

Mapping the Impacts of COVID-19 On Farmworkers in Immokalee, Florida

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Introduction

COVID-19 has had a disparate effect across racial and ethnic groups in the community of Immokalee, Florida. Immokalee residents are mostly Latinx, while Collier County is a majority white county. There are 15,000 to 20,000 migrant farmworkers in Immokalee – a statistical outlier when compared to Collier County as a whole. Immokalee, an agricultural community home to many farmworkers, has experienced a disproportionate number of COVID-19 cases compared to the rest of Florida.

Farmworkers were deemed “essential workers” by Florida governor Ron DeSantis and have thus been required to work throughout the pandemic. Why is it that despite being one of the most significant contributors to the US agricultural economy and food/retail sector, the Immokalee community of farmworkers were thrown into the line of fire during the pandemic? Immokalee remains one of the most significant COVID-19 epicenters in the United States. As “essential workers” on the frontlines, it is imperative that we fully understand the legal and economic conditions that explain why Immokalee farmworkers lacked access to legal protections and to care. Why does this matter? What can Immokalee reveal about the shared challenges facing workers during the pandemic across the United States and beyond? How have advocacy efforts of prominent organizations such as the Coalition of Immokalee Workers (CIW) fared during this time of crisis and what must be done to strengthen emergency response during the pandemic?

Historical Racialization of Farmworkers

Historically, agricultural laborers in the United States have been subject to various forms of exploitation and have comprised predominantly of racial and ethnic groups that remain vulnerable even today. The exploitation of negatively racialized peoples for economic and social gain has a long and fraught history in the United States. According to Leong “... non-whiteness [has been] used as a basis for withholding value by denying nonwhite people legal rights.”⁴ Commentators similarly invoke the history of the Southern plantation, noting that plantations spaces of physical

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⁴ Nancy Leong, “Racial Capitalism,” *Harvard Law Review* 126, no. 8 (2013): 2151-2226, 2155.

confinement for people without power.⁵ For centuries, various governments have wielded the law to forcefully assign whiteness a disproportionate value over other racial-ethnic groups, thus enabling the commodification of racial and ethnic identities for

The effects of this were felt in the New Deal Era. Between 1933 and 1939, the Roosevelt administration initiated widespread economic and legal reform to mitigate the impacts of the Great Depression.⁶ Of note is the introduction of the National Labor Relations Act (NLRA) of 1935, which, among other things, guaranteed workers the right to unionize and collectively bargain with employers. The act, however, exempted agricultural workers and other independent contractors from these privileges.⁷

The agricultural workforce in the United States in this era was mostly comprised of African Americans in the South.⁸ Southern segregationists orchestrated the exclusion of agricultural workers in return for their support for President Roosevelt's proposed reforms.⁹ The NLRA, in tandem with other legislation that sprung up during that period, effectively relegated African Americans to low-waged and unskilled occupations.

The agricultural workforce has become more ethnically diverse since then. The Civil Rights Movement of the 1960s made significant strides, procuring access to better jobs and wages outside the agricultural sector for African Americans. However immigrant and migrant workers, notably of Latin American and Caribbean origin, have become an increasingly significant presence in the agricultural workforce over time. The racial and ethnic composition of the workforce in Immokalee today reflects these historical changes. Immokalee is an immigrant farming community producing one third of the nation's winter tomatoes. Farmworkers in this community continue to be of mostly Latinx or of Caribbean origin. Many are also undocumented, which adds an additional layer of precarity as we will discuss in more detail below.

Agriculture and Low-Cost Immigrant Labor in Immokalee

Immokalee is a rural unincorporated area located in Eastern Collier County, Florida. The area spans 16,764 acres of land, with 60 percent used for agriculture. Immokalee was initially inhabited by Calusa Indians and later by the Seminole tribe. The first colonial settlers arrived in 1872.¹⁰ After European traders invested in draining the regions many swamps to clear the way for farming land, the area was transformed. Immokalee's rich and fertile soil, access to cheap immigrant, and racial-ethnic minority labor, attracted farmers to the region. Immokalee soon became a major agricultural hub in the nation.

Immokalee is not a village, town, or city. Rather it is classified as an unincorporated area. According to the census, Immokalee has a population of 25,000 people.¹¹ Collier County is

⁵ John L. Copper, *The Police and the Ghetto*, (Port Washington: Kennikat Press, 1980).

⁶ Juan F. Perea, "The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act," *Ohio State Law Journal* 72 (2010): 95-138.

⁷ National Labor Relations Board (NLRB), "National Labor Relations Act, 1935," Guidance, <https://www.nlr.gov/guidance/key-reference-materials/national-labor-relations-act>.

⁸ Jim Powell, "Why Did FDR's New Deal Harm Blacks?" *CATO Institute*, December 3, 2003, <https://www.cato.org/publications/commentary/why-did-fdrs-new-deal-harm-blacks>.

⁹ Jim Powell, "Why Did FDR's New Deal Harm Blacks?"

¹⁰ CCCRA, "Immokalee Area CRA 2019 Annual Report."

¹¹ United States Census Bureau, "QuickFacts: Immokalee CDP, Florida," accessed September 28, 2020, <https://www.census.gov/quickfacts/immokaleecdpflorida>.

a majority white county and draws much of its power base from wealthy communities like Naples and Ave Maria. Immokalee was originally called Gopher Ridge by the Seminole.¹² It began as a Seminole Trading Post specializing in the sale of alligator hides.¹³ The Seminole utilized the swamp for travel and to hunt alligators to sell. This came to a halt when the state of Florida drained the swamp area to convert the region into agricultural land. Immokalee became known for cattle ranching but remained sparsely populated. It was not until the 1950s when large scale industrial agriculture arrived first in the form of the farming of citrus fruits, then transitioning to watermelons and tomatoes.

Agriculture is the largest single industry in Immokalee, accounting for approximately 47 percent of all employment and 22 percent of all business establishments.¹⁴ However, workers in the industry earn an average annual wage of less than \$30,000, one of the lowest in Immokalee. Agriculture in Immokalee contributes significantly to the state and national economy, but this does not translate into wealth or enhanced wellbeing for farmworkers. Immokalee has a large undocumented population compared with the rest of Collier County – 37 percent in Immokalee versus 14 percent in the county as a whole.¹⁵ Because many of them are undocumented, farmworkers might be reluctant to bargain collectively or demand labor right

Figure 1: Population Statistics of Immokalee

	Immokalee	Collier County
Total Population	33,937 (2018)	365,657 (2018)
U.S. Citizens	63%	83%
Non-Citizens	46%	24%
Unauthorized	37% (2017)	14% (2017)
Ethnicity		
Hispanic or Latino	72%	27%
Non-Hispanic or Latino	28%	73%

Source: Immokalee Economic Overview, 2019¹⁶

¹² WGPU Public Media, “Immokalee, Florida – Part Two: Evolving Opportunities, Untold Stories,” YouTube, January 10, 2020, <https://www.youtube.com/watch?v=cJrbYZVqGgU&t=3s>.

