

CASE COMMENT

Temporarily Unchained: The Drive to Unionize Foreign Seasonal Agricultural Workers in Canada – A Comment on Greenway Farms and UFCW

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INTRODUCTION

THIS CASE COMMENT ADDRESSES the struggle to unionize temporary foreign agricultural labour in British Columbia. It focuses on the BC Labour Board's decision to permit the unionization of seasonal agricultural workers who come to Canada through the federally administered Seasonal Agricultural Workers Program (SAWP). These workers perform dangerous but essential work for the Canadian agricultural industry, with musculo-skeletal, subtransportation, and other work-related injuries being a common occurrence.¹ However, they are largely invisible to Canadian society until the occasional news story exposes substandard working conditions or a horrific work-related accident. These incidents are all too common. From 1990 to 2005, 1,769 people were killed in "agricultural injury events" in Canada.² Compared to the previous fifteen years, there were fewer fatal farm injuries in that period among those aged 15 to 59, but those over 60 were actually at increased risk for fatalities resulting from farm machine accidents.³

¹ The historically dangerous conditions of farm labour in Canada have been well documented. See Joy Parr, "Hired Men: Ontario Agricultural Wage Labour in Historical Perspective," *Labour* 15 (1985): 91-103. In the United States, the agricultural sector has historically had the highest annual work death rate of all industries because of accidents involving improper safety protocols with farm machinery and lax enforcement of workers' compensation regulations. See Mark A. Purschwitz and William E. Field, "Scope and Magnitude of Injuries in the Agricultural Workplace," *American Journal of Industrial Medicine* 18, 2 (1990): 179-92.

² Agriculture and Agri-Food Canada, "Canadian Farm Fatalities Decreasing," 10 March 2009, <http://www.casa-acsa.ca/english/PDF/Canadian%20farm%20fatalities%20decreasing.pdf> (viewed 29 January 2011).

³ *Ibid.* Agricultural machines were involved in 71 percent of the fatalities, with rollovers responsible for almost one-quarter of the deaths. Agriculture remains the most dangerous occupation in Ontario, with over twenty farm workers killed every year at work. See Kerry Preibisch and L.M.H. Santamaria, "Engendering Labour Migration: The Case of Foreign

In British Columbia, there were 82 fatal injuries and 1,407 hospitalizations related to agricultural work from 1990 to 2000.⁴ Since British Columbia joined SAWP in 2004, there have been numerous deaths and injuries in farm worker transport in the province, including a 2007 crash that killed three workers and injured fourteen;⁵ a toxic gas release in 2008 at a mushroom farm in Langley that killed three workers and seriously injured three others;⁶ and an October 2010 vehicle accident involving workers from Greenway Farms in Surrey that critically injured one worker.⁷

Over the past two years, the employer involved in this last incident, Greenway Farms, fought attempts by the United Food and Commercial Workers of Canada (UFCW) to unionize workers at the farm, including approximately forty temporary foreign workers brought in through SAWP. In 2008, a majority of SAWP workers at Greenway voted to join the UFCW. Greenway challenged the vote on grounds that the BC Labour Code did not apply to SAWP workers. In June 2009, the BC Labour Relations Board (the Board) ruled that SAWP workers in British Columbia could unionize.

This commentary focuses on the Greenway/UFCW decision and its ramifications for SAWP workers. It begins with a brief explanation of SAWP and of Canadian history and law relating to unionization of agricultural workers. It then reviews the Board's decision and the arguments of the parties. It concludes with the fallout from the decision and a comment on the capacity of unionization to help SAWP workers.

THE SEASONAL AGRICULTURAL WORKERS PROGRAM AND UNIONIZATION OF FARM WORKERS IN CANADA

SAWP was established in 1966 as the first guest worker program in Canada. It initially brought workers from former British colonies in the Caribbean to work temporarily on Canadian farms. Jamaica sent

Workers in Canadian Agriculture," in *Women, Migration and Citizenship: Making Local, National and Transnational Connections*, ed. E. Tastsoglou and A. Dobrowolsky (Burlington: Ashgate Publishing, 2006), 110.

⁴ P.E. Saar, H. Dimich-Ward, K.D. Kelly, D.C. Voaklander, "Farm Injuries and Fatalities in British Columbia, 1990-2000," *Canadian Journal of Public Health* 97, 2 (2006): 100-4.

⁵ CBC News, "Van Packed with Farm Workers Crashes in BC, Killing 3," 7 March 2007, <http://www.cbc.ca/canada/british-columbia/story/2007/03/07/bc-van-crash.html#ixzz19uijqjoW> (viewed 29 January 2011).

