

**EMPLOYEE RELATIONS BEST PRACTICES:
A HANDBOOK FOR ONTARIO FARMERS**

First Edition

Labour Issues Coordinating Committee



The materials in this handbook are for information purposes only. These materials are not exhaustive and the issues addressed are legally complex. This handbook cannot and should not be relied on, in any respect, as a reference manual or as legal advice or opinion. Farm employers who are experiencing difficulties in employee relations or with union organizing activities should retain a labour lawyer experienced in agricultural labour relations. The Labour Issues Coordinating Committee is available to assist in identifying appropriate legal counsel.

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Glossary of Terms

Some of the terms and acronyms used in this handbook are complex legal terms and/or have specific legal definitions. Refer to this glossary of terms to help navigate the handbook.

Term	Definition
AFRAAT	Agriculture Food and Rural Affairs Appeal Tribunal
AEPA	<i>Agricultural Employees Protection Act, 2002</i>
<i>Fraser</i>	<i>Fraser v. Ontario</i> (a recent case before the Ontario Court of Appeal)
LICC	Labour Issues Coordinating Committee
UFCW	United Food and Commercial Workers
LRA	<i>Labour Relations Act</i>
“majoritarian exclusivity”	one union is certified to represent all employees at a workplace who perform the same or similar job functions
SAWP	Seasonal Agricultural Workers Program

Part 1: Introduction

Union activities on Ontario's farms are regulated by the *Agricultural Employees Protection Act, 2002* ("AEPA"). But a recent decision of the Ontario Court of Appeal in the case of *Fraser v. Ontario* ("*Fraser*") ruled that the AEPA is unconstitutional because it does not provide sufficient statutory protection for collective bargaining. The Court of Appeal ordered that the AEPA should be "struck down" (in other words, rendered null and void) and that the Ontario Legislature should pass replacement legislation supporting the right of farm workers to engage in collective bargaining. The Court of Appeal suspended its order for 12 months to give the Legislature time to consult with stakeholders and to draft the new legislation.

The Ontario government has asked the Supreme Court of Canada for permission to appeal the *Fraser* decision. If granted, the AEPA could remain in effect beyond November 17, 2009, when the suspension of the Court of Appeal's order expires, even without replacement collective bargaining legislation. If the Supreme Court does not grant permission, the AEPA will remain in effect until November 17, 2009, or until the Ontario Legislature enacts new collective bargaining legislation, whichever occurs first.

The *Fraser* decision was a win for the trade unions, particularly the United Food and Commercial Workers ("UFCW"), that have been trying to gain a foothold on Ontario's farms. In recent years, the UFCW has actively been signing up farm workers as members. This will likely increase as a result of the *Fraser* decision and the possibility that new collective bargaining legislation will soon apply to Ontario's farms. It is likely that unions will want to sign-up farm workers as union members and/or organize farm workers into employee associations. This way, the union will be well positioned to represent the workers if new collective bargaining legislation comes into force.

The handbook has four main goals:

1. To outline farmers' rights and obligations with respect to union organizing under the AEPA
2. To assist you in identifying union organizing activities on your farm
3. To provide you with guidance in responding to union organizing activities
4. To offer suggestions on how to manage your farm so that your workers will not feel the need for union representation.

The content of this handbook is not exhaustive and the issues are legally complex. If you believe that union organizing activities may be taking place on your farm, you should immediately advise the Labour Issues Coordinating Committee ("LICC"). The LICC can provide you with information and support, and can help you to find an experienced labour lawyer.

Contact information for the LICC is as follows:

Labour Issues Coordinating Committee

Ken Linington

45 Speedvale Avenue East, Unit 7

Guelph, Ontario, N1H 1J2

Telephone: (519) 836-5495, ext. 227

Toll Free: 1-800-698-0113, ext. 227

E-mail: Ken@fco.on.ca

Part 2: What are the Rights and Obligations Under the *Agricultural Employees Protection Act, 2002?*

Farm workers are excluded from Ontario's general labour relations statute, the *Labour Relations Act* ("LRA"), which applies to most other employees in the province. Instead, farm workers fall under the *AEPA*, which protects their right to form their own representative associations, and to make representations about working terms and conditions to farmers through these associations. Unlike the *LRA*, the *AEPA* does not provide for collective bargaining rights.

As noted above, the *AEPA* will continue to apply to the farm sector until at least November 17, 2009. If the request for permission to appeal *Fraser* to the Supreme Court of Canada is granted, then the *AEPA* could remain in effect beyond November 17, 2009, even without replacement collective bargaining legislation. If permission is not granted, then the *AEPA* will remain in effect until November 17, 2009, or until the Ontario Legislature enacts new collective bargaining legislation, whichever occurs first.