¹³ WGPU Public Media, “Immokalee, Florida.”

¹⁴ Christopher Westley and John Shannon, “Immokalee Economic Overview 2019,” Regional Economic Research Institute, 2019, <https://www.fgeu.edu/cob/reri/immokalee/immokalee2019.pdf>.

¹⁵ Westley and Shannon, “Immokalee Economic Overview 2019.”

¹⁶ Westley and Shannon, “Immokalee Economic Overview 2019,” 4.

The oppressive work conditions confronting farmworkers in Immokalee is well documented.¹⁷ Terms like “modern slavery” and “forced labor” have routinely been used to describe the conditions faced by farmworkers in Immokalee. Farm owners and owners of capital in general in the region have a history of viewing farmworkers and their interests as expendable. Farmworkers have expressed feeling objectified – treated as mere factors of production. A tomato grower famously remarked that “the tractor does not tell the farmer how to run his farm.”¹⁸ Lacking property themselves, farmworkers are reduced to commodified bodies – little more than property themselves. As many as 1,000 immigrant farmworkers were “freed” from farms between 1997 to 2010. These farmworkers had been held against their will, forced to work around the clock, and were grossly underpaid.¹⁹ Without proper documentation or representation, racial and ethnic minority farmworkers were powerless.

For a long period of time farming interests continued to capitalize on farmworker vulnerability by ensuring that workplace standards were not strengthened or enforced.²⁰ Farm owners, through their allies in government at the national and state levels, forcefully suppressed the ability of farmworkers to organize and demand fair labor conditions on farms.²¹ This situation has led to an emergence of a consortium of advocacy groups who now bargain with farm owners over unfair labor conditions on farms, housing standards, and access to public health and educational services.

One such notable example of this is the emergence of the CIW. With limited political and legal support from the state, the CIW has utilized political campaigns and innovative socio-legal strategies to mobilize actors across the supply chain. The activities of the Coalition ultimately produced a new framework for labor relations between the different actors in Immokalee’s agricultural sector.

Legal Regime

Labor and Employment Laws

Labor unions empower workers to collectively bargain with employers for improved working conditions, benefits, and other aspects of workers’ compensation and rights. Unions have long existed in the United States, but their activities had no robust federal or state protections until the 1930s. Further, companies have often gone to extreme lengths to stop workers from organizing and fighting for workplace improvements, often with the support of the government.²² This changed when Congress enacted the National Labor Relations Act (NLRA) in 1935 which was

¹⁷ See the 1960 documentary “Harvest of Shame” and the 2014 documentary “Food Chain.”

¹⁸ Manoj Dias-Abey, “A Socio-Legal History of the Coalition of Immokalee Workers,” in Alysia Blackham, Miriam Kullmann, and Ania Zbyszewska, eds., *Theorizing Labour Law in a Changing World: Towards an Inclusive Labour Law* (Oxford: Hart Publishing, 2019).

¹⁹ Manoj Dias-Abey, “A Socio-Legal History of the Coalition.”

²⁰ Manoj Dias-Abey, “A Socio-Legal History of the Coalition.”

²¹ Greg Asbed & Steve Hitov, “Preventing Forced Labor in Corporate Supply Chains: The Fair Food Program and Worker-Driven Social Responsibility,” *Wake Forest Law Review* 52 (2017): 497-531.

²²“On this day, the Pullman Strike changes labor law,” *Constitution Daily*, May 11, 2020, <https://constitutioncenter.org/blog/on-this-day-the-pullman-strike-changes-labor-law>.

prompted by a looming economic catastrophe during the Great Depression, as well as social pressure from a strong labor movement.²³

The NLRA is the foundational statute for labor relations in the United States. The NLRA set up a system of enterprise bargaining, meaning that unions negotiate wages and working conditions at the level of individual organizations and companies.²⁴ The act forbids employers from firing or disciplining a worker for joining, organizing, or supporting a labor union. The act also forbids employers from firing or disciplining workers for engaging in concerted activity to improve working conditions at their place of employment.²⁵ The act set up the National Labor Relations Board (NLRB) to protect the rights set forth in the act and mediate disputes between workers and management.

Workers across the country have utilized these protections to build a strong labor movement in the United States. Although union density rates have fallen in recent decades,²⁶ unions remain popular with a majority of Americans.²⁷ Union workers earn on average 13.6 percent more than their non-union counterparts (when adjusted for education and age), are 28.2 percent more likely to be covered by employer-provided health insurance, are 53.9 percent more likely to have employer-provided pensions, and generally have more paid time off and sick leave. Beyond these quantifiable improvements, unionization shifts the balance of power from an authoritarian, hierarchical, employer dominated relationship, to a more democratic, contractual relationship between the employer and the workforce.²⁸

The scope of the NLRA's protections extends beyond protecting unions in workplaces. §7 of the NLRA establishes the rights of workers protected by the act, which include not only rights to unionize and collectively bargain, but also the right to concerted activity for "mutual aid or protection."²⁹ These rights were demonstrated in the seminal case *NLRB v. Washington Aluminum*. In this case workers were fired for collectively walking off the job due to insufficient protection from below zero degree temperature working conditions. The NLRB ordered the employers to rehire the workers. The Supreme Court upheld the NLRB's reinstatement order, determining that the NLRA protected the rights of employees, even non-union workers, to act collectively to improve workplace conditions. The language of the NLRA heavily influences access to the benefits of unionization and collective workplace action. Concerted activity by workers is protected as long as the workers fall within the scope of the statutory definition of "employee." The NLRA expressly excludes independent contractors, supervisory employees and, as per § 152(3), "any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home."

²³ OurDocuments, "National Labor Relations Act (1935)," accessed 28th September, 2020, <https://www.ourdocuments.gov/doc.php?flash=false&doc=67>.

²⁴ Dylan Matthews, "Europe could have the secret to saving America's unions," *Vox*, April 17, 2017, <https://www.vox.com/policy-and-politics/2017/4/17/15290674/union-labor-movement-europe-bargaining-fight-15-ghent>. This system is distinct from many countries in Europe which utilize sectoral bargaining systems.