⁶ *Vancouver Sun*, "BC Mushroom Farm Accident Kills Three," 6 September 2008, <http://www.canada.com/ottawacitizen/news/story.html?id=335e206a-652b-4d34-84cc-08d8de1a50f7> (viewed 29 January 2011).

⁷ Tom Sandborn, "Hard Thanksgiving for Injured Farm Workers," *Tyee*, 11 October 2010, <http://thetyee.ca/News/2010/10/11/InjuredFarmWorkers/> (viewed 29 January 2011).

264 workers that first year. Trinidad and Tobago and Barbados joined the following year, Mexico in 1974, and then the Organization of Eastern Caribbean States in 1976.⁸ By 2009, the program involved over 26,000 workers per year.⁹ With the increase of trade and labour cooperation under the North American Free Trade Agreement and its side agreements, Mexico has become the principal source of SAWP workers, and British Columbia is employing a growing percentage of them.¹⁰ The program is run by Human Resources and Social Development Canada (HRSDC) and is described as matching “workers from Mexico and the Caribbean countries with Canadian farmers who need temporary support during planting and harvesting seasons, when qualified Canadians or permanent residents are not available.”¹¹

SAWP was developed in response to chronic labour shortages on Canadian farms that became increasingly acute after the Second World War. Family farms, which had long relied on unpaid labour from house members, faced increasing pressures from larger producers, forcing them to seek out paid labour to expand their operations.¹² The federal government tried various schemes to solve this problem, including interprovincial transfers of farm labour and recruiting foreign war veterans to work on Canadian farms.¹³ However, neither scheme solved farm labour shortages,¹⁴ and their failure led the agricultural sector, particularly in Ontario, to lobby the federal government to allow

⁸ The OECs full membership comprises Antigua and Barbuda; Commonwealth of Dominica; Grenada; Montserrat; St. Kitts-Nevis; Saint Lucia; St. Vincent and the Grenadines.

⁹ HRSDC, “Temporary Foreign Worker Program: Labour Market Opinion Statistics, 2006-2009,” March 2010, http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/stats/annual/table10a.shtml (viewed 29 January 2011).

¹⁰ *Ibid.* After joining SAWP in 2004, British Columbia saw the number of its SAWP workers increase from 1,484 in 2006 to more than 3,768 in 2008.

¹¹ *Ibid.*

¹² Tanya Basok, *Tortillas and Tomatoes: Transmigrant Mexican Harvesters in Canada* (Montreal: McGill-Queen’s University Press, 2002), 26.

¹³ Canada, Department of Labour, *Annual Report*, 30 June 1966. In 1942, a program known as the Federal-Provincial Agricultural Manpower Program was launched as a cooperative arrangement between the federal government and most Canadian provinces to provide an adequate supply of workers for agricultural and related industries. The program provided for movement within provinces as well as movement between provinces. The federal government and provinces equally shared expenses incurred in organizing, recruiting, transporting, and placing farm labourers. It lasted as a source for seasonal agricultural labour until the mid-1960s; George Haythorne, *Labour in Canadian Agriculture* (Cambridge, MA: Harvard University Press, 1960), 79-80.

¹⁴ Many immigrants directed to Canadian farms faced problems with farmers, wages, and farm labour. For a study of Portuguese immigrants contracted to work on Canadian farms in the 1950s – and the exodus of that community to urban centres “as soon as they could” – see Alan Sousa, “The Formative Years: Toronto’s Portuguese Community, 1953-1967” (MA thesis, University of Toronto, 1986), chap. 3.

Caribbean farm workers to enter Canada as seasonal workers.¹⁵ Farmers saw migrant workers as a reliable labour source, and Ottawa could also justify importing Caribbean farm workers as “temporary development aid” to the Commonwealth Caribbean.¹⁶

SAWP “flourished under long-established [provincial] labour codes that explicitly excluded farm workers from union organizing” as a “form of protection against Communist labour incursions” onto the family farm.¹⁷ These restrictions remained in place even as the small-scale, family-based operations were replaced by larger, increasingly mechanized farming conglomerates. However, despite mechanization, the demand for farm labour remained dependent on crop cycles. Wages in the farm sector remained low, and greater opportunity in cities led to increasing migration of domestic farm workers to urban areas.¹⁸ The difficulties in obtaining and retaining a “reliable” agricultural workforce meant that farm labour required a type of worker who was essentially “unfree.”¹⁹