2.A: Farm Workers' Rights

Under the *AEPA*, farm workers have the following rights:

- **The right to form or join an employees' association:** The *AEPA* does not place any restrictions on an employee's choice of an employees' association. This means that an employees' association could be a group of workers from a particular farm that decide on their own accord to band together and approach their farm employer, or it could be a group of farm workers at a particular farm who are organized by an established trade union, such as the UFCW. An employees' association cannot be certified under the *AEPA* as the *exclusive* bargaining agent for a group of employees on a farm. This means that employees on a farm may be represented by several employees' associations. Also, individual employees have the right not to be represented by an employees' association.
- **The right to participate in the lawful activities of an employees' association.**
- **The right to assemble.**
- **The right to make representations about working terms and conditions either orally or in writing through an employees' association.** An employees' association may use a person who is not a member of the association (such as a union staffer) to present the association's representations to the farmer. The *AEPA* does not impose an obligation on a farmer to respond to such representations. A farmer's only obligation is to listen to or read representations, as discussed below.
- **The right to protection against interference, coercion and discrimination in the exercise of their rights under the *AEPA*.**

2.B: Farmers' Rights & Obligations

Under the *AEPA*, farmers have the following rights:

- **The right to refuse a non-employee (such as an outside union organizer) access to the farm for organizing purposes.** A farmer is only required to allow access if employees live on the farmer's property and the non-employee has obtained an order from the Agriculture Food and Rural Affairs Appeal Tribunal ("AFRAAT") allowing for access to the property.
- **The right to implement a workplace rule that prohibits solicitation and the distribution of materials on farm property during working hours.** This right may permit reasonable rules preventing the solicitation of employees to support an employees' association and the distribution of union literature during working hours.
- **The right to express views on an employees' association or a union, provided that the farmer does not use coercion, intimidation, threats, promises or undue influence.**

Under the *AEPA*, farmers have the following obligations:

- A farmer must give an employees' association a "reasonable opportunity" to make representations respecting the terms and conditions of employment. Whether an employees' association has had a "reasonable opportunity" to make representations is determined with reference to the frequency and repetitiveness of the representations and the timing of the representations in terms of planting, harvesting, weather, animal health and safety, plant health, and other agricultural concerns. Representations cannot be used to harass a farmer.
- A farmer must listen to representations made by an employees' association if the representations are made orally. If the representations are made in writing, the farmer must read the representations and acknowledge in writing that he or she has read them.
- A farmer may not interfere with the formation of an employee's association, or the exercise by employees of their right to freely decide whether or not to join or to continue to participate in an employees' association. A farmer is prohibited from coercing, intimidating or threatening employees with respect to the employees' exercise of their rights under the *AEPA* and may not impose any adverse employment consequences on an employee because of the employee's involvement with or sympathy for an employees' association.

The AFRAAT hears complaints alleging violations of the *AEPA* and has broad power to award remedies where appropriate.

Part 3: What did the *Fraser* Case Decide?

In the *Fraser* case, the Ontario Court of Appeal struck down the *AEPA* and ordered the Ontario Legislature to enact legislation enabling farm employees to bargain collectively. For the statutory regime to be constitutional, the Court of Appeal directed that “at minimum” the new legislation would have to include the following four features:

1. **A statutory duty to bargain in good faith:** The new legislation must impose on farmers and bargaining agents (*i.e.*, trade unions) a statutory duty to bargain in good faith. Under traditional labour relations laws like the *LRA*, the duty to bargain in good faith generally means that the parties negotiating a collective agreement must make every reasonable effort to conclude a collective agreement. Typically, this requires an employer to be sincerely committed to concluding a collective agreement and to disclose to the bargaining agent during negotiations important decisions the employer has made, such as a decision to shut down all or part of the employer’s operation.
2. **Majoritarian exclusivity:** Farm workers must be free to select a bargaining agent based on the principles of majoritarianism and exclusivity (“majoritarian exclusivity”). Unlike under the current *AEPA*, one union will be certified to represent all employees at the workplace who perform the same or similar job functions. This includes even those employees who do not wish to be represented by the union. Once workers select a union, the farmer must deal directly with that union on all matters relating to employment and may not negotiate working terms and conditions directly with employees.
3. **A mechanism to resolve a bargaining impasse:** The legislation must provide a mechanism to resolve disputes if a farmer and a union are unable to negotiate the terms of a collective agreement (in other words, situations where the farmer and the union have reached an impasse in collective bargaining). In Canada, bargaining impasses are usually resolved by strikes and lockouts. Notably, the Court of Appeal in *Fraser* did not require the Legislature to enact provisions allowing farm workers to strike. This means that the Legislature could choose to enact an alternative mechanism to resolve a bargaining impasse such as interest arbitration (where a neutral arbitrator settles the working terms and conditions after receiving the employer’s and the union’s submissions) or final offer selection (where the union and the employer submit to a neutral third party the working terms and conditions they think should apply to the workplace and the neutral third party picks one of the two proposals).
4. **A mechanism to resolve disputes over the interpretation or administration of the collective agreement:** The legislation must prescribe a way for a farmer and a union to resolve disputes about the way the farmer has interpreted or applied the parties’ collective agreement. In most labour legislation across the country, this occurs by way of binding grievance arbitration. Grievance arbitration requires a neutral arbitrator to determine whether an employer has misapplied the collective agreement, and if so, to provide an appropriate remedy.