²⁵ National Labor Relations Board, "Concerted Activity," accessed 28 September, 2020, <https://www.nlr.gov/about-nlr/rights-we-protect/the-law/employees/concerted-activity-0>.

²⁶ Quoctrung Bui, "50 Years of Shrinking Union Membership, in One Map," *Planet Money*, NPR, February 23, 2015, <https://www.npr.org/sections/money/2015/02/23/385843576/50-years-of-shrinking-union-membership-in-one-map1>.

²⁷ Russell Heimlich, "Majority of Public agrees Labor Unions Needed," *Facttank*, Pew Research Center, August 30, 2020, <https://www.pewresearch.org/fact-tank/2012/08/30/majority-of-public-agrees-labor-unions-needed/>.

²⁸ Simon Deakin, "The Comparative Evolution of the Employment Relationship," Working Paper No. 317, Center for Business Research, University of Cambridge, December, 2005.

²⁹ NLRB, "National Labor Relations Act."

This section is couched in ostensibly race neutral language. However when viewed in the context of 1930s America, racial animus undoubtedly played a part in the specific form the legislation took. At the time, southern Democrats were a strong presence in Congress and were willing to stray from the national Democratic Party line to block civil rights legislation.³⁰ They ensured that economic bills such as the NLRA included provisions that either explicitly or implicitly discriminated against large numbers of minority workers. The common method used by legislators was to exclude sectors dominated by African American and other minorities – such as domestic and agricultural work – from the rights extended by bills such as the NLRA. Support from Southern Democrats was believed to be vital to the passage of the bill.³¹ It is estimated that at least 65 percent of African Americans worked on farms, in domestic service, or in other industries excluded from important New Deal reforms.³² Farmworkers were not only excluded from collective bargaining laws, but also left out of the Social Security Act and the Fair Labor Standards Act (FLSA).³³ These important acts created the Social Security Program, Unemployment Insurance, and offered protections such as a minimum wage and overtime pay.³⁴

Inclusion of farmworkers under the protections of this flurry of progressive legislation would have threatened the agrarian power structure in regions of the country such as Florida. Florida has always depended on racialized systems of labor – whether it was chattel slavery, sharecropping, or exploitative labor contracting practices as used today.³⁵ Florida’s agricultural history can be understood through the lens of racial capitalism, compelling us to see, as Cedric Robinson urged us to do, the centrality of race in structuring social and labor hierarchies in capitalist economies.³⁶ Florida growers and multinational corporations have, for hundreds of years, extracted lucrative profits from their workers, using racist laws like legalized slavery, segregation, and now, by playing on fears of Immigration and Customs Enforcement (ICE) raids and deportation faced by undocumented workers.³⁷ The exclusion from laws like the NLRA which provide a bare minimum guarantee of something akin to a democratic workplace, have further exacerbated the situation.

CIW and the Consequences of NLRA Exclusion

Exclusion from the NLRA does not mean it is illegal for farmworkers to form unions. Rather, it means that employers are free to retaliate against workers. When a worker is fired from an NLRA protected job, unions can file an unfair labor practice charge and employers can be ordered to reinstate the worker with backpay. If farmworkers are fired for attempting to organize a union, they have no similar legal recourse. The unionization rate for farmworkers is less than 1 percent,

³⁰ United States House of Representatives, “Party Realignment and the New Deal,” accessed September 29, 2020, <https://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Essays/Keeping-the-Faith/Party-Realignment--New-Deal/>.

³¹ Perea, “The Echoes of Slavery.”

³² Larry DeWitt, “The Decision to Exclude Agriculture and Domestic Workers from the 1935 Social Security Act,” *Social Security Bulletin*, 70, no. 4 (2010).

³³ DeWitt, “The Decision to Exclude Agriculture and Domestic Workers.”

³⁴ Perea, “The Echoes of Slavery.”

³⁵ Asbed and Hitov, “Preventing Forced Labor in Corporate Supply Chains.”

³⁶ C.J. Robinson *Black Marxism: The Making of the Black Radical Tradition*, (Chapel Hill: University of North Carolina Press, 2000).

³⁷ Asbed and Hitov, “Preventing Forced Labor in Corporate Supply Chains,” 499.

while in industries under the NLRA, the rates are much higher.³⁸ For instance, rates of unionization are 23 percent in utilities, 12 percent in construction, and 15 percent in telecommunications.³⁹ These jobs are typically considered higher quality jobs in terms of wages, safety, benefits, and social status.

Some states, such as California⁴⁰ and Massachusetts⁴¹ have recognized the rights of farmworkers to bargain collectively and have extended legal protections to farmworkers seeking to organize unions. Florida is not one of those states. Thus, when the CIW began organizing for improvements in the workplace, they could not rely on state or federal agencies to recognize their union. Instead, they embarked on a brand-based campaign to advocate for improvements in their working conditions.

It is important to note that this successful brand-based campaign – also known as a “secondary boycott” – utilized by the CIW would be illegal if the CIW was a formalized union. The NLRA protects a union’s right to call for a boycott of its primary employer but makes it unlawful for the union to call for a boycott of “neutral” employers under section 8(b)4 of the NLRA.⁴² If the CIW was a formalized union, it could legally boycott growers, but could not organize a boycott of the large corporations who buy from the growers. Ironically, therefore, the application of 8(b)4 to farmworker organizing would severely restrict the CIW’s power, as the growers today often make razor thin profit margins in order to cater to major buyers like Publix, McDonalds, and Wendy’s. Farmworkers often move from farm to farm throughout the month, week, and sometimes every other day. This would be a further impediment to unionization under the laws and norms of the NLRA, as bargaining is conducted on an enterprise level, rather than a sectoral level, like in other countries.

Many of the advancements of the labor movement during the era ushered in by the passage of the NLRA have been eviscerated by several explicitly anti-union administrations. Reagan, both Bushes, and even the Clinton administration sought to roll back gains by workers and unions and reduced worker control of enterprise and policy. The President directly appoints members of the NLRB, which is made up of three members of the ruling party and two members of the opposition. The narrowing of worker protections has accelerated under Trump’s NLRB, which has embarked on an unprecedented assault on the rights of workers.⁴³ Thus, even if farmworkers in Immokalee were to gain protections in organizing overnight, their road to union election and certification would be very difficult.

