business. The Agriculture Committee heard from a panel of individuals representing farmworkers. The debate became heated when Kerry Kennedy, representing the Robert F. Kennedy Memorial Center for Justice and Human Rights, raised concerns over human rights abuses on farms. She reported that she had heard first-hand claims that several female farmworkers were sexually abused on the job. Senator Catherine Young, R-Jamestown, and other Senators questioned the allegations and asked why the incidents were not reported to authorities. Senate majority leader Pedro Espada was present at the hearing and also reported claims of sexual abuse on farms by female farm employees. Farm leaders were upset at the allegations and the discussion continued until late morning. After the farmworker panel was excused, the rest of the day was devoted to hearing testimony from those representing agricultural interests. Most of the comments centered on the hardships farmers would face if the bill were enacted. They reiterated their position that adequate laws are already on the books to protect farm worker safety and welfare.

On April 20, 2010, the bill came to a vote in the Senate Agriculture Committee. It was voted down with six votes against, one vote for and two members voting to move the bill forward without expressing an opinion. At the time, many observers believed the vote would be the end of the debate on the Farmworkers Fair Labor Practices Act for the legislative session. However, on May 11, 2010 the legislation with minor language changes was reintroduced as S7787 by Senator Onorato, Chair of the Senate Labor Committee. This bill languished in Committee as the Senators struggled to come to agreement on the annual state budget.

Labor advocates continued to push for a full Senate vote on the legislation. On June 16, they held a rally on the steps of the Capitol in Albany calling once again for legislative consideration. Both Senate and Assembly leaders and many other legislators were present and voiced support for passage in this legislative session. That same day, Majority Leader Pedro Espada reintroduced the same legislation that was defeated in the Senate Agriculture Committee. He had it referred directly to the Rules Committee, the last step in the legislative process before being moved to the Senate floor.

On June 1, 2010 the Senate passed the Domestic Worker’s Bill of Rights (S2311-D) by a margin of 33 to 28. Domestic workers are one of the employee groups that were exempt from provision of federal labor law. The legislation was subsequently passed by the Assembly and signed by the Governor. Senator Espada viewed the passage as a major victory and commented that “he would use this historic vote to get his colleagues to refocus their attention on helping another workforce who’s rights have been long neglected—farmworkers.”¹⁶

Throughout the spring and early summer, lawmakers were engaged in a protracted struggle to finalize the 2010 state budget. While Senate Democrats negotiated to get every member of their narrow majority to agree on final details of the late budget, Senator Majority Leader Espada announced he would hold up the vote until promised that his version of the Farmworkers Fair Labor Practices Act would be allowed a full Senate floor vote. He got his way and the vote came late on August 3, 2010 and was defeated by a 28-31 margin. Appendix 8 lists the floor vote tally with each member’s political affiliation and region they represent. (One NYC Democrat abstained and one NYC Republican was excused from the vote.) Of the three Republicans that voted in favor of passage, one represented an upstate district, one a NYC district and the other represented a Long Island district. Of the five Democrats that voted to defeat the bill, two represented Long Island districts and the three represented upstate districts.

Farmers and farm business interests considered the outcome of the Senate floor vote a major victory while farmworker and labor advocates viewed it a devastating defeat. Governor Patterson had previously stated he would sign the legislation if passed. Had two dissenting Senators voted differently, the legislation would have become law.

In response to the Senate floor defeat, Dean Norton, President of New York Farm Bureau said, “We are proud of the farmers and Senators who spoke out against this bill and once again sent it to its defeat. Should it reappear again, we will fight with the same vigor and determination to kill it once again.”¹⁷ Rev. Richard Witt, Executive Director of Rural and Migrant Ministry expressed sentiments of farmworker and labor advocates, “At this point, we’re assessing where things stand and figuring out a new course of action. I can’t say at this point what that might be, but we can say that we’re not giving up and we’re not going away.”¹⁸

Overtime Pay and Collective Bargaining Features of Legislation and Implications

New York's largest farm operations account for the majority of agricultural production in New York State. They also employ the majority of hired workers in New York agriculture. Farm summary data from Cornell University shows that hired labor is the largest operating expense on New York's fruit farms and the second largest operating expense after purchased feed on dairy farms.^{19,20} As a result, farm managers pay close attention to actions that may raise labor costs. Such is the case with the Farmworkers Fair Labor Practices Act. The following is a summary of key provisions and some of the implication of the legislation.

Note there are three versions of the legislation: the initial version introduced both chamber's labor committees (A1877-A and S2247-A); the amended version reintroduced in the labor committees (A1867-B and S2247-B); and final version introduced by Majority Leader Espada (A11569 and S8223) that was voted down by the full Senate on August 3, 2010.

The following provisions refer to the amended (B-version) of the legislation:

Collective Bargaining Rights - This provision would have granted collective bargaining rights to laborers on farms with gross sales of \$650,000 or more in the previous calendar year. Most dairy farms larger than 200-cows generate this level of gross sales. Apple farms producing for fresh markets can generate this level of sales with 100 acres or more under production. Fruit grown for processing markets would require much larger acreage. Acreage required to generate \$650,000 of vegetable sales will vary by the specific crops grown and method of marketing. Processing vegetables may require 300 or more areas while certain high-value fresh market vegetables may require 40 acres or less. By national standards, farms of these sizes are not considered large operations.