The Ontario Court of Appeal suggested in *Fraser* that it would likely be constitutional to enact a collective bargaining regime applicable to farm workers that considers the needs of the agricultural sector and excludes employees who work on small family farms. This gives reason to hope that the collective bargaining statute enacted by the Legislature will be sensitive to the realities of farming (e.g. by prohibiting strikes by farm workers) and that farmers who operate relatively small family farms will not be required to engage in collective bargaining.

Part 4: Union Organizing Under the *Agricultural Employees Protection Act*

While the Ontario Court of Appeal decided in *Fraser* that the Ontario Legislature must enact new collective bargaining legislation applicable to farms, the *AEPA* still remains in force. The *AEPA* will continue to apply to the farm sector until at least November 17, 2009. Depending on the outcome of the appeal filed with the Supreme Court of Canada, the *AEPA* could apply longer. If the appeal is successful, then the *AEPA* will apply indefinitely. If the appeal is not successful, then the *AEPA* will remain in effect until new collective bargaining legislation comes into force.

The relevant provisions in the *AEPA* are quite common in labour relations laws throughout Canada, including the *LRA*. So a farmer's rights and obligations during an organizing campaign under the *AEPA* will likely be similar to the rights and obligations that could be imposed if a collective bargaining law were enacted for the Ontario farm sector.

For farms employing migrant workers, there are some significant differences in the way a farmer should approach this issue. Refer to section 4.E "Unique Issues Respecting Migrant Workers" (below) for more details.

4. A: How to Spot Union Organizing

Unions often take a secretive approach when attempting to organize a workplace to prevent the employer from voicing concerns or giving legitimacy to any existing employee reservations about joining a union. Often there are indirect signs that an organizing campaign could be underway. Occasionally, direct signs of union organizing will also be present.

Indirect Signs that Union Organizing is Occurring

Indirect signs that union organizing is underway include:

Indirect Sign	Examples
Changes in employee behaviour	<ul style="list-style-type: none"> ▪ There is an unusual increase or decrease in the number of employee complaints without apparent cause. ▪ Employees stop talking to coworkers when supervisors are nearby or continue to speak but in a language that the supervisor does not understand. ▪ Employees meet and talk in unusual locations or with employees from different work areas or job levels. ▪ There are an unusual number of requests for time off on the same day. ▪ Employees begin leaving the workplace for lunch or breaks in unusual numbers.

Indirect Sign	Examples
	<ul style="list-style-type: none"> ▪ Employees are inexplicably and frequently outside of their normal working area (e.g. in a different greenhouse or another field). ▪ Employees avoid being seen by managers or supervisors. ▪ Employees show unusual interest in compensation, personnel and other policies, such as policies pertaining to discipline and dismissal. ▪ Employees become belligerent towards managers in the course of everyday conversation. ▪ Employees start using unusual terms in the course of everyday conversations (for example, “management” instead of the proper name of the employer or an individual supervisor or manager). ▪ Employees refer to off-site meetings. ▪ Employees who have completed a shift return after their shift to speak to other employees during their shift. ▪ There is an increase in interpersonal conflict between employees without apparent reason. ▪ Some high status persons in the workgroup suffer a loss in status; some formerly low status persons or recent hires become popular. ▪ Some employees harass other employees who are known to be pro-employer. ▪ The quantity and quality of output of the group declines.
Changes in communication	<ul style="list-style-type: none"> ▪ Supervisors and managers are no longer privy to the jokes and rumours of the workgroup. ▪ The communication grapevine shuts down. ▪ Complaints are made by a delegation or by an individual on behalf of a group.
Appearance of strangers	<ul style="list-style-type: none"> ▪ Non-employees appear at or near the workplace, or even in work areas, such as in fields or greenhouses. ▪ Non-employees show undue interest in the operations or policies of the farmer. ▪ A former employee, especially a discharged employee, returns and loiters on or near the premises.
Other signs	<ul style="list-style-type: none"> ▪ Confidential information goes missing, particularly lists of employee names and addresses. ▪ Any person (an employee or a non-employee) asks for the names or addresses of employees or copies the names of employees from any list.

Direct Signs that Union Organizing is Occurring

Direct signs that union organizing is underway include:

- Union literature is distributed on the premises or in convenient locations such as the restroom.
- Union posters appear on bulletin boards or in employee housing.
- Union or anti-employer graffiti appears in restrooms or elsewhere.
- Some workers begin wearing union buttons or other insignia.
- Comments that a union is needed or inevitable are made directly to supervisors or managers or within their earshot.
- Employees are seen passing out applications for union membership.
- Employees report being contacted by union organizers directly. This can include visits to a worker's home, telephone calls to workers, or letters to workers.
- A collective agreement is found or is seen being passed from one employee to another (this could include a collective agreement applicable to a farm in another jurisdiction where farm workers are permitted to engage in collective bargaining).
- Advertisements encouraging farm workers to join the union or to contact the union to learn more about union membership are seen in town or in local newspapers.