Farm labour unionization was also hampered by the dominant model of collective bargaining in Canada, which assumed the norm of an adult, white male citizen holding a single job at a stationary work site.²⁰ It was not until 2001 that Canada’s Supreme Court ruled that the right to collective bargaining extended to farm workers who were permanent residents or citizens.²¹ In 2007, the Court went a little further, ruling that a right to collective bargaining is a “limited right” implied in the Canadian Charter of Rights and Freedoms.²²

¹⁵ Jill Leslie Findeis, *The Dynamics of Hired Farm Labour: Constraints and Community Responses* (New York: CABI, 2002), 177.

¹⁶ *Ibid.*

¹⁷ Peter H. Sawchuk, “Guest Worker Programs and Canada: Towards a Foundation for Understanding the Complex Pedagogies of Transnational Labour,” *Journal of Workplace Learning* 20, 7 (2008): 497.

¹⁸ Vic Satzewich, *Racism and the Incorporation of Foreign Labour: Farm Labour Migration to Canada since 1945* (New York: Routledge, 1991), 81–82.

¹⁹ Tanya Basok, “Free to Be Unfree: Mexican Guest Workers in Canada,” *Labour Capital and Society* 32, 2 (1999): 192. The phrase “unfree labour” is used in comparison with “wage labour” or “free labour,” concepts that, in Marxist terms, refer to economic compulsion. Marx did not actually use the term “unfree labour” in his work.

²⁰ Leah Vosko, *Precarious Employment: Understanding Labour Market Insecurity in Canada* (Montreal and Kingston: McGill-Queen’s University Press, 2006), 375.

²¹ *Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016. Bastarache J., writing for the majority at para. 103, made “explicit reference to the fact that in these reasons we are not deciding on the rights, or lack thereof, of foreign seasonal agricultural workers and their families, who are regulated under federal legislation.”

²² *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 S.C.R. 391 at para 91. The Court stated that s. 2(d) of the Charter “protects the capacity of members of labour unions to engage, in association, in collective bargaining on fundamental workplace issues” but does not guarantee any economic or other outcomes.

GREENWAY FARMS LTD. AND UFCW, LOCAL 1518

UFCW Canada Local 1518 organized the sign-up campaign of SAWP workers at Greenway. It was part of the UFCW's nationwide campaign to organize migrant farm workers in British Columbia following successful sign-up campaigns in Manitoba and Quebec.²³ The campaign was a response to "systemic problems" reported in SAWP, such as the arbitrary repatriation of workers, and workplace safety and housing issues.²⁴ Greenway, supported by the Western Agricultural Labour Initiative and the British Columbia Agricultural Council, applied to cancel the certification on the basis that the BC Labour Relations Code (the Code) did not apply to migrant workers in the federally administered SAWP.²⁵

Greenway submitted, first, that the federal government's involvement with SAWP represents "a valid exercise of federal jurisdiction over aliens."²⁶ The memoranda of understanding between Canada and the various source countries of migrant workers were international agreements and, therefore, involved the federal government's exercise of exclusive jurisdiction in foreign affairs.²⁷ Moreover, migrant workers' rights are sufficiently protected in SAWP, Greenway argued, so as to make the application of the BC Labour Relations Code redundant. It also pointed out that the SAWP employment contract for British Columbia states that it cannot be modified "in any way, without the express written permission" of Canada, the agent representing the foreign government, the employer, and the worker. The SAWP employment contract defines the role of a foreign government official (the agent) as facilitating the program's operation,²⁸ and if the Code were applied and the bargaining unit certified, claimed Greenway, then the agent would not be able to negotiate in the interests of their nationals – the SAWP workers. Finally, Greenway maintained that collective bargaining in agriculture would "wholly undermine and negate" the SAWP structure established by the Canadian government through international agreements with participating countries.²⁹ SAWP represents an intention by the Canadian gov-

²³ UFCW Press Release, "Seasonal Farm Workers in BC Go Union with UFCW Canada," 8 August 2008, http://www.ufcw.ca/index.php?option=com_content&view=article&id=593&catid=5&Itemid=99&lang=en (viewed 11 February 2011).

²⁴ *Ibid.*

²⁵ *Greenway Farms Ltd. and United Food and Commercial Workers International Union, Local 1518 and Attorney General of Canada and Attorney General of British Columbia*, (29 June 2009), BCLRB No. B135/2009 ["Greenway"].