At the present time agricultural workers are not protected under the law if they engage in union activities. One issue often raised by agricultural employers regarding collective bargaining rights for farm workers is the need for a "no strike" provision. Many farm employers feel that any law regarding collective bargaining should take into consideration the uniqueness of food production; specifically the perishable nature of agricultural products and the around-the-clock care required for farm animals. One of the greatest concerns farmers have regarding collective bargaining is that a specialty crop farmer could face a strike at harvest time or that dairy cattle might not get milked, fed or cared for, specifically because of a strike. In a recent Cornell survey, a majority of New York Dairy farmers reported that they would be very concerned if workers were allowed to join a union and engage in collective bargaining.²¹ The bill attempts to address this issue by establishing a 21-day cooling off period before a strike or lockout action can be implemented. The bill also establishes an advisory committee on agricultural collective bargaining for the purpose of establishing dispute resolution procedures and fostering labor-management cooperation.

This provision could lead to an increase in union activity in New York's agricultural industry. However, the state's agriculture is relatively small scale and dispersed compared to a state like California. Organizing and recruiting would be costly and time consuming for limited potential union membership. Nevertheless, some level of attempted labor organizing in the state could be expected.

Overtime Pay – This provision would have established an overtime rate for farmworkers who work more than 10 hours a day, 60 hours per week, or 6 days a week. The overtime pay rate would be time and ½ over 60 hours a week. On the seventh day of work, the employee would be paid time and ½ for the first 8 hours of work and 2 times the normal rate of pay after 8 hours. Beginning in 2013, all hours worked in excess of 10 hours a day or 55 hours in a calendar week would have been paid at 1 and ½ times the regular rate. A majority of dairy farmers surveyed in 2010 reported that they would be very concerned if state law required them to pay overtime.²²

Other Provisions

Day of Rest - This provision would have provided that every farm laborer be allowed at least 24 consecutive hours of rest each calendar week. The bill indicated that 24 hours spent at rest because of weather or crop conditions would constitute the rest required. A farm laborer could have voluntarily refused the day of rest. Farmworkers typically work long hours and are likely to voluntarily work a longer workweek.

Unemployment Insurance - This provision would have made the state's unemployment insurance law applicable to all farms with quarterly payrolls of \$6250 or more. Currently, larger farms (those with \$20,000 in payroll for a calendar quarter) are required to pay unemployment insurance. The net result of this provision impacts smaller farms by requiring them to incur the unemployment insurance costs and additional paperwork. The provision would have also excluded H-2A from unemployment insurance coverage.

Work Agreement - This provision defined the term "work agreement" and mandates the use of one. Existing agricultural labor laws in New York already require a written work agreement, making this provision redundant.

Sanitary Code for Labor Camps – The current law applies state sanitary code to migrant farmworker housing occupied by 5 or more workers. This provision expands the code to include housing of any number of migrant workers.

Workers' Compensation – Workers' Compensation is already required for farm employers with more than \$1200 in payroll. This provision would have made workers' compensation required for all farm employees. This provision also would have made it unlawful for an employer or crew leader to fire a worker because the worker files or attempts to file a Workers' Compensation claim or requests a claim form.

Disability Benefits – This provision would have required farm workers to be covered by the New York State Disability Law. It would have required their employers to contribute to the disability insurance pool. Currently, farm workers and farm employers can participate on a voluntary basis.

(**Note:** The legislation introduced by Senate Majority Leader Espada and voted down by the full Senate contained several different provisions relating to overtime pay, special certificates that lower minimum wage for certain youth and disabled groups, unemployment insurance coverage, and application of sanitary code relating to housing.)

Implications for the Future

The positions reflected in the debate over the Farmworker Fair Labor Practices Act have broad implications for New York agriculture and the agricultural workforce. The political battle in New York over many of the provisions included in the Farmworker Fair Labor Practices Act has gone on for more than four decades. With the defeat of the bill in the 2009-10 legislative session, now is a good time to consider the implications that overtime pay, collective bargaining and other agricultural labor exemptions may have for agriculture and the agricultural workforce going forward. It is also a good time to think about what the future holds for this type of legislation. We see the following implications going forward.

1) Agricultural exemption issues left unresolved are likely to continue a divisive and protracted conflict.

The struggle over agricultural exemptions in New York is in many ways a classic labor vs. management conflict. The primary difference is that this conflict is being fought in the political arena rather than in the workplace. The defeat of the Farmworker Fair Labor Practices Act in the New York State Senate on August 3, 2010 provided a sense of victory and much relief for the state's agricultural industry. At the same time, labor advocates were disappointed and expressed strong resolve to continue their efforts to equalize the rights of farmworkers with other workers in New York. Throughout the debate farm business interests argued that granting overtime pay and collective bargaining rights to workers would put New York farms at a competitive disadvantage. New York farmers' opposition to the overtime pay and collective bargaining provisions in the Farmworker Fair Labor Practices Act is documented in a 2010 Cornell survey representing 2100 New York dairy farmers. When asked how concerned they would be if state law allowed their workers to form a union and engage in collective bargaining, 55% of those responding indicated they would be very concerned. Likewise when the same group was asked how concerned they would be if state law required them to pay overtime after 40 hours, 65% indicated they were very concerned. When asked how concerned they would be if a state law required them to be in overtime after 55 hours, 54% said they were very concerned and if overtime were required after 60 hours per week, 45% said they would be very concerned.²³ Though progress has been slow there are strong indications that labor advocates will keep this issue in front of policymakers and the public. Nonetheless, the players will continue to reinforce their positions within their

constituencies and the general public unless a new approach can be agreed upon. Since little has changed in this conflict over 40 years, leaders on both sides should consider new ways to approach these divisive issues.

2) A continued standoff between farmworker advocates and farm advocates presents a long-term public relations problem for agriculture.