The question, then, cannot be limited to asking if the existence of a farmworker union would have mitigated the impact of the COVID-19 outbreak. Rather the question is, if unions had

³⁸ “Less than 1 percent of U.S. farmworker belong to a union. Here’s why,” *Salon*, June 8, 2019, https://www.salon.com/2019/06/08/less-than-1-percent-of-u-s-farmworkers-belong-to-a-union-heres-why_partner/.

³⁹ U.S. Bureau of Labor Statistics, “Union membership rate 8.6 percent in manufacturing, 23.4 percent in utilities, in 2019,” *TED: The Economics Daily*, February 3, 2020, https://www.bls.gov/opub/ted/2020/union-membership-rate-8-point-6-percent-in-manufacturing-23-point-4-percent-in-utilities-in-2019.htm?view_full.

⁴⁰ Herman M. Levy, “The Agricultural Labor Relations Act of 1975 – La Esperanza De California Para El Futuro,” *Santa Clara Law Review* 15, no. 4 (1975): 783 – 816.

⁴¹ The General Court of the Commonwealth of Massachusetts, “Section 5A: Agricultural Workers: representatives,” accessed September 29, 2020, <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter150A/Section5A>.

⁴² National Labor Relations Board, “Secondary Boycotts (Section 8 (b) (4)),” accessed September 29, 2020, <https://www.nlr.gov/about-nlr/b-rights-we-protect/the-law/secondary-boycotts-section-8b4>.

⁴³ Celine McNicholas, Margaret Poydock, and Lynn Rhinehart, “Unprecedented: The Trump NLRB’s attack on workers’ rights,” *Economy Policy Institute*, October 17, 2019, <https://www.epi.org/publication/unprecedented-the-trump-nlrbs-attack-on-workers-rights/>.

played a *structural* role in the development of the agricultural working conditions in Immokalee, could the outbreak have been avoided? If unions had been formed in Immokalee during the heyday of labor organizing in 1950s and 1960s, which was also the era when fruit and vegetable production in Immokalee first expanded considerably, it is likely that Immokalee's workers would have enjoyed higher wages and benefits over the years. As a result farmworkers may have had greater access to healthcare and sick leave through employer-covered plans. The power of farmworker unions may have waned in an era when supply chains are increasingly globalized, but much of the healthcare infrastructure would have likely remained in place.

CIW and Organizing Against Employers

Farmworkers, it is important to point out, have not remained passive in the face of exploitation in the fields of Immokalee. Instead of using the traditional NLRB model of labor organizing, the CIW has instead utilized a series of strategies collectively known as Worker-driven Social Responsibility (WSR).⁴⁴ WSR begins with workers identifying human rights crises in their workplaces, then determining solutions tailored to their workplaces and industries. The workers then craft a code of conduct with the intent of implementing the code in their workplace. After a rigorous campaign, an agreement is signed with industry buyers.⁴⁵ The agreement includes an enforcement mechanism where workers themselves can file complaints if an employer violates the code of conduct. The worker complaint can be heard through a structured arbitration process. The worker complaint mechanism is bolstered by truly independent audits which review working conditions in workplaces that are signatories to the code of conduct. The goal of WSR is to place the importance of human rights standards over corporate profits and supply chain efficiency.⁴⁶ Sean Sellers of the WSR lines up several principles that are critical to the WSR model: that labor rights initiatives must be worker driven, that obligations for global corporations be binding and enforceable, that buyers must give suppliers the financial incentive and capacity to comply, that consequences for non-compliant suppliers must be mandatory, that gains for workers must be measurable and timely, and that the verification of workplace compliance must be rigorous and independent.⁴⁷

The CIW's WSR strategy culminated in several major victories, notably the Fair Food Program and the Campaign for Fair Food. The Fair Food Program is a legally binding agreement between the CIW and Florida Tomato Growers focusing on six elements: A pay increase supported by the "penny per pound" paid by participating buyers, compliance with the Code of Conduct, worker-to-worker education sessions carried out by the CIW, a worker-triggered complaint resolution mechanism, health and safety committees on every farm, and ongoing auditing of the farms to insure compliance.⁴⁸ The Fair Food Program now covers 90% of Florida Tomato farms. The Campaign for Fair Food began in 2001, and aimed to convince major buyers of Florida tomatoes to purchase only from Fair Food Program affiliates, and to commit to paying an extra

⁴⁴ Coalition of Immokalee Workers, "About CIW," accessed September 29, 2020, <http://ciw-online.org/about/>.

⁴⁵ Coalition of Immokalee Workers, "About CIW."

⁴⁶ Coalition of Immokalee Workers, "About CIW."

⁴⁷ Sean Sellers and Theresa Haas, "The Worker-Driven Social Responsibility Model," Counter Human Trafficking Compliance Solutions (CHTCS), January 23, 2018, <https://www.chtcs.com/the-worker-driven-social-responsibility-model/>.

⁴⁸ Coalition of Immokalee Workers, "Fair Food Program," accessed 29th September 2020, <http://ciw-online.org/fair-food-program/>.

one penny per pound of tomatoes in order to raise wages on farms.⁴⁹ The CIW achieved its first victory in 2005 when Taco Bell agreed to sign on to the program, with later major brands such as Whole Foods, McDonalds, and Walmart signing on in the 2010s.⁵⁰

The Fair Food Program has been incredibly successful in rooting out systemic workplace issues such as conditions described as akin to modern slavery, sexual harassment, and wage theft.⁵¹ However, the WSR model took an incredible amount of organizing over a long period of time. The extraordinary effort put forth by the workers to improve work in the fields over an almost 30 year period does not necessarily translate well in emergency situations.

Under section 8(d) and 8(a)5 of the NLRA, employers are required to bargain over certain subjects, known as mandatory subjects of bargaining.⁵² Health and welfare plans are mandatory subjects of bargaining.⁵³ This means that if the CIW was a formal union protected by the NLRA, growers would have been forced to bargain over healthcare plans. Instead the CIW had to assert itself just to get the growers and buyers to sit at the same table, rather than being able to take health and welfare plans as a given part of workers benefits.