²⁶ *Ibid.*, at para. 19. This was pursuant to s. 91(25) of the Constitution Act. Section 91(25) specifically grants federal jurisdiction over naturalization and aliens.

²⁷ *Ibid.*, at para. 20.

²⁸ Agents in the SAWP scheme include Mexican or Commonwealth Caribbean consular officials.

²⁹ *Ibid.*, at para. 13.

ernment to create a “multi-party, industry-wide, state-to-state agreement on terms and conditions of employment” that is incompatible with the “enterprise-based system of collective bargaining” envisioned by the BC Labour Relations Code.³⁰

The UFCW replied that the SAWP employment contract creates certain minimal contractual obligations that would not conflict with a collective agreement that provided additional rights to SAWP workers. The employment contract spells out minimal rights but does not constitute the whole range of rights that would otherwise be available to agricultural labourers who are citizens or permanent residents. Collective bargaining would involve “extending” additional workplace rights and benefits to SAWP workers.³¹ The UFCW also argued that the denial of the total range of workplace rights to SAWP workers would not be consistent with the stated goals in the memorandum of understanding between Canada and Mexico, which provided that SAWP workers were to be treated equally to Canadian workers performing the same type of agricultural work. On the question of the roles of the various parties, the UFCW argued that the Canadian government’s task in SAWP was to facilitate the documented entry and exit of SAWP workers; the foreign government agents fulfill a similarly administrative role in the program rather than representing the workers. Finally, the UFCW argued that SAWP, in itself, does not extend the normal range of workplace rights at BC farms available to permanent residents or citizens.

The Board held that the UFCW is able to “bargain collectively with the Employer, on behalf of SAWP workers, for alterations to those terms and conditions.”³² It rejected Greenway’s arguments that collective bargaining is incompatible with SAWP and that the federal government has exclusive jurisdiction over SAWP workers in Canada. The SAWP employment contract provides minimal rights but certainly does not preclude additional rights granted through collective bargaining. Moreover, the Labour Code did not conflict with “or frustrate the purposes of the SAWP such that it must be found to be constitutionally inapplicable to SAWP workers.”³³ Finally, the Board held that the agent’s role in SAWP is an administrative one similar to that performed by Canadian officials

³⁰ Ibid., at para. 15; *Greenway*, note 25 (above) at paras. 10 and 14.

³¹ Ibid., at para. 46.

³² *Greenway*, note 25 (above), at para. 147.

³³ Ibid., at paras. 147-48. The only federal legislation raised by Greenway was the Immigration and Refugee Protection Act, S.C. 2001, c. 27, which does not directly address employment of SAWP workers. It does mention temporary foreign workers within the context of the application and objectives of the Act in sections 27-31, but these are not applicable to the participants in SAWP. The *Immigration and Refugee Protection Regulations*, SOR/2002-227, mention seasonal

involved with the program. The sawp employment contract provides that agents “shall be stationed in Canada to assist in the administration of the program.” The Board properly found this statement “to be inconsistent with the notion that the agent was to represent exclusively the interests of the workers.”³⁴

AFTER GREENWAY FARMS

SAWP was established to facilitate the seasonal flow of migrant labour to Canadian farms, providing farms with workers when they were needed. With union certification comes the possibility of labour disputes, strikes, and lockouts, all of which might hinder the farming operations and undermine the basis of the program. However, if the Board had denied the possibility of certification to sawp workers, it would have confirmed that migrant workers had substantially fewer rights in the workplace than those constitutionally guaranteed to Canadian citizens and residents. The decision that collective bargaining rights can extend to sawp workers is a significant step in migrant workers’ struggle for legal rights in the workplace.

However, on 29 June 2009, the same day that the Board issued its decision allowing sawp workers to unionize, Greenway workers filed to decertify their union. UFCW officials and organizers who had worked with the Mexican workers the previous season indicated that Greenway did not bring back many of the pro-union workers in 2009.³⁵ According to the UFCW, only twelve of thirty-five Mexican workers at Greenway who had been part of the organizing drive in 2008 were brought back in 2009, a number that was lower than regular sawp retention levels. Greenway topped up its labour force with local Indo-Canadian workers.³⁶ During this time, the Abbotsford migrant worker support centre became aware of rumours circulating among sawp workers in the Fraser Valley that employers would use recall provisions in sawp to exclude union supporters from sawp work in Fraser Valley farms.³⁷ The successful decertification vote occurred on 2 July 2009 amid the UFCW’s complaints that another farm employer friendly with Greenway’s owners had intimidated

agricultural workers in exempting them from obtaining a work permit through HRSDC-issued labour market opinions.