While farm interests have historically maintained the upper hand politically, the labor advocates have been relentless in their efforts to turn public opinion, especially downstate, against farm employers. In recent decades, labor advocates in New York have used marches, hunger strikes, op-ed columns in downstate newspapers, protests at the state Capitol and other tactics to call attention to their cause. In almost every case these activities are covered by the media and generally carry the message that “because farmers exploit their workers, the laws need to be changed.” In fact, over the past 40 years, wages, benefits and working conditions on most New York farms have continued to improve. There is a potentially large disconnect between the human resource practices on New York farms today and what many non-farmers believe as a result of the continued negative press regarding the treatment of farmworkers. There were 20 editorials and opinions calling for farmworker rights published in New York City and Albany newspapers during deliberations over the Farmworker Fair Labor Practices Act described in this paper.²⁴ Agricultural leaders should think carefully about strategies that will minimize or eliminate this challenge to agriculture.

3) Redistricting will significantly impact the future politics of the agricultural labor exemption issue.

All 212 seats of the New York State legislature were up for reelection in November 2010. As expected, Democrats maintained solid control of the Assembly. But the narrow 2-seat majority of the Democrats in the Senate shifted to a 2-seat majority for the Republicans. Furthermore, four Democratic senators broke from their caucus forming the Independent Democratic Caucus.

The results of the 2010 legislative election held greater significance than most elections because redistricting will occur in 2011. Every ten years following the release of new census data, legislative districts are adjusted to reflect updated population numbers so that districts continue to have relatively equal populations. In the past, redistricting has been used to improve the chances that legislative majority parties stay in power.

A Joint Legislative Task Force on Demographic Research and Reapportionment determines the shape and constituency of legislative districts. Leaders of the two legislative chambers appoint the task force members. The Senate Majority Leader and Assembly Speaker each appoint one legislator and one private citizen. The Minority Leaders of each chamber appoint one member of the legislature to form the six-member task force. The governor has veto power over the final redistricting plan developed.

As a result of how the task force is appointed, the legislative majority leaders have significant influence over the results of redistricting. For the past four redistricting plans, a Republican Senate Majority Leader and Democrat Assembly Speaker resulted in a task force of equal party representation. Subsequently, the resulting redistricting maps favored keeping the Senate Republican-led and the Assembly Democrat-led.

The November 2008 election changed that landscape. It subsequently led to the advancement of farmworker rights legislation beyond introductions in the Senate Labor Committee for the first time since the mid-1990's. The November 2010 elections resulted in the Republican Party recapturing the Senate majority. If the redistricting process remains the same as in the past, when district lines are redrawn, they will likely favor Republican control of the York State Senate. As long as Republicans maintain control of the Senate, it is unlikely there will be major changes in agricultural labor exemptions in the state.

4) An overtime pay requirement could change how farm employers operate their businesses

If future legislation requires farm employers to pay overtime, they are likely to consider several options. First, they could simply pay overtime and hope to operate their businesses to generate increased revenue required to pay the increased costs. There are already a small number of farm businesses in the state that pay overtime. Second, a more likely response would be to do what many other U.S. businesses do. They opt not to allow employees to work overtime so as to eliminate additional overtime costs. This response on the part of farm employers in many cases would be disruptive to both the business and to employees who count on the paychecks generated from working long hours. This is particularly true of Hispanic workers who in a 2004 Cornell survey indicated that if they were not allowed to work at least 55 hours per week they would look for another job.²⁵ A third option that farm employers might pursue is to continue to mechanize their farm operations. Mechanization has changed the face of agriculture over its entire history. However, if labor costs increase dramatically as a result of overtime pay or other mandates, farm managers will have a greater incentive to accelerate their purchases of equipment and improvements to reduce the amount of labor required. The recent adoption of robotic milkers on dairies is a good example.

One option for farm managers who are concerned they will be required to pay overtime at some point in the future is to devise ways to gradually pay overtime today. Then if the requirement does come, it will not be an abrupt change for the business.

5) If farmworkers gain collective bargaining rights the conflict between labor advocates and farm employers is likely to escalate.

From a union perspective New York agriculture is relatively small and geographically dispersed and would therefore be difficult and expensive to organize. Nonetheless, if workers have the option to form unions it is very likely that union organizers would become active in the state. In that scenario, the general conflict over the agricultural

exemptions would likely move from the current political standoff to a heated conflict over union organizing on individual farms. While labor advocates see collective bargaining as a workers rights issue, farm employers view it as a direct impediment to management. Their perceptions are negative and deeply emotional. They fear that they would lose their flexibility to manage and that the farms' employer-employee relationships would turn impersonal and adversarial. Their mistrust of unions comes from stories like one that recently appeared in Dairy Herd Management magazine.²⁶ It recounts one California dairy farmer's experience after a successful union vote on his farm. The union contract was so restrictive that both management and employees found it completely disruptive and after one year the employees voted the union out.

6) Farm employers with top-notch human resource management practices give their employees little reason to form a union.

Farm employers who are concerned that one day they may have to deal with union organizing should make every effort today to provide their workers with the best wages, benefits and working conditions possible. Unions don't generally form for positive reasons. Union organizing on the part of employees often grows out of a mistrust of management, with workers feeling that they are being unfairly treated or that management is not listening to them. Farm managers who want to minimize the risks of union organizing should embrace modern human resource management practices ahead of time. They can do this by providing competitive wages and benefits, soliciting employee feedback, providing safe comfortable working conditions and, when possible, providing job security. Farm businesses with top-notch human resource management practices give their employees little reason to want to form a union.

7) A mediation/conflict resolution approach to dealing with the agricultural exemptions should be carefully considered

Over the past several decades many individuals have invested a substantial amount of effort, time and energy on the battle over agricultural labor exemptions. The net result from all these efforts has been modest change and seemingly endless conflict. What is currently absent from this debate is any attempt to have representatives from each side work together face to face on solutions that would end the standoff. Both sides should make an effort to better understand each other and then work toward a solution. A paradigm shift from a direct confrontation approach to a conflict resolution approach would be a positive alternative. For example, one way to ensure that a proposed labor bill will pass the legislature would be to have representatives on both sides come together on mutually agreeable provisions and then have the bill introduced into the legislature. This approach of farm advocates and labor advocates agreeing in advance on a legislative proposal worked in formulating the current version of the AgJOBS bill on the federal level. With determination on both sides perhaps it could work in this case on the state level.