Although farmworkers are still excluded from the NLRA, some individual protections under the FLSA were extended to farmworkers in 1966, such as a minimum wage. However this did not include guarantees for overtime pay.⁵⁴ Migrant farmworkers also gained rights under the Migrant and Seasonal Farmworker Act of 1983.⁵⁵ This act requires agricultural employers to secure a certificate of registration from the U.S. Department of Labor before contracting to hire farm laborers. Employers must provide proof that transportation vehicles, written payroll records, and written information available on wages, hours, and other working conditions all meet federal standards.⁵⁶

Major issues remain concerning the implementation of the protections gained by farmworkers through the FLSA amendments and Migrant and Seasonal Farmworker Act. The CIW has utilized two legal projects to fill in this gap: engagement with federal criminal law to prompt federal enforcement of modern slavery laws and a private arbitration process enacted through the Fair Food Program. Southwest Florida was referred to by the Justice Department as “ground zero for slavery” in 2003,⁵⁷ as the practice was seemingly endemic to the region.⁵⁸ From the 1990s the CIW started to raise public awareness about forced labor conditions in Florida fields.⁵⁹ Heightened coverage of modern day slavery in the press along with pressure from other grassroots

⁴⁹ Coalition of Immokalee Workers, “Fair Food Program.”

⁵⁰ Coalition of Immokalee Workers, “Fair Food Program”; Holly Burkhalter, “Fair Food Program helps end the use of slavery in the tomato fields,” *Washington Post*, September 2, 2012, https://www.washingtonpost.com/opinions/fair-food-program-helps-end-the-use-of-slavery-in-the-tomato-fields/2012/09/02/788f1a1a-f39c-11e1-892d-bc92fee603a7_story.html.

⁵¹ Steven Greehouse, “In Florida Tomato Fields, a Penny Buys Progress,” *New York Times*, April 24, 2014, <https://www.nytimes.com/2014/04/25/business/in-florida-tomato-fields-a-penny-buys-progress.html>.

⁵² National Labor Relations Board, “National Labor Relations Act.”

⁵³ National Labor Relations Board, “Employer/Union Rights and Obligations,” accessed 29 September, 2020, <https://www.nlr.gov/about-nlr/rights-we-protect/your-rights/employer-union-rights-and-obligations>

⁵⁴ Marc Linder, “Farmworkers and the Fair Labor Standards Act: Racial Discrimination in the New Deal,” *Texas Law Review* 65 (1986): 1335 – 1393.

⁵⁵ Linder, “Farmworkers and the Fair Labor Standards Act.”

⁵⁶ 29 U.S.C. § § 1801-1872.

⁵⁷ John Bowe, “Nobodies: Does slavery exist in America?” *Annals of Labor, New Yorker*, April 21, 2003, <https://www.newyorker.com/magazine/2003/04/21/nobodies>

⁵⁸ Free the Slaves, *Hidden Slaves: Forced Labor in the United States*, (Human Rights Center, September 2004), https://www.law.berkeley.edu/files/hiddenslaves_report.pdf, 8.

⁵⁹ Manoj Dias-Abey, “A Socio-Legal History of the Coalition.”

organizations led Congress to pass the Trafficking Victims Protection Act (TVPA) in 2000. The CIW has instigated eight federal investigations and obtained convictions for charges of forced labor in Florida.⁶⁰ The CIW was able to utilize criminal law to break up what became known as “slavery rings,” and were also able to draw attention to the systemic poverty in Immokalee and other migrant farmworker communities. The CIW understood that the main beneficiaries of forced labor were the buyers at the opposite end of the supply chain. If these major purchasers could drive down produce prices through large volume purchases, they could also utilize this purchasing power to force farmers to end forced labor on their farms.⁶¹

The Fair Food Code of Conduct, the contents of which were the result of bargaining between buyers, growers and workers, governs employment relations on CIW affiliated farms.⁶² The code introduces new protections such as a health and safety committee on every farm. However, it is mostly dedicated to protections that are either already laws which are rarely enforced, or are filling in legal gaps caused by the exclusion of farmworkers from labor and employment laws. For example, the code requires breaks on every farm, which is already required under Florida law.⁶³ The code also requires employers who provide housing to provide accommodations in accordance with federal standards, which are already set by federal law under the Migrant and Seasonal Farmworker Act of 1983.⁶⁴ The institution which holds growers and buyers accountable is not a state, federal, or local court. Rather, dispute resolution and auditing are overseen by the Fair Food Council.⁶⁵ Conditions on Immokalee farms have improved considerably since the implementation of the Fair Food Program.⁶⁶

Immokalee under COVID-19

WSR has proven incredibly successful in improving conditions in the fields, but the CIW’s ability to respond to emergencies has been put to the test in recent months. Sean Sellers has noted that an effective WSR activity requires the capacity to enter into a long-term planning process and a multi-year campaign. When advancing protections against the effects of a pandemic such as COVID-19, or a hurricane, time is of the essence. Since specialized expertise is needed it may be more difficult for workers to rally the necessary resources during this time. Furthermore, the CIW’s strategy of engaged consumer action may be weakened by global economic distress. While the CIW has undoubtedly played a significant role in improving conditions on Immokalee’s farms, the COVID-19 outbreak has still ravaged the area.

In emergencies, centralized public planning is necessary for distributing resources, especially in areas of exceptional inequality between working class farmworkers on the one hand, and growers and buyers on the other. Typically, this is when the government is expected to step in. However, Immokalee is an unincorporated area, leaving Collier County and the State of Florida as the only state forces responsible for the area. As explained above, Immokalee has a specific

⁶⁰ Manoj Dias-Abey, “A Socio-Legal History of the Coalition.”

⁶¹ Susan Marquis, *I Am Not a Tractor!: How Florida Farmworkers Took On the Fast Food Giants and Won* (Ithaca: Cornell University Press, 2017).

⁶² Fair Food Standards Council, “Fair Food Code of Conduct: Overview,” accessed on September 29, 2020, <http://www.fairfoodstandards.org/resources/fair-food-code-of-conduct/>.

⁶³ Florida Stat. 450.081(4).

⁶⁴ Fair Food Standards Council, “Fair Food Code of Conduct.”

⁶⁵ Manoj Dias-Abey, “Justice on Our Fields: Can “Alt-Labor” Organizations Improve Migrant Farm Workers Conditions?” *Harvard Civil Rights-Civil Liberties Law Review* 53 (2018): 167-211, 199.

⁶⁶ Dias-Abey, “Justice on our Fields.”

history of settlement. With the arrival industrial agriculture came increased demand for workers to plant, tend, and pick the crops. This was the era when Immokalee first became truly populated. As migrants came in different waves, municipal services did not follow.