4.B: What To Do During a Union Organizing Campaign

Union organizing can occur very quickly. Because of the speed with which union organizing can occur, a farmer may have limited opportunities during an organizing campaign to exercise the right of free speech and to express opinions. It is important that farmers act quickly and decisively during an organizing campaign. Advance preparation can help.

Initial Steps

If you suspect that union organizing is taking place on your farm, remember not to react aggressively. Instead, observe, consider, analyze and report your suspicions. Immediately take the following five initial steps:

Step 1: Immediately contact the LICC and advise them of your concerns. You can reach the LICC by contacting:

Ken Linington
 45 Speedvale Avenue East, Unit 7
 Guelph, Ontario, N1H 1J2
 Telephone: (519) 836-5495, ext. 227
 Toll Free: 1-800-698-0113, ext. 227
 E-mail: Ken@fco.on.ca

Step 2: Retain a lawyer who has expertise in agricultural labour relations (the LICC may be able to assist you in identifying and retaining an appropriate lawyer).

Step 3: If there is physical evidence of organizing (pamphlets, posters, etc.), collect samples. If there is not, review the basis for your suspicion. Interview all supervisors and managers to determine if they have noticed any unusual activity and if they suspect that an organizing campaign is underway.

Step 4: Do not discipline suspected union supporters or organizers for their suspected organizing activities.

Step 5: Inform all management and supervisory personnel that a suspected organizing campaign is underway and instruct them on what they should and should not say and do during the campaign. Supervisory and managerial personnel must be prudent in their communications with employees during an organizing drive. As a member of management, the conduct of a supervisor or manager can be attributed to a farmer and can be used as evidence that the farmer has improperly interfered with the formation of an employees' association or an employee's right to freely decide whether to join the association. So it is important that senior management maintain close control over the content, timing and method of communications during an organizing campaign. If a supervisor or manager is in any way uncertain as to how to respond to a question received from an employee during a union organizing campaign, the supervisor or manager should write down the employee's question and indicate that a response will be

forthcoming. Only after conferring with senior management, should the supervisor or manager answer the employee's question.

Once a union organizing campaign is underway, labour legislation in Canada (including the *AEPA*) attempts to ensure that the decision to unionize is made by employees without undue influence from the employer. Undue influence includes threats, intimidation or coercion. If a farmer is found to have unduly influenced a farm worker during an organizing campaign, then the consequences for the farmer could be severe. For example, the consequences for unduly interfering with an employee's decision about unionization could include legally binding orders issued by the AFRAAT:

- A cease and desist order.
- An order requiring the farmer to post notices of its breach of the *AEPA* in conspicuous locations throughout the farm.
- An order that the farmer must provide the union with the names, telephone numbers and addresses of all employees.
- Significant fines.
- An order allowing the union to hold meetings on the farmer's premises or during working hours.
- An order that the farmer reimburse the union for the costs incurred during its organizing drive or an order that the farmer pay the costs of the union's new organizing campaign.

Appropriate Steps During an Organizing Campaign

Generally speaking, during an organizing campaign a farm employer can take the following steps:

Steps to take:	For example, a farmer can:
Step 1: Operate your farm as usual.	<ul style="list-style-type: none"> ▪ Continue to discipline employees for just cause in accordance with customary practice. ▪ Continue to assign work and overtime in accordance with customary practice. ▪ Implement a previously scheduled wage increase or layoff that occurs for legitimate business reasons and is conducted in accordance with existing policy.
Step 2: Inform employees about the law.	<ul style="list-style-type: none"> ▪ Tell employees that the law gives farm workers the right to refrain from becoming a union member and that employees may not be threatened, coerced or intimidated to join a union. ▪ Tell employees that it is unlawful for anyone from the union to use threats, intimidation or coercion. Employees should be advised that if they believe that union organizers are acting inappropriately, they should report it to the farmer or a supervisor.