³⁴ *Greenway*, note 25 (above), at para. 162.

³⁵ Tom Sandborn, “Setback for Historic Effort to Unionize Guest Farm Workers,” *Tyee*, 29 June 2009, <http://theyee.ca/News/2009/06/29/FarmUnionSetback/> (viewed 11 February 2011).

³⁶ *Ibid.*

³⁷ Lucy Luna, Coordinator of AWA/UFCW Migrant Worker Support Centre, interview by author, Abbotsford, British Columbia, 22 August 2010.

Greenway workers and led a campaign to “get rid of the union.”³⁸ The farm employer, who was not an employee of Greenway, stated that he was “acting for the employees,” and the Board dismissed the UFCW’s complaints that the actions amounted to unfair labour practices under the BC Labour Relations Code.³⁹

Other repatriations and decertification votes also occurred during the Greenway constitutional challenge. In September 2008, Floralia Plant Growers in Abbotsford laid off and repatriated fourteen SAWP workers shortly before a certification vote. The UFCW filed a complaint to the Board, but it ruled that Floralia was economically justified in laying off the SAWP workers.⁴⁰ In August 2008, a bargaining unit at a Manitoba farm composed largely of SAWP workers voted to decertify just weeks after a successful certification vote. The Mexican consul visited the farm prior to the decertification vote and allegedly warned the workers in a closed-door meeting that they could be blacklisted from participation in SAWP unless they voted to decertify.⁴¹ During this period, the Mexican consul visited several farms with SAWP workers in Manitoba and repeated the same warnings.⁴² Accounts from a UFCW affiliated migrant worker support centre in Abbotsford allege that Mexican government agents acted similarly in British Columbia.⁴³

The federal government has not intervened in what appears to be a practice of blacklisting pro-union workers. In response to inquiries about the alleged refusal to rehire workers who express pro-union sentiments, an official from Human Resources Social Development Canada (HRSDC) noted: “It is ultimately the responsibility of the Mexican or Caribbean country’s government to recruit and place the workers. This is done in consultation with the individual workers themselves, since HRSDC/Service Canada does not provide any input regarding the determination of which workers are chosen to participate in the SAWP or their placement.”⁴⁴ In June 2010, more than three hundred former and current workers in

³⁸ Justicia4migrantworkers, <http://www.justicia4migrantworkers.org/bc/news.html>.

³⁹ Tom Sandborn, “Issues: Migrant Mexican Farm Workers Unionization Hopes Revived,” *Abbotsford Today*, 3 July 2009, <http://www.abbotsfordtoday.ca/?p=14196> (viewed 11 February 2011); *Labour Relations Code*, R.S.B.C. 1996, c.244, s.2(6)(i).

⁴⁰ *Floralia Plant Growers Ltd and United Food and Commercial Workers International Union*, Local 1518, (8 October 2008), BCLRB No. B157/2008. At the time Floralia had thirty employees, twenty-nine of whom were acquired through SAWP.

⁴¹ Jennifer DeGroot, “How Clean Are Your Carrots?” *Winnipeg Free Press*, 14 August 2009, <http://www.winnipegfreepress.com/opinion/westview/how-clean-are-your-carrots-53215827.html> (viewed 29 January 2011).

⁴² *Ibid.*

⁴³ Luna, interview.

⁴⁴ *Ibid.*

SAWP protested at the Canadian embassy in Mexico City against working conditions in Canada and Ottawa's indifference to their plight.⁴⁵

On the provincial side, there are mixed results from the Greenway story. The BC Supreme Court found that the vice-chair who ruled that Greenway's workforce could vote to decertify in 2009 had shown "actual bias" in a 2006 case involving claims of unfair labour practices towards foreign workers. That decision was later overturned by the BC Court of Appeal, but the UFCW maintains that the Board had shown bias against temporary foreign workers.⁴⁶ Following the repatriation of fourteen of its SAWP workers, Floralia Farms applied to delay the certification vote on its farm pending the outcome of the Greenway constitutional challenge. However, the Board declined to postpone the certification vote,⁴⁷ and, despite the repatriation of some of the SAWP workers, the certification vote succeeded.⁴⁸ Nearly a year later, on 21 September 2009, Floralia and the UFCW signed the first collective agreement covering SAWP workers as part of a bargaining unit in British Columbia.⁴⁹ In early 2010, the Board upheld the certification of a bargaining unit at Sidhu and Sons Nursery in Mission, British Columbia, which consists solely of SAWP workers.⁵⁰ The Board decided that the SAWP employees were sufficiently "distinct" as a result of their unique status and terms of employment to be certified in a separate unit but found, on further review, that certification only for SAWP workers limits the union to bargaining solely on matters deemed "unique" to that employee group (such as wages and recall provisions).⁵¹