There are some federal housing programs in Immokalee, notably from the United States Food and Drug Administration (FDA).⁶⁷ However, undocumented populations cannot access this housing, and many of the units remain empty.⁶⁸ Meanwhile private housing is monopolized by one family, who drive up prices to maximize profits.⁶⁹ Farmworker families of multiple generations are forced to share one room trailers, facilitating the spread of COVID-19.⁷⁰ Additionally, Immokalee residents are at the mercy of the Florida and Collier County Public Health Departments.⁷¹ The CIW offered to write a grant to help trace and track COVID-19 in partnership with the Florida Department of Public health, but the state declined to participate.⁷²

Today the main advocates of incorporation are the Immokalee Chamber of Commerce, who recently issued a statement that the city cannot attract a Walmart because it is still not incorporated.⁷³ The idea of what a “city” is has shifted considerably in neo-liberal age.⁷⁴ In the not so recent past, community organizations have proven very successful in instituting progressive reforms in cities that quickly spread throughout the country.⁷⁵ This raises questions over the effectiveness and viability of a campaign for incorporation. Could the CIW, or other community groups lead a charge for incorporation and write progressive laws and protections into law at the city level, and draw tax revenue from the incredible wealth that is harvested every year from its fields? Would business interests take over regardless of who is organizing? Would progressive incorporation scare off agricultural buyers who are willing to pull up and switch to lower cost locations?

⁶⁷ United States Department of Agriculture (USDA), “USDA Celebrates Groundbreaking for Farm Worker Village,” February 4, 2016, <https://www.rd.usda.gov/newsroom/news-release/usda-celebrates-groundbreaking-farm-worker-village>.

⁶⁸ Mary Grace Menner interview on June 30, 2020.

⁶⁹ Mary Grace Menner interview.

⁷⁰ Patricia Mazzei, “Florida’s Coronavirus Spike is Ravaging Migrant Farmworkers,” *New York Times*, June 18, 2020, <https://www.nytimes.com/2020/06/18/us/florida-coronavirus-immokalee-farmworkers.html>.

⁷¹ Greg Stanley, “Feelling left behind, Immokalee chamber to push for incorporation,” *Naples Daily News*, September 4, 2016, <https://www.naplesnews.com/story/news/local/2016/09/04/feeling-left-behind-immokalee-chamber-push-incorporation/89648532/>.

⁷² Transnational Institute, “Webinar – Migrant Farmworkers: Organising and Resisting Before, During and After COVID-19,” Institute for Development Policy, July 3, 2020, <https://www.youtube.com/watch?v=mAom91BiG1E>.

⁷³ Greg Stanley, “Feeling left behind, Immokalee chamber to push for incorporation,” *Naples Daily News*, September 4, 2016, <https://www.naplesnews.com/story/news/local/2016/09/04/feeling-left-behind-immokalee-chamber-push-incorporation/89648532/>.

⁷⁴ Gilles Pinson and Christelle Morel Journal, “The Neoliberal City – Theory, Evidence, Debates,” *Territory, Politics, Governance* 4, no. 2 (2016): 137-153.

⁷⁵ Peter Dreier, “What Milwaukee Can Teach the Democrats about Socialism,” *Dissent*, May 8, 2020, https://www.dissentmagazine.org/online_articles/what-milwaukee-can-teach-the-democrats-about-socialism

The Care Nexus – Access to Healthcare During a Pandemic

Health Care and Access to Health Services

The current crisis of inadequate healthcare for farmworkers has deeper historical roots from well before the pandemic. Numerous studies have shown that agricultural workers, specifically in the southeastern United States, are disproportionately exposed to injuries caused by occupational and environmental conditions. This includes long hours of working outdoors in high temperatures, working with hazardous machinery and equipment, and being exposed to harmful levels of pesticides.⁷⁶ Research has demonstrated that the injury rate in the agricultural industry has been higher than any other industrial sector. Infectious diseases, such as TB, are considered especially hard to treat among immigrant farmworker populations since it requires months of uninterrupted treatment and a regular caregiver to renew prescriptions.⁷⁷ Even though farmworkers are essential to the food supply chain, many are denied access to basic health insurance.

As previously noted, H-2A farmworkers are entitled by law to a minimum wage. They are also entitled to receive housing from their employer.⁷⁸ However, there's no requirement to provide H-2A temporary farmworkers with health care access or compensation for non-work related illness or injury. They are also barred from enrolling in Medicaid until they have been in the United States for five years. Even then, enrolling in Medicaid raises difficulties as it requires documentation of income and residence. The public health provisions of the Affordable Health Care Act are not applicable to migrant farmworkers. H-2As are entitled to worker's compensation, even though they are often reluctant to use this insurance.⁷⁹ When it comes to undocumented farmworkers, the absence of a health care safety net is even more apparent and acute, particularly as they do not benefit directly from the health insurance reforms of the last decade. With no legal documentation, they are not entitled to third party public benefits such as Medicaid, the State Children's Health Insurance (SCHIP), or Medicare.⁸⁰

Community and Migrant Health centers provide primary health services such as emergency medical services, diagnostic laboratories, immunizations and family planning services regardless of immigration status. Still, many secondary and specialized health services cannot be provided by primary care givers. For the uninsured and underinsured, specialized treatment, advanced testing, and hospitalization remain out of reach.⁸¹ There are many factors at play in denying treatment to migrant farmworkers. Demands on community health providers often exceeds capacity, eligibility for sliding fee scale services often requires verification of income and an address, both things that undocumented farmworkers may be unable or reluctant to provide. Even minimal co-payments might be infeasible for migrant farmworkers. Finally, there is a pervasive

⁷⁶ Joan D. Flocks, "The Environment and Social Injustice of Farmworker Pesticide Exposure," *Georgetown Journal on Poverty Law & Policy* 19, no. 2 (2012): 255-82.

⁷⁷ Arthur L. Frank et al., "Health Care Access and Health Care Workforce for Immigrant Workers in the Agriculture, Forestry and Fisheries Sector in the Southeastern US," *American Journal of Industrial Medicine* 56 no. 8 (2013): 960-74.

⁷⁸ United States Department of Labor, "Fact Sheet #26: Section H-2A of the Immigration and Nationality Act (INA)," Wage and Hour Division, February 2010, <https://www.dol.gov/agencies/whd/fact-sheets/26-H2A>. See the expansive DOL explanation for specific entitlements.

⁷⁹ H, Virginia McCoy, Marl L. Williams, John S. Atkinson and Muni Rubens, "Structural Characteristics of Migrant Farmworkers Reporting a Relationship With a Primary Care Physician," *Journal of Immigrant Minority Health* 18, no. 2 (2016): 710-14.

⁸⁰ Frank et al., "Health Care Access," 964-69.

⁸¹ Frank et al., "Health Care Access," 964.

fear of engaging with the authorities in the event that it could lead to deportation. Working conditions and lack of labor rights guaranteeing sick leave are also factors that severely limit farmworker access to health services.⁸² As we have learned from interviewing key figures in the Collier County Health Department, low wages make it infeasible for farmworkers to acquire health insurance themselves, and they often remain unprotected.