Steps to take:	For example, a farmer can:
Step 3: Make factual or opinion statements that do not intimidate, coerce or threaten employees or otherwise interfere with the formation of an employees' association.	<ul style="list-style-type: none"> ▪ Make statements of fact and express opinions reasonably held about the farmer's operation, the union and/or the employees' association. ▪ Advise employees of the farmer's belief that a union is unnecessary. ▪ Express the farmer's personal preference for a non-union work environment. ▪ Tell employees that they do not have to talk to union organizers, allow them into their homes or provide them with their names or addresses. ▪ Point out that anyone can make promises, but that if the union is successful in forming an employees' association, it only has the right to make representations to the employer. The union cannot guarantee that any term or condition of employment will change.
Step 4: Correct misinformation.	<ul style="list-style-type: none"> ▪ Correct untrue or misleading statements contained in union propaganda.
Step 5: Highlight the working terms and conditions that employees presently enjoy.	<ul style="list-style-type: none"> ▪ Advise employees of the farmer's positive track record and of the employment benefits farm workers receive. ▪ Compare the terms and conditions of employment employees receive with what other farm workers receive at similar agricultural operations in Ontario and similar unionized operations in other provincial jurisdictions, if any.
Step 6: Outline the obligations that come with joining a union.	<ul style="list-style-type: none"> ▪ Advise employees that unions almost always require members to pay dues. ▪ Advise employees that union members must abide by the union's Constitution and By-Laws and that the union can discipline members who breach the Constitution or By-Laws, by, amongst other things, imposing fines.
Step 7: Refuse to allow unions to organize using employer resources or property.	<ul style="list-style-type: none"> ▪ Refuse to provide union organizers with a list of employee names and addresses. ▪ Refuse to permit any non-employee union organizer to enter the farmer's property for the purpose of union organizing. This is subject to an order from the AFRAAT requiring a farmer to allow a union organizer to access its property if farm workers reside on the farmer's property or on property to which the farmer has the right to control access. ▪ If the farmer has a general non-solicitation and non-distribution policy in place: <ul style="list-style-type: none"> ○ Refuse to allow pro-union supporters to use bulletin boards for solicitation purposes. ○ Refuse to permit union organizing activities by

Steps to take:	For example, a farmer can:
	employees on the farmer's property during working hours. <ul style="list-style-type: none"><li data-bbox="667 344 1382 415">○ Refuse to permit the distribution of union materials on the farmer's property during working hours.

4.C: What Not To Do When You Suspect that Union Organizing is Occurring

As noted above, if a farmer suspects that union organizing is occurring, he or she cannot engage in conduct that unduly influences an employee's choice as to whether to become a union member. Under the *AEPA*, a farmer may not intimidate, coerce or threaten an employee or impose adverse employment consequences on an employee because the employee participates in or supports an employees' association or decides to become a union member. Generally speaking, during an organizing campaign, a farmer cannot "S P I T" on its workers. That is, a farmer cannot Spy, Promise, Interrogate or Threaten employees.

SPIT Tactics

More specifically, during an organizing campaign, a farmer cannot do the following:

Prohibited tactics:	For example, a farmer cannot:
Spying on employees.	<ul style="list-style-type: none"> ▪ Engage in surveillance of employees or union activities. Surveillance includes watching employees who attend union meetings or receive union handbills, or otherwise give the impression that employee activities are being observed. ▪ Attend a union meeting.
Promising to improve working conditions.	<ul style="list-style-type: none"> ▪ Promise employees a pay increase, promotion, benefit or special favour if they refuse union membership or refuse to support a union.
Discriminating against employees on the basis of perceived union support.	<ul style="list-style-type: none"> ▪ Impose adverse employment consequences because of an employee's union activities or perceived support for the union. This would include imposing unjust discipline upon an employee or refusing to hire a job applicant with pro-union sympathies.
Interrogating employees.	<ul style="list-style-type: none"> ▪ Ask a current employee or a job applicant whether they belong to a union, have signed a union card, or would support a union. ▪ Ask employees to divulge their personal opinion about unionization or an employees' association or the feelings of another employee. ▪ Ask employees about internal union or employees' association affairs such as the conduct of union meetings.

Prohibited tactics:	For example, a farmer cannot:
Threatening or intimidating employees.	<ul style="list-style-type: none"> ▪ Spread rumours that the farmer knows who signed union membership cards. ▪ Tell employees that the farm could cease to operate if employees are represented by a union. ▪ Threaten to dismiss an employee or impose another penalty to restrain the employee from supporting an employees' association or becoming a union member. ▪ Use threatening language to influence an employee's decision to support an employees' association or become a union member. ▪ Threaten employees with the loss of jobs, a reduction in income or hours of work, or the discontinuance of any employment benefit or perquisite presently enjoyed by employees. ▪ Threaten to or withhold planned or expected merit or promotional increases because of union or associational activity. ▪ Threaten to discipline or discharge an employee because of lawful activities on behalf of a union or an employees' association. ▪ Convene "captive audience" meetings where attendance is mandatory and the farmer expresses views about the union or an employees' association.
Changing terms or conditions of work for non-business reasons.	<ul style="list-style-type: none"> ▪ Implement an unscheduled pay raise designed to undermine the union or employees' association. ▪ Lay-off employees not out of economic necessity but to send the message that their employment security will be threatened should employees come to be represented by a union.
Restricting employees' free speech when their activity does not adversely impact productivity, safety or some other compelling employer interest.	<ul style="list-style-type: none"> ▪ Prohibit employees from wearing pro-union t-shirts or buttons unless the wearing of such paraphernalia does not comply with the employer's reasonable, established and regularly-enforced dress code. ▪ Prohibit the distribution of union literature by employees to their colleagues or the solicitation of employees by their colleagues to become union members provided this activity occurs during non-working hours.