The long-term goal should be to address this conflict over agricultural labor exemptions and then, in the future, resolve to work together on issues of common interest. There are

many issues impacting the quality of life for farm workers that labor advocates and farm employers could work on together. These include housing, immigration reform, health care, and general enhancement of rural communities. A paradigm shift is needed from focusing on the divisive issues relating to the agricultural labor exemptions to focusing on issues of mutual benefit.

Footnotes

- ¹ The Fair Labor Standards Act of 1938, as Amended. 29 U.S.C. 201, *et seq.* U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division. WH Publication 1318, Revised March 2004. Washington, DC.
- ² The National Labor Relations Act (NLRA), as amended, 29 U.S.C. §§151-169. Title 29, Chapter 7, Subchapter II United States Code. Washington, DC.
- ³ U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division. 2001. The “New Economy” and its impact on Executive, Administrative, and Professional Exemptions to the Fair Labor Standards Act (FLSA). Washington, DC.
- ⁴ U.S. General Accounting Office, Report to Congressional Requesters U.S. Senate. Collective Bargaining Rights: Information on the Number of Workers with and without Bargaining Rights. GAO-02-835, September 2002. Washington, DC.
- ⁵ Union Membership Summary. Economic News Release, U.S. Bureau of Labor Statistics, January 22, 2010. Washington, DC.
<http://www.bls.gov/news.release/union2.nr0.htm>
- ⁶ State of New York Legislative Digest. 1993-2009 (216th through 232nd session). Legislative Bill Drafting Commission, New York State Legislative Library, Albany, NY. Digest information from 2001 to current can be retrieved from the New York State Legislature Public Information Website,
<http://public.leginfo.state.ny.us/menuf.cgi>.
- ⁷ Harvest Kennedy’s Legacy: State Senate Must Pass Farmworker Rights Bill. NY Daily News, editorial. New York City, NY. May 15, 2009.
- ⁸ Farm Workers’ Rights, 70 Years Overdue. The New York Times, editorial. New York City, NY. April 6, 2009.
- ⁹ Justice on the Farm. The New York Times, editorial. New York City, NY. September 9, 2009.
- ¹⁰ Espada doesn’t duck: State Senate troublemaker does right by farmworkers. New York Daily News, editorial. New York City, NY. August 25, 2009.
- ¹¹ This must be New York’s harvest of shame: Let us finally protect exploited farmworkers. New York Daily News, editorial. New York, NY. November 26, 2009.
- ¹² Memorandum of Opposition, Senate 2247-A and Assembly 1867-A. Farm Credit East, Cobleskill, NY. January 15, 2010.

- ¹³ Farm Labor Bill Detours to the Senate Agriculture Committee. Watertown Daily Times, Watertown, NY. January 21, 2010.
- ¹⁴ Farm Labor Bill Detoured on Road to N.Y. Senate. The Observer, Dunkirk, NY. January 26, 2010.
- ¹⁵ Farmworkers Plowed Under by Sampson: State Senate boss' lie buries hopes for farm worker bill. NY Daily News, editorial. New York City, NY. January 25, 2010.
- ¹⁶ Senator Pedro Espada, Jr Press Release, June 1, 2010. Senate Passes Domestic Worker's Bill of Rights—Now onto Farmworkers
- ¹⁷ New York Farm Bureau Website, Resources, Farm Labor, August 4, 2010. Farmworker Bill Defeated: New York Family Farmers Cheer Senate Vote on Labor Bill.
- ¹⁸ Reisman, N. August 10, 2010. Gannet Albany Bureau. New York Farm Workers Advocates Regroup After Legislative Loss. Appeared in the Ithaca Journal.
- ¹⁹ White, Gerald B., Alison M. DeMarree and James Neyhard. 2009. Fruit Farm Business Summary: Lake Ontario Region New York 2008. E.B. 2009-19, Department of Applied Economics and Management, College of Agriculture and Life Sciences, Cornell University, October.
- ²⁰ Knoblauch, Wayne A., Linda P. Putnam, Jason Karszes and Jessica Anderson. 2009. Dairy Farm Business Summary: New York 2008. R.B. 2009-01, Department of Applied Economics and Management, College of Agriculture and Life Sciences, Cornell University, November.
- ^{21, 22, 23} Maloney, Thomas R. and Nelson L. Bills. Survey of New York Dairy Farm Employers 2009, Charles H. Dyson School of Applied Economics and Management, College of Agriculture and Life Sciences, Cornell University, publication pending.
- ²⁴ <http://www.labor-religion.org/farmworkers-updates.htm>
- ²⁵ Maloney, Thomas R. and David C. Grusenmeyer. 2005. Survey of Hispanic Dairy Workers in New York State. R.B. 2005-02, Department of Applied Economics and Management, College of Agriculture and Life Sciences, Cornell University, February.
- ²⁶ Megan Pierce. 2009. Be concerned about a union vote. Dairy Herd Management, Vance Publishing Company, Linexa, Kansas, October.