These challenges and others were apparent during the pandemic. The MSF team that operated in Immokalee reported that during the pandemic between 15,000-20,000 farmworkers continued to work in Immokalee with minimal access to healthcare and testing.⁸³ Overcrowding in housing and transportation to the fields, the lack of PPE, sanitizers, and hand washing stations, and the absence of a hospital in have been seen as main drivers for the spread of the virus.⁸⁴ Our informants disclosed that the fact that sick leave is not available for many farmworkers acts as disincentive to either being tested or informing their employer of symptoms.

Active Organizations

Against this background, a range of actors (public agencies, local and transnational NGOs, growers and their organizations) have taken steps to mitigate the harm from COVID-19:

(1) *The Healthcare Network of Southwest Florida*: This private nonprofit organization provides treatment to any one in need, with or without insurance, regardless of immigration status, and charges based on a sliding fee scale.⁸⁵ Also, certain programs of the Collier County Health Department were available through this organization.

(2) *Doctors Without Borders (MSF) and other NGOS*: MSF arrived in Immokalee after the CIW reached out to them. According to the MSF final report on Immokalee, when the team arrived in late April open testing was available only three days a week. As noted, this limited availability could constitute a substantial barrier for farmworkers. With the support of MSF, availability was broadened to six days per week, including evenings and weekends. Over the next two months, while MSF was present, the testing capacity was largely increased and an isolation center was opened. Care workers speaking Spanish and Creole tried to further encourage immigrant farmworkers to get tested. According to the report, as of June 2, 36 percent of those tests were positive, compared to a positivity rate of 5.6 percent at the state level.⁸⁶ The CIW itself was active in educating farmworkers via radio channels in multiple languages, raising awareness using original methods, artwork and posters.

(3) *Grower Enterprises/Employers*: Growers were also involved in promoting access to care. However, in the absence of formal enforcement mechanisms, the extent of protection provided by different employers has been subject to the employer's own discretion. According to Mark Lemke, head of the Immokalee Division of the Department of Health, major Growers have

⁸² Katherine D. Hoerster et al., "Impacts of Individual-, Environmental-, and Policy-level Factors on Health Care Utilization Among US Farmworkers," *American Journal of Public Health* 101, no. 4 (2011): 685-692.

⁸³ Doctors Without Borders (MSF), "Florida: Doctors Without Borders ends COVID-19 activities in Immokalee," News & Stories, June 26, 2020, <https://www.doctorswithoutborders.org/what-we-do/news-stories/news/florida-doctors-without-borders-ends-covid-19-activities-immokalee>.

⁸⁴ Migration Policy Center, "Webinar: Migrant workers under Covid-19 lockdown," European University Institute, April 20, 2020, <https://www.youtube.com/watch?v=C71wNshOXF0&app=desktop>.

⁸⁵ Healthcare Network, "About Us," Accessed September 29, 2020, <http://www.healthcareswfl.org>.

⁸⁶ Doctors Without Borders (MSF), "Florida: Doctors Without Borders ends COVID-19 activities."

been quite proactive in providing protections to their farmworkers.⁸⁷ The problem is, that this was not always the case.

Structural Community Factors

Our research and interviews provided a nuanced picture of the challenges and deeper, less visible drivers of the vulnerabilities experienced by farmworkers. We focused on several community factors which influence agricultural worker access to healthcare: compliance, enforcement authority, farmworker fear of engagement with institutions, the transitory nature of Immokalee, and the predatory system of apartment leasing.

According to our interviews with officials at the Collier County Health Department, the extent of compliance with health standards varied between different growers. Some major employers, such as Lipman have been very proactive. They contacted the Department of Health to learn about best practices to mitigate the spread of COVID and inquired as to where they could acquire PPE, sanitizers and other emergency materials. These growers have made efforts to keep workers in their camps to stop the spread of the virus by bringing bank services and groceries to them. However, in the absence of binding regulation, compliance, these practices are at the employer's discretion. We learned that there was significant variation between large employers whose workforce is relatively stable, and small-scale growers who replace farmworkers working in their fields on a daily basis. According to the Department of Health, a considerable number of employers hold the attitude that "the work just has to be done" – if one worker gets sick, they are easily replaceable. We have encountered reports that some growers consider the pandemic a hoax, and do not provide face masks or PPE, or even instruct workers to wear their own face masks and take precautionary measures.⁸⁸

The absence of formal mechanisms of enforcement was also a key issue raised in discussions that our research group had with Ms. Lisa Lochridge, Director of Public Affairs of the Florida Fruit and Vegetables Association (FFVA).⁸⁹ Ms. Lochridge emphasized that even though the FFVA strongly encouraged farmers to take serious steps to protect themselves, the decision ultimately rested with the growers. Governmental authorities similarly lack formal enforcement authorities. The only authority that the Department of Health delegated under the Migrant and Seasonal Agricultural Workers Protection Act (MSAP), was enforcing housing standards for migrant workers.⁹⁰ For example, they ensured that no more than five workers live in the same dwelling. This authority is limited to a pre-inspection before workers are housed and then every six weeks from then on. There is no inspection of the workplace itself or employer-provided transportation.⁹¹ Adding to the problem, local administrative agencies like the Department of Health, were not even able to get a list of all the farms in Collier County in order to reach small-scale farmers for educational purposes.

Due to the constant presence of ICE, there is widespread fear of engagement with any formal authority or institution in the Immokalee farmworker community, especially if it involves

⁸⁷ Interview with Mark Lemke, June 2020.

⁸⁸ Interview with Mark Lemke.

⁸⁹ Interview with Lisa Lochridge, June 2020.

⁹⁰ See Department of Labor, "Migrant and Seasonal Agricultural Worker Protection Act (MSPA) as amended (29 CFR Part 500)," Employment Law Guide, updated December 16, 2020, <https://webapps.dol.gov/elaws/elg/mspa.htm>.

⁹¹ Florida Department of Health, "Collier County: Migrant Farm Worker Housing," accessed 29 September 29, 2020, <http://collier.floridahealth.gov/programs-and-services/environmental-health/migrant-housing/index.html>.

having their name written down. This has been reported in various studies and was confirmed through our conversations with public health officials and community activists.