4.D: Promoting and Maintaining Individual Employment Relationships

As noted above, notwithstanding the *Fraser* decision, union organizing on Ontario farms is still regulated by the *AEPA*. The *AEPA* contains no mechanism to certify a union as the exclusive bargaining agent for farm workers or to compel a farm employer to engage in collective bargaining. Farmers who wish to continue to operate in a union-free environment are well-advised to adopt practices now that promote and maintain healthy individual employment relationships. Farm workers who are satisfied with their current employment relationship are less likely to perceive a need for third-party intervention to address workplace issues. Strategies for increasing worker satisfaction with the current employment relationship are discussed below.

Build and Maintain a Positive Work Environment

Employees are driven by the need for income, security, respect, a sense of accomplishment, and a desire to participate in the social activity of work. By contributing to these needs, employers can often increase employee satisfaction and reduce employees' motivation to unionize.

Goal 1: Commit to Positive Employee Relations

A farmer who is committed to maintaining positive employee relations can substantially reduce farm workers' incentives to change the employment relationship. Creating a positive employment relationship requires a general sense amongst employees that the farmer is committed to:

- Sharing the success of the farm through fair wages and benefits.
- Giving employees a sense that have they contributed to the success of the farm.
- Involving employees in farm decisions.
- Maintaining open communications with employees.
- Respecting employees' interests and valuing their contribution to the farm.
- Providing employees with due process and a fair procedure to resolve workplace disputes.

Goal 2: Provide a Safe and Healthy Workplace

A common motivation for changing the employment relationship is the belief that employees need an advocate to address unsafe working conditions. Farmers can reduce this motivation by ensuring that employee safety is a priority. Farmers can contribute to making their farms as safe as possible by:

- Providing employees with a farm orientation that includes a discussion of the location of first aid supplies, an explanation of fire and emergency response plans, and the identification of chemical and physical hazards present on the farm.
- Supplying well maintained personal protective equipment (e.g., safety glasses, gloves, etc.) and instructing workers on the proper use of the equipment when handling pesticides, herbicides, fertilizers and other chemicals.
- Discussing and demonstrating the safe operation of farm machinery.
- Ensuring that employees are properly trained to perform assigned work and that they are properly supervised.

Goal 3: Provide Competitive Wages and Benefits

Wages and benefits offer employees the most tangible measure of how they fare in comparison to other farm workers. A commonly held perception is that unions are able to secure higher wages and improved benefit packages. Farmers can address this misperception by:

- Ensuring that wage and benefit packages are competitive with what is offered to people performing similar work on similar farms.
- Sharing information with farm workers that dispels any myths that people performing similar jobs on similar farms are better paid (*e.g.* wage and benefit comparisons).

Goal 4: Reward Merit and Avoid Favouritism

A common source of employee dissatisfaction and support for a union is a suspicion that the employer favours certain employees over others. Farmers can quell this suspicion by:

- Ensuring that wages and benefits are internally equitable. Base wages should be the same for farm workers who perform the same job function. Increases in compensation should be related to performance and objective criteria such as length of service. Performance goals should be known and measurable.
- Ensuring that the process for being placed on a shift schedule or receiving overtime work is objectively fair and reasonable, known to employees, and applied consistently.

Goal 5: Recognize and Reward Long-term Service

One of the perceived benefits of unionization is that unions will insist that employers give credit for length of service. This credit works to the advantage of long-serving employees for benefits such as vacation entitlement and overtime opportunities. Farmers who reward long-term employees in a similar manner can reduce employees' motivation to change the employment relationship.

Goal 6: Instill a Sense of Job Security

Instilling a sense of job security is an important factor in successfully operating a non-union workplace. Employees often think that a union will protect their jobs. Farmers can enhance perceived job security by:

- Reminding employees of the growth of the farm and the stability of their employment.
- Adopting personnel policies that give employees a sense of job security (*e.g.* publically celebrating long-serving employees on their 5th, 10th and 15th year anniversary dates).
- Reminding employees of the farmer's commitment to avoiding job losses.
- Providing opportunities for training and skills development. There is often a close link between perceived job security and training opportunities.

Secure the Workplace

Farmers have the right to protect their property and an obligation to protect the privacy of their employees. If you suspect that an organizing campaign may affect your farm, take steps to:

- Make sure personnel files and lists of employee addresses and phone numbers are secure.
- Bar individuals not employed by the farmer (e.g. outside union organizers) from the farmer's property.
- Implement policies that prohibit the solicitation of employees and the distribution of non work-related materials during working hours. Generally, these workplace rules are valid unless they are inconsistently or unfairly applied. For example, a farmer could be vulnerable to a complaint that he or she has interfered with the formation of an employees' association if the farmer permitted an employee to fundraise for a child's school during working hours but precluded solicitation for union organizing purposes during working hours.