Appendix 1. Groups Exempt from Overtime Pay by the Federal Labors Standards Act of 1938

- Employees in agriculture
- Administrative, executive or professional employees
- School administrators and teachers
- On-the-road, door-to-door, and telemarketing sales representatives
- Recreational and educational employees at seasonal camps/parks
- Seafood harvest and production employees
- Employees of small newspapers
- Crews on non-American seagoing vessels
- In-home domestic service and care employees
- Certain computer system technicians
- Certain transportation industry positions
- Television and radio station positions in small cities
- Employees of independent car, truck, boat, aircraft and farm implement dealerships
- Local delivery employees
- Grain elevator employees
- Fruit and vegetable packing and transport employees
- Taxi drivers
- Fire fighters and police in small communities
- Cinema theater employees
- Employees of small lumber operations
- Individuals employed by their spouse or parent

Appendix 2. Groups Exempt from Collective Bargaining by the NLRA of 1935

- Employees in agriculture
- In-home domestic service employees
- Employees of a parent or spouse
- Independent contractors
- Individuals employed as managers or supervisors.
- Employees of federal and state governments and their political subdivisions
- Employees of transportation companies as outlined in the Railroad Labor Act
- Teachers and certain other employees of religious organizations
- Crews of foreign ships in U.S. ports.

Appendix 3. Description of State’s Farmworker Overtime Pay Provisions

| State | Agricultural Worker Overtime Pay Provisions | Citation |
|------------|---|--|
| California | <p>Time and one half for over 10 hours in any one workday; and</p> <p>More than 6 days in any workweek; on 7th day of work, first 8 hours paid at time and one half and double for hours after first 8 hours.</p> <p>Exemptions:</p> <ul style="list-style-type: none"> • 7th day provision not applied to employees working less than 30 hours a week and any one day not exceed six hours; • shepherders of range grazed flocks • in any week, employees who spend more than half of their work time performing irrigation duties; • employees covered by a collective bargaining agreement that provides more than \$1.00/hr more than minimum wage. | <p>Industrial Welfare Commission, Order No. 14-2001, Regulating Wages, Hours and Working Conditions in the Agricultural Occupations. Updated January 1, 2002.</p> <p>http://www.dir.ca.gov/lwc/wageorder14.html</p> |
| Colorado | <p>Time and one half for any work in excess of:</p> <ul style="list-style-type: none"> • 40 hours per workweek; • 12 hours per workday; or • 12 consecutive hours without regard to start and end of the workday | <p>Colorado Minimum Wage Order No. 26, Department of Labor and Employment, Division of Labor, 7CCR 103-1.</p> <p>http://www.colorado.gov/cs/Satellite/CDLE-LaborLaws/CDLE/1248095305236</p> |
| Hawaii | <p>Time and one half for any work in excess of 40 hours in a workweek.</p> <p>Exemptions:</p> <ul style="list-style-type: none"> • employees engages in coffee harvest; • farms with less than 20 employees for any workweek; • farms with more than 20 employees select 20 weeks per year in which work beyond 48 hours/week (instead of 40 hours) must be paid time and one half. | <p>Hawaii Revised Statues, Chapter 387, Wage and Hour Law, Sections 1 and 3.</p> <p>http://www.capitol.hawaii.gov/hrscurrent/Vol07_Ch0346-0398/HRS0387/HRS_0387-.htm</p> |

Appendix 3. (Continued)

| | | |
|----------|--|---|
| Maryland | <p>Time and one half for any work in excess of 60 hours in a workweek.</p> <p>Exemptions:</p> <ul style="list-style-type: none"> • farms with less than 500 worker-days during each quarter of the preceding calendar year (roughly 5-6 workers); • hand harvest laborers paid piece-rate basis in an operation that is customarily and generally recognized as having been paid on that basis if: <ul style="list-style-type: none"> ○ employee commutes daily from a permanent resident to the farm; and ○ employed less than 13 weeks the preceding year; or ○ is the child under the age of 17 whose parent is employed on the farm and is paid the same rate as other employees of similar age. | <p>The Maryland Wage and Hour Law, Title 3, Subtitle 4, § 3-403, § 3-420.</p> <p>http://mlis.state.md.us/asp/web_statutes.asp?gle&3-403</p> <p>http://mlis.state.md.us/asp/web_statutes.asp?gle&3-420</p> |
|----------|--|---|

Note: Overtime provisions in District of Columbia and the Commonwealth of Puerto Rico apply to agricultural workers.

Appendix 4. Select Labor Collective Bargaining, Dispute Resolution Provision and Legislative Citation for States with Labor Relation’s Law Pertaining to Agriculture

| State | Select Agricultural Worker Collective Bargaining Provisions | Citation |
|------------|---|---|
| Arizona | <ul style="list-style-type: none"> • Seven-member, Governor-appointed Agricultural Employment Relations Board. • Board decisions are subject to judicial review. • Courts may grant a 10-day restraining order delaying a threatened strike or boycott as long as the employer agrees to binding arbitration. • Limited right to strike if there are public health and safety impacts. | <p>Arizona Revised Statutes, Title 23 Labor, Chapter 8 Labor Relations, Article 5 Agricultural Employment Relations, Sections 1381-1395.</p> <p>http://www.azleg.state.az.us/arizonarevisedstatutes.asp?title=23</p> |
| California | <ul style="list-style-type: none"> • Five-member Agricultural Labor Relations Board appointed by the Governor with Senate advice and consent. • 24/7 hotline for agricultural labor information to advise and help with disputes. • Board regulations define process for bargaining impasse. • 60-day no-strike period after notice to change a certified collective bargaining contract. | <p>California Labor Code, Division 2. Employment Regulation and Supervision, Part 3.5 Agricultural Labor Relations (Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975), Sections 1140 – 1166.</p> <p>http://are.berkeley.edu/heat/laborcode.html</p> |
| Hawaii | <ul style="list-style-type: none"> • Agricultural employees have the right to join unions without interference or retribution from employer. • Card-check union designation valid for employees of employers with greater than \$5 Million of annual gross revenues, covering most large, high-value crop farms such as coffee and pineapple. • Agricultural employees must give Hawaii Labor Relations Board 10 day notice of intent to strike. | <p>Hawaii Employment Relations Act, Hawaii Revised Statute Chapter 377, Sections 1-18.</p> <p>http://www.capitol.hawaii.gov/hrscurrent/Vol07_Ch0346-0398/HRS0377/</p> |