⁴⁵ UFCW Press Release, "Another BC Farm Goes Union with ufcw Canada," 14 October 2008, http://www.ufcw.ca/Theme/UFCW/images/en/socialjustice/immigration_PDF/Resources_Immigr/UFCW%20BC%20Farm%20Unit%2014OCT2008.pdf (viewed 29 January 2011).

⁴⁶ *Construction & Specialized Workers' Union, Local 1611 and SELI Canada Inc.* 2010 BCCA 335. The original 2006 case before the Board involved temporary foreign workers employed in the construction of the Canada Line. In 2006, the Construction and Specialized Workers' Union Local 1611 initiated complaints against Canada Line employers alleging that they were frustrating the collective bargaining process.

⁴⁷ *Floralia Plant Growers Ltd and United Food and Commercial Workers International Union, Local 1518*, (20 October 2008), BCLRB No. B165/2008.

⁴⁸ UFCW Press Release, "Another BC Farm Goes Union with ufcw Canada," 14 October 2008, http://www.ufcw.ca/Theme/UFCW/images/en/socialjustice/immigration_PDF/Resources_Immigr/UFCW%20BC%20Farm%20Unit%2014OCT2008.pdf (viewed 29 January 2011).

⁴⁹ BCLRB, <http://www.lrb.bc.ca/cas/WUK33.pdf>. Although Greenway was the first bargaining unit formed in British Columbia composed of SAWP workers, a collective agreement was never signed.

⁵⁰ *Sidhu & Sons Nursery Ltd. and United Food and Commercial Workers International Union, Local 1518 and Western Agriculture Labour Initiative (WALI) and British Columbia Agriculture Council (BCAC)*, (9 February 2010) No. B26/2010 [Leave for Reconsideration denied in No. B64/2010].

⁵¹ *Ibid.*

Under these terms, the union cannot bargain about work jurisdiction or other matters that SAWP employees hold in common with resident agricultural workers. The effects of the *Sidhu* decision are unclear in that the decision purports to create a separate but equal bargaining structure for SAWP workers.

These collective agreements include wage benefits, selection of returning workers based on seniority, and protections against arbitrary repatriation as punishment for workplace complaints or union organizing. But they do not alter the basic structure of SAWP. Employer selection of returning workers and repatriation of workers remains permitted in many circumstances. Moreover, the agreements do not change the fact that SAWP workers cannot apply for permanent residency or Canadian citizenship. The history at the Board illustrates that procedural fairness for SAWP workers can be a difficult legal struggle fraught with unique problems, such as blacklisting and repatriations, that do not apply to Canadian citizens or resident workers.

CONCLUSION

The use of temporary foreign workers in Canada is a piece in the much larger processes of economic globalization. Seasonal agricultural migrant labour plays a critical but little known role in the Canadian agricultural sector. The agricultural industry views SAWP as critical to the viability of many Canadian farms that, without the program and the thousands of foreign seasonal workers that it brings, would find it difficult to remain in business. Greenway's basic argument was that it would not survive if collective bargaining were permitted.

The question for the labour boards and the courts is whether an industry should be supported by denying the basic labour rights that are available to non-migrant workers in Canada. Even with the possibility of certification now apparently secure, those rights remain threatened. SAWP allows employers to recall workers for selection in subsequent seasons and to specify preferences for individual workers. In this way, employers can threaten those migrant workers who are seen to be complaining or agitating for unionization or any other labour rights. Once it is in place, a collective agreement can offer some protection against arbitrary repatriation or blacklisting, but the Greenway experience demonstrates that the collective bargaining process itself leaves SAWP workers vulnerable to those actions.

In the wake of the *Greenway* decision, the UFCW is broadening its engagement with SAWP workers, and the unionization of temporary foreign workers on Canadian farms will continue. However, the challenges that SAWP workers encountered at Greenway Farms will also continue until such time as SAWP itself is reformed to prevent dismissal and deportation of workers who demand the basic rights given to Canadian residents. In order to be secure in those rights, SAWP workers must, at some point, be given the opportunity to become permanent residents and Canadian citizens.