Provide an Objective & Transparent Process to Resolve Employee Complaints

Employees often seek union representation when they believe that they are powerless to obtain a remedy when the employer acts arbitrarily or out of step with its own policies and procedures. To reduce a farm worker's motivation to unionize, a farmer can adopt a formal complaint system so that employees can obtain a remedy if the farmer acts in an arbitrary manner or inconsistent with the farm's practices and procedures.

A formal complaint system should:	Tips
Be credible	<ul style="list-style-type: none"> ▪ The farmer should be prepared to deal with employee concerns in a timely fashion and with an open mind.
Be accessible to all employees	<ul style="list-style-type: none"> ▪ Employees should be informed of the existence of the system and how it works. ▪ The system should be easy to understand and use.
Be safe for employees to access	<ul style="list-style-type: none"> ▪ Employees should be free from retaliation or reprisal for bringing forward a complaint.
Provide reasons for decisions	<ul style="list-style-type: none"> ▪ This helps employees feel they have been heard and that their concern has been fairly considered. ▪ An obligation to provide reasons can encourage decision makers to thoroughly consider a complaint.

Use a Progressive Discipline System

A common reason for seeking union representation is an employee's belief that the employer has imposed discipline arbitrarily and without just cause. Farmers can counter this belief by creating, publicizing and using a progressive discipline system. In designing a progressive discipline system, a farmer should consider the following principles:

- The policy should be known to employees (e.g. explained at employee orientation sessions, posted in the workplace and published in an employee handbook).

- There should be several levels of discipline of increasing severity (*e.g.* a verbal warning, a written warning, a suspension, termination, *etc.*).
- The level of discipline imposed should be proportionate to the employee's wrongdoing. Repetitive misconduct of a relatively minor nature (*e.g.* taking an extended break) should be managed according to the steps in the progressive discipline policy (*e.g.* a verbal warning for the first infraction, a written warning for the second infraction, *etc.*). More severe misconduct such as workplace violence may constitute grounds for immediate dismissal.
- Discipline should be enforced fairly and consistently (*e.g.* similar types of misconduct should be treated in a similar fashion).
- Where serious misconduct is alleged or suspected but not known, an employee should be suspended with pay pending an investigation. After the investigation is complete, appropriate discipline, if any, should be imposed.

Create and Maintain Open Channels of Communication

Unions are often successful in organizing a group of employees when those employees feel powerless to influence their work environment. One perceived benefit of unionization is that employees have increased involvement in the workplace and a voice in decisions affecting them. Farmers can decrease farm workers' motivation to unionize by maintaining open channels of communication, by considering the information received from employees, and by acting on it.

Farmers can foster open communication by:

- Encouraging employees to communicate their ideas and concerns directly to the farmer or supervisors.
- Assuring employees that, if desired, their comments and suggestions will be maintained in confidence and by then living up to that commitment.
- Instituting anonymous "suggestion boxes." Farmers may wish to provide a written response to suggestions received and posting the written responses in a conspicuous location.
- Keeping employees informed of the status of the farm so that they remain interested in their jobs and the farm's success. Information can be provided through regular consultation, workplace newsletters, introductory booklets for new employees, or pamphlets posted on bulletin boards.
- Soliciting employee feedback on how to improve work processes.
- Forming ad-hoc employee committees to advise on farm issues likely to affect employees.
- Publicizing employee suggestions that are accepted and adopted.

Train Supervisors and Managers in Good Management Practices

One of the most important relationships in the workplace is the relationship between a supervisor and employees. Supervisors should be trained to understand the importance of their role in the success of the operation and the health of employer-employee relations. If employees trust and respect their direct supervisors, they may feel less inclined to be represented by a union. Supervisors should be trained to:

- Respond to employee concerns or complaints, no matter how minor they may seem, in a constructive manner.
- Hold regular and informal consultation sessions to foster and develop the employment relationship.

4.E: Unique Issues Respecting Migrant Workers

There is some dispute about whether provincial labour legislation applies to migrant workers who are in Canada under the Seasonal Agricultural Workers Program (“SAWP”). Some argue that because federal law generally takes precedence over provincial law, and since the federal government has established the terms and conditions of employment in bilateral agreements with other governments, provincial labour legislation does not apply. But a number of labour relations boards in other jurisdictions have held that provincial labour legislation can and does apply to migrant workers. For instance, the Manitoba labour board certified a bargaining unit of migrant workers from Mexico working at Mayfair Farms in Portage la Prairie. In British Columbia, the labour board certified a bargaining unit of migrant workers working at Greenway Farms in Surrey. A similar decision has been reached in Quebec.