Appendix 4. (Continued)

| State | Select Agricultural Worker Collective Bargaining Provisions | Citation |
|-----------|--|---|
| Indiana | <ul style="list-style-type: none"> No agricultural exemption or special provisions from state labor relations laws and procedures. | Indiana Statute Title 22 Labor and Safety, Articles 5, 6 and 7, Unlawful Labor Practices, Labor Relations and Labor Organizations. http://www.state.in.us/legislative/ic/code/title22/ |
| Kansas | <ul style="list-style-type: none"> Governor-appointed 3-member Agricultural Labor Relations Board activated upon complaint received by the state Secretary of Agriculture. If impasse longer than 40-days, Board may render a binding order. The order is subject to judicial review. Applies to workers on farms with 6 or more employees for 20 or more days/month within the preceding 6 months. Agricultural employers may not institute a lockout. Agricultural employees may not strike during periods of marketing livestock or during critical periods of production or harvest of crops. | Kansas Revised Statute Chapter 44, Labor and Industries, Articles 8 Employer and Employee Relations §44-818 through 44-831 (Agricultural Relations Act). http://www.kslegislature.org/legsrv-statutes/getStatute.do?number=19314 |
| Louisiana | <ul style="list-style-type: none"> Agricultural employees have the right to join unions without interference or retribution from employer. Agricultural employers cannot require or deny employment based on union membership. Agricultural employers are allowed to hire other employees during a strike or lockout. | Louisiana Revised Statutes Title 23, Labor and Workers' Compensation, § 23-881 through 23-888 and § 23-900 through 23-904. http://www.legis.state.la.us/lss/search.htm |
| Maine | <ul style="list-style-type: none"> Guaranteed rights to unionize and labor dispute protections only apply to poultry farms with more than 500,000 laying bird and more than 100 agricultural employees. | Maine Revised Statutes Title 26 Labor and Industry, Chapter 16 Agricultural Employees Labor Relations Act § 1321 through 1334. http://www.mainelegislature.org/legis/statutes/26/title26ch16sec0.html |

Note: Idaho Agricultural Labor Act of 1971 was repealed.

Appendix 4. (Continued)

| State | Select Agricultural Worker Collective Bargaining Provisions | Citation |
|---------------|---|--|
| Massachusetts | <ul style="list-style-type: none"> Guaranteed rights to unionize and labor dispute protections apply to farms with more than 4 non-family employees. | Massachusetts General Laws Chapter 150A Labor Relations, § 5 and 5A. http://www.malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter150A/Section5A |
| Nebraska | <ul style="list-style-type: none"> No agricultural exemption or special provisions from state labor relations laws and procedures. | Nebraska Revised Statutes Chapter 48, Labor, Sections 48-901 through 48-912. http://www.nebraskalegislature.gov/laws/browse-chapters.php?chapter=48 |
| New Jersey | <ul style="list-style-type: none"> No agricultural exemption or special provisions from state labor relations laws and procedures. | New Jersey Permanent Statutes, Title 34, Labor and Workman’s Compensation, Chapter 13A, New Jersey Employer-Employee Relations Act. Section 34:13A-3, Definitions. http://www.state.nj.us/perc/Statute.pdf |
| Oregon | <ul style="list-style-type: none"> Workers on farms with more than \$20K hired labor expenditures per quarter in current or previous calendar year; or Farms with 10 or more workers for at least one day in 20 weeks of the current or previous calendar year. Picketing of farming operations is not allowed during times of planting or harvesting. | Oregon Revised Statutes, Volume 14, Chapters 663, Labor Relations Generally and 657.045, Employment, Agricultural labor excluded; exceptions. http://www.leg.state.or.us/ors/657.html and http://www.leg.state.or.us/ors/657.html |
| Wisconsin | <ul style="list-style-type: none"> Farm employees must give Wisconsin Employment Relations Commission 10 day notice of intent to strike. | Wisconsin Statutes & Annotations, Chapter 111, Employment Relations http://legis.wisconsin.gov/statutes/Stat0111.pdf |

Appendix 5. History of Farmworker Overtime and Collective Bargaining Legislation in New York State

Overtime Pay Bills

| Year Introduced | Assembly Action | Senate Action |
|------------------------|---|------------------------------|
| 1995 | No action by Labor Committee | No action by Labor Committee |
| 1996 | No action by Labor Committee | No action by Labor Committee |
| 1997 | No action by Labor Committee | No action by Labor Committee |
| 1998 | Passed Labor Committee Referred to Code Committee No floor vote | No action by Labor Committee |
| 1999 | No bill introduced | No bill introduced |

Collective Bargaining Rights Bill

| Year Introduced | Assembly Action | Senate Action |
|------------------------|--|------------------------------|
| 1994 | Passed Labor Committee Referred to Rules Committee No floor vote | No action by Labor Committee |
| 1995 | Passed Assembly floor vote | No action by Labor Committee |
| 1996 | Referred to Rules Committee No floor vote | No action by Labor Committee |
| 1997 | Passed Assembly floor vote | No action by Labor Committee |
| 1998 | Referred to Rules Committee No floor vote | No action by Labor Committee |
| 1999 | No bill introduced | No bill introduced |

In 2000, individual bills on farmworker overtime pay, collective bargaining and several other provisions were combined into a bill referred to as the Farmworker Fair Labor Practices Act. The legislative history of this bill follows.