There is a crucial lack of access to technology facilitating communication. Many workers lack phones, permanent addresses, and personal transportation. Indeed, these findings coincide with research showing a clear connection between how long farmworkers have lived in Immokalee and how likely they are to have a primary care physician. A study shows that almost 75 percent of farmworkers who were interviewed did not have access to a primary care physician, but researchers found that those who have lived in Immokalee for at least five years have usually established such a connection.⁹² In the same study, there also emerged a clear connection between lack of access to primary health care and lack of insurance. 75 percent of the study's participants did not have insurance, and thus were far less likely to have a primary care physician.

The system of apartment leasing in Immokalee also contributes to issues in health care. Many farmworkers in Immokalee pay their landlords weekly. Farmworkers typically spend most of their paycheck on rent. Farmworkers are extremely worried about the consequences of testing positive for COVID-19 and having to be isolated. Missing work causes a farmworker to miss rent payments and some have come back from quarantine to discover that their lease has been terminated and their personal belongings are missing. This has not only exacerbated the an already significant problem of people without homes in Immokalee but also creates incentives to avoid getting tested.

In terms of policy recommendations, Mark Lemke pointed out that lack of financial compensation highly exacerbates the ability of farmworkers and immigrants to take care of the basic food and health needs of their families. Most farmworkers did not receive the stimulus paychecks that many other communities (even non-essential workers) received from the government. As such, a public policy recommendation would be to focus on promoting the provision of stimulus paychecks to all “essential” frontline workers who carry out services within the US.

Child Care, Family Planning and Support: The Care/Work Dilemma

The 1960 CBS documentary “Harvest of Shame” opens with Ms. Doby, a 34 years older mother of nine, working in the strawberry and cherry fields. Eight out of her nine children come to the field to work.⁹³ To a large extent, that picture has not changed. Even though migrant children are entitled to education, there are numerous barriers that disrupt their ability to perform well. Migrant children are likely to experience disruptions in their schooling. Reports include frequent absences, illness, sleepiness in class, and inability to study. Migrating between states in accordance with the times of harvest is also a major disruption.

Several actors are providing care services to Immokalee farmworkers. Perhaps the most notable organization in the fields of education and other child-related needs is the Redlands Christian Migrant Association (RCMA). RCMA provides early learning centers and after school programs. As teachers are usually involved and trusted by the families, they serve as a source for information, communication and good advice. They also provide nutrition classes and parental support. Eight-five percent of the RCMA annual budget of 60 million dollar is governmental

⁹² McCoy et al., “Structural Characteristics of Migrant Farmworkers.”

⁹³ “1960: Harvest of Shame,” CBS, *YouTube*, accessed November 2, 2020, https://www.youtube.com/watch?v=yJTVF_dya7E.

funds.⁹⁴ The Guadalupe Center is another major center in Immokalee providing early childhood education and after school tutoring.⁹⁵ The Collier County Department of Health provides vaccines for any child under the age of eighteen. The department also provides family planning services, conducts interviews with pregnant women in order to mentor them towards motherhood, and proposes programs for health nutrition for children.

During the pandemic, many of these child-related services were diminished. Schools have been closed since April and the RCMA is also closed. In order to mitigate hardships and allow students to keep learning, laptops were provided. Most institutions continued their school lunch programs even when schools were closed so that children could pick up a meal. More generally, the health department in collaboration with the nonprofits working in Immokalee and with food banks operated to ensure food security to any individual.

Women, men, and children all provide care to dependents. However, it would be reasonable to say that women farmworkers experience greater concerns about going to the fields, infecting their children and the other people in the trailer, or losing the ability to have shelter in the first place. This concern is shared also by men but is still highly gendered.⁹⁶

Final Thoughts: Stakeholder Analysis of the Food/Care Regime

Understanding the disparate impact of COVID-19 on minoritized racial and ethnic groups in Immokalee, Florida requires a careful analysis of the stakeholders involved in the agricultural industry. This analysis is particularly appropriate when examining Immokalee because the principal strategy of CIW was, in fact, leveraging large corporate stakeholders. As discussed above, CIW conceptualizes their strategy in this framework as a focus on “Worker-Driven Social Responsibility.”⁹⁷ WSR is meaningfully distinguished from “Corporate-Driven Social Responsibility” (CSR). By exercising their collective power and agency, workers can mitigate and prevent human rights violations without relying on the popular media to expose such violations and incite public relations backlash.

This strategy was derived from an analysis of the stakeholders within the corporate agricultural supply chain. Specifically, it emphasized and strategized around the outsized influence that large retail corporations have on the prices and conditions of agricultural growers. Consider, then, the narrow but well-defined stakeholder picture that formed: (1) massive retail corporations that had exercised incredible influence over prices and subsequently wages and labor conditions for growers; (2) growers, which relied significantly on contracts with the large retail corporations that their prices were defined by their terms, forcing cost-cutting measures to compete with other growers to maintain profits from a non-diversified revenue stream; and (3) farmworkers, who were then forced to bear the burden of razor-thin profit margins by enduring substandard and dangerous working conditions.⁹⁸ From this picture, it became clear to CIW that intervening was necessary to

⁹⁴ Redlands Christian Migrant Association, “About RCMA,” accessed September 29, 2020, <https://www.rcma.net/about-rcma/>.

⁹⁵ Guadalupe Center, “Home Page,” accessed September 29, 2020, <https://www.guadalupecenter.org>.

⁹⁶ Migration Policy Center, “Webinar: Migrant workers under Covid-19 lockdown.”

⁹⁷ Asbed and Hitov, “Preventing Forced Labor in Corporate Supply Chains,” 505-06.

⁹⁸ Asbed and Hitov, “Preventing Forced Labor in Corporate Supply Chains.” In their opening Asbed and Hitov quote Dr. Kevin Bales: “There is real slavery in the fields of [America]. This is not about lousy jobs, but violent control, vicious exploitation, and the potential for serious harm and even death.”

shift the power dynamics in this supply chain.⁹⁹ This required leveraging two key stakeholders: consumers and the mass media.

The slogan “Taco Bell makes farmworkers poor” summarizes CIW’s bottom line. CIW used this language coupled with a massive information campaign to begin leveraging consumers to put pressure on megabrands to improve wages and working conditions for farmworkers.¹⁰⁰ Certain subsections of consumers proved instrumental. CIW identified students as important in organizing and boycotting Taco Bell in the early stages of the campaign. By using students to put pressure on universities where Taco Bell was rapidly attempting to introduce new franchises, CIW undercut one of Taco Bell’s most important expansion strategies. Taco Bell signed the first Fair Food Agreement in 2005, providing, among other things, a crucial proof-of-concept for the CIW strategy.