Given these decision, there is a credible argument that the *AEPA* (and any new collective bargaining statute applicable to the farm sector) will apply to migrant workers. If this is the case, the tips provided above on how to respond to an organizing campaign will apply generally to migrant workers. But migrant workers also raise several unique issues that warrant further attention.

Language Barriers

Language barriers present unique challenges for farmers attempting to respond to union organizing. Where a farmer does not speak the same language as employees, it may be difficult for the farmer to identify whether employees are discussing unionization. Difficulties may also arise with respect to written union organizing materials as these materials may be written in the language of the worker.

It may be prudent for farmers to prepare written materials in the first language of their migrant workforce respecting union organizing. It may also be prudent for farmers to learn some key words and phrases in the language commonly spoken by their workforce. For instance:

English	Spanish
union	<i>sindicato</i>
non-union	<i>no afiliado a sindicato; no sindicado</i>
union card	<i>tarjeta de sindicato; carnet de sindicato</i>
union member	<i>miembro del sindicato; sindicalista</i>
union organizer	<i>organizador de sindicato</i>
union shop (closed shop)	<i>taller de afiliación sindical obligatoria</i>
collective agreement	<i>convenio colectivo de trabajo; convenio colectivo; contrato sindical</i>
union dues	<i>cuotas de sindicato</i>
workers	<i>trabaja</i>
management	<i>directivos</i>

Migrant Worker Support Centres

For a number of years, the UFCW has funded and staffed Migrant Worker Support Centres (“Centres”) to provide certain support services to migrant workers. Following the decision in *Fraser*, it is reasonable to assume that the Centres could play an increased role in the UFCW’s efforts to organize migrant workers. This presents unique challenges for farmers.

Farmers should be alert to any unusual pattern of usage of the Centres. They should also be aware that in many cases the Centres offer non-union related support services that are valuable to migrant workers. Care must be taken to ensure that farmers do not mistake migrant workers seeking support services as evidence of union organizing. Farmers may wish to consider providing migrant workers with a list of support services available in their first language that are offered by providers other than the UFCW.

Many migrant workers return to Canada year after year, have developed personal relationships with staff at the Centres, and have come to rely on the services provided. So it is probable that a union campaign to organize migrant workers will be different than normal union organizing where the union must work hard to contact employees and earn their trust. In the case of migrant workers who have used the Centre before, a pre-existing relationship and trust exists that the UFCW may use to its advantage.

Early Warning Signs of a Union Organizing Campaign

Where a union organizing campaign is targeting migrant workers, farmers should be aware that some of the early indications may be different than in traditional union organizing campaigns and may be more difficult to identify. But the underlying premise for identifying union organizing remains unchanged – union organizing will likely result in observable changes in the workplace and in employee behaviour. Look for the following signs of an organizing campaign amongst migrant workers:

- Strangers may not be seen at or near the workplace since organizing activities may occur at the Centres.
- Employees may attend the Centres more frequently or may attend the Centres in large groups.
- Employees may not stop talking when a supervisor is present or within earshot. Instead, employees who normally speak English at work may switch to another language when a supervisor is nearby.
- Employees may not show increased interest in compensation or other terms and conditions of employment, since the terms of employment are set bilaterally between Canada and the workers’ home country.
- Employees may begin using new vocabulary in their first language (e.g. “*directivos*”, which means “management” in Spanish).
- Former employees, particularly discharged employees, will not generally be seen loitering near the workplace because they will have been repatriated.
- Open signs of union support may be less visible due to migrant workers’ fears about repatriation.

- Where employees do not have access to computers, written materials in the employee's first language that have been printed by a computer may be an indication of an organizing campaign.

Promoting Individual Employment Relationships

Most of the approaches discussed above apply equally to migrant workers. But some of the general strategies to build and maintain strong individual employment relationships would not apply since certain terms and conditions of employment are not always within the farmer's control under the SAWP. Wages, for example, are often determined bilaterally by Canada and the country supplying workers.

While a farmer may not be able to modify terms and conditions of employment for migrant workers, there are still some techniques that a farmer can employ to foster individual employment relationships. For example, a farmer could:

- Provide housing for migrant workers that exceeds the standards contained in the *Guidelines for the Provision of Seasonal Housing for Migrant Workers*.
- Use the naming process under the SAWP consistently and fairly to reward good workers. This will decrease any perceived favouritism in the workplace and will instill a sense of job security for hard working employees.
- Provide a list, written in the first language of migrant workers, that identifies local support services and recreational activities that are available to workers other than through the Centres.
- Recognize long service employees by enriching their workplace experience. Draw on the experience and expertise of long-serving employees by having them mentor new workers and aid in their transition to Canada. Farmers should promote a trust relationship with long-service employees who may be perceived by other workers as leaders and role models.
- Advise migrant workers of their terms and conditions of employment in their first language. Where possible, provide workplace instructions to employees in their first language.
- Consider learning the language spoken by migrant workers and encourage supervisors and managers to do the same. Union organizers often speak the first language of migrant workers and may use this to their advantage.