Farmworker Fair Labor Practices Act

| Year Introduced | Assembly Action | Senate Action |
|------------------------|---|------------------------------|
| 2000 | Passed Labor Committee Passed Code Committee Passed Ways & Means Com. Referred to Rules Committee No floor vote | No companion bill introduced |
| 2001 | Passed Labor Committee Passed Code Committee Passed Ways & Means Com. Passed Rules Committee Passed Assembly floor vote | No action by Labor Committee |
| 2002 | Referred to Rules Committee No floor vote | No action by Labor Committee |
| 2003 | Passed Labor Committee Passed Code Committee Passed Rules Committee Passed Assembly floor vote | No action by Labor Committee |

Appendix 5. (Continued)

| Year Introduced | Assembly Action | Senate Action |
|------------------------|--|--|
| 2004 | Passed Rules Committee Passed Assembly floor vote | No action by Labor Committee |
| 2005 | Passed Labor Committee Passed Code Committee Passed Rules Committee Passed Assembly floor vote | No action by Labor Committee |
| 2006 | Referred to Rules Committee No floor vote | No action by Labor Committee |
| 2007 | Passed Labor Committee Referred to Rules Committee No floor vote | No action by Labor Committee |
| 2008 | Passed Labor Committee Passed Codes Committee No floor vote | Passed Labor Committee No floor vote |
| 2009 | Passed Labor Committee Passed Codes Committee Passed Ways & Means Com. Passed Assembly floor vote | Passed Labor Committee No floor vote |
| 2010 | No floor vote | Passed Labor Committee Discharged from Codes Com. Considered by Agriculture Com. Defeated in Agriculture Com. Reintroduced Passed Rules Committee Failed Senate floor vote |

Appendix 6. Political Affiliation of the 2010 NYS Legislature by Region

State Senate

| Region of State | Republicans | Democrats |
|------------------------|--------------------|------------------|
| New York City | 3 | 23 |
| Long Island | 7 | 2 |
| Metro NYC | 3 | 2 |
| Upstate | 17 | 5 |

State Assembly

| Region of State | Republicans | Democrats |
|------------------------|--------------------|------------------|
| New York City | 1 | 65 |
| Long Island | 12 | 9 |
| Metro NYC | 3 | 6 |
| Upstate | 29 | 25 |

Appendix 7. Chronology of Significant Events Surrounding the Farmworker Fair Labor Practices Act during the 2009-10 Legislative Session

| | |
|-------------------|---|
| Spring 2009 | The Farmworker Fair Labor Practices Act, sponsored by Assemblywoman Nolan, D-Queens, works its way through the Assembly Labor, Codes and Ways & Means Committees. |
| June 8, 2009 | Assembly passes the Farmworker Fair Labor Practices Act. |
| April 5, 2009 | Editorial appears in New York Times reiterating justice on the farm is 70 year overdue |
| May 15, 2009 | Editorial appears in the New York Daily News highlighting the involvement of human rights advocate Kerry Kennedy at an Albany rally in support of the Farmworker Fair Labor Practices Act. |
| June 1, 2009 | The Farmworker Fair Labor Practices Act sponsored by Senator Onorata, D-Queens, passes the Senate Labor Committee. It dies in the Codes Committee when the legislative session ends. |
| August 21, 2009 | Senator Majority Leader Pedro Espada, D-Bronx, arranges a media event by attempting to enter a Sullivan County duck farm and talk with farmworkers to highlight labor abuses. Agricultural leaders are angered by the one-sided coverage. |
| September 8, 2009 | Editorial appears in the New York Times once again calling for state legislators to pass the Farmworker Fair Labor Practices Act. |
| Fall 2009 | Chairman of the Senate Agriculture Committee, Darrel Aubertine holds round tables on a variety of issues of interest to farmers including the Farmworker Fair Labor Practices Act. |
| November 19, 2009 | Senator Aubertine convenes a Committee hearing in Watertown, NY where agricultural representatives and farm worker representatives express their concerns regarding the proposed legislation. |
| November 26, 2009 | A Thanksgiving Day editorial opinion by Kerry Kennedy entitled “This must be New York’s final harvest of shame: Let us finally protect exploited farmworkers,” appears in the New York Daily News. It alleges near-slavery conditions on New York farms and calls for a Senate vote on the Farmworkers’ Fair Labor Practices Act. |
| December 2, 2009 | In special legislative session, Senate Majority Leader Espada, pushed for a full-Senate vote on the bill as a condition for passing budget reduction legislation. Several upstate Senate Democrats will not support a floor vote. |
| January 8, 2010 | Meetings and discussions between farm and labor interests held in late December results in an amended bill. Major changes in overtime pay and collective bargaining provisions were proposed. |
| January 20, 2010 | Amended Farmworker Fair Labor Practices Act passes Senate Labor Committee. |
| January 21, 2010 | Departing from conventional procedure, Senate leadership grants Agricultural Committee consideration of the bill. |

Appendix 7. (Continued)

| | |
|-------------------|--|
| March 1, 2010 | Senate Agriculture Committee holds hearing in Albany to gather further testimony on the proposed Farmworkers Fair Labor Practices Act. Over 200 individuals attend. Testimony included passionate arguments from both interest groups. |
| April 20, 2010 | Senate Agriculture Committee votes the bill down. Many legislative observers believe this action would be the end of the debate for this legislative session. |
| May 11, 2010 | Senator Onorata reintroduces a slightly modified Farmworkers Fair Labor Practices Act. Language changes did not significantly change any provisions. |
| June 1, 2010 | Senate passes the Domestic Worker’s Bill of Rights giving domestic workers additional rights. Senator Espada says he will use this labor victory to refocus attention on the farmworker legislation. |
| June 16, 2010 | Labor advocates hold rally on the steps of the Capitol in Albany. Supporters continue to push for a full Senate vote. Senate and Assembly leaders and many other legislators were present at the rally. |
| June 16 | Senator Espada introduces the Farmworkers Fair Labor Practices Act that failed in the Senate Agriculture Committee. |
| Early August 2010 | Senator Majority Leader Espada announces he will hold up final vote on the State Budget until promised a full-Senate floor vote on the Farmworkers Fair Labor Practices Act. |
| August 3, 2010 | Farmworker Fair Labor Practices Act is defeated in a close 28-31 Senate vote. Legislative session ends. |

Appendix 8. August 3, 2010 NYS Senate Floor Vote Results to Defeat S8223--Aye 28, Nay 31

| Vote | Member | Party | Region | Vote | Member | Party | Region | Vote | Member | Party | Region |
|-------------|------------------|--------------|---------------|-------------|---------------|--------------|---------------|-------------|-----------------|--------------|---------------|
| Aye | Adams | D | NYC | Nay | Johnson C | D | LI | Aye | Peralta | D | NYC |
| Aye | Addabbo | D | NYC | Nay | Johnson O | R | LI | Aye | Perkins | D | NYC |
| Nay | Alesi | R | Ups | Aye | Klein | D | NYC | Nay | Ranzenhofer | R | Ups |
| Nay | Aubertine | D | Ups | Aye | Krueger | D | NYC | Aye | Robach | R | Ups |
| Nay | Bonacic | R | Ups | Nay | Kruger | R | NYC | Nay | Saland | R | Ups |
| Aye | Breslin | D | Ups | Nay | Lanza | R | NYC | Aye | Sampson | D | NYC |
| Nay | DeFrancisco | R | Ups | Nay | Larkin | R | Ups | Aye | Savino | D | NYC |
| Aye | Diaz | D | NYC | Nay | LaValle | R | LI | Aye | Schneiderman | D | NYC |
| Abs | Dilan | D | NYC | Nay | Leibell | R | Met | Aye | Serrano | D | NYC |
| Aye | Duane | D | NYC | Nay | Libous | R | Ups | Nay | Seward | R | Ups |
| Aye | Espada | D | NYC | Nay | Little | R | Ups | Nay | Skelos | R | LI |
| Nay | Farley | R | Ups | Aye | Marcellino | R | LI | Aye | Smith | D | NYC |
| Nay | Flanagan | R | LI | Nay | Maziarz | R | Ups | Aye | Squadron | D | NYC |
| Nay | Foley | D | LI | Nay | McDonald | R | Ups | Nay | Stachowski | D | Ups |
| Nay | Fuschillo | R | LI | Aye | Montgomery | D | NYC | Aye | Stavisky | D | NYC |
| Exc | Golden | R | NYC | Nay | Nozzolio | R | Ups | Aye | Stewart-Cousins | D | Met |
| Nay | Griffo | R | Ups | Aye | Onorato | D | NYC | Aye | Thompson | D | Ups |
| Nay | Hannon | R | LI | Aye | Oppenheimer | D | Met | Nay | Valesky | D | Ups |
| Aye | Hassell-Thompson | D | NYC | Aye | Padavan | R | NYC | Nay | Volker | R | Ups |
| Aye | Huntley | D | NYC | Aye | Parker | D | NYC | Nay | Winner | R | Ups |
| | | | | | | | | Nay | Young | R | Ups |

All or majority of the legislative district lies within the four regional designations:

NYC—5 boroughs; LI—Long Island; Met— Metro Counties of Rockland; Putnam, Westchester; Ups—North of Metro Counties

OTHER A.E.M. EXTENSION BULLETINS

| EB No | Title | Fee (if applicable) | Author(s) |
|---------|--|------------------------|---|
| 2010-18 | Dairy Farm Business Summary, New York Dairy Farm Renters, 2009 | (\$16.00) | Knoblauch, W. and Putnam, L. |
| 2010-17 | New York Economic Handbook, 2011 | | Extension Staff |
| 2010-16 | A Compilation of Smart Marketing Articles, January 2008-October 2010 | | Park, K. and T. M. Schmit |
| 2010-15 | Economic Analysis of the Financial Impact of the Grape Leafroll Virus (GLRV) in the Finger Lakes Region of New York | | Gomez, M., S. Atallah, T. Martinson, M. Fuchs, and G. White |
| 2010-14 | An Economic Examination of Alternative Organic Cropping Systems in New York State | | Chan, S., Caldwell, B. and B. Rickard |
| 2010-13 | Organic Agriculture in New York State | | Henehan, B. and J. Li |
| 2010-12 | 2010 Federal Reference Manual for Regional Schools, Income Tax Management and Reporting for Small Businesses and Farms | (\$25.00) | Bouchard G. and J. Bennett |
| 2010-11 | 2010 New York State Reference Manual for Regional Schools, Income Tax Management and Reporting for Small Businesses and Farms. | (\$25.00) | Bennett, J. and K. Bennett |
| 2010-10 | Dairy Farm Business Summary, Intensive Grazing Farms, New York, 2009 | | Conneman, G., Karszes, J., Grace, J., Murray, P., Carlberg, V., Benson, A., Staehr, A., Ames, M., Glazier, N., Anderson, J. and L. Putnam |
| 2010-09 | Profiles of Successful Farm Transfers on Long Island | | Staehr, A. |
| 2010-08 | Dairy Farm Business Summary, New York Small Herd Farms, 80 Cows or Fewer, 2009 | (\$16.00) | Knoblauch, W., Putnam, L., Kiraly, M. and J. Karszes |
| 2010-07 | Dairy Farm Business Summary, Hudson and Central New York Region, 2009 | (\$12.00) | Knoblauch, W., Putnam, L., Karszes, J., Buxton, S., Shoen, K., Hadcock, S., Kiraly, M., Hulle, L., Smith, R, Skellie, K., Conneman, G. and R. Overton |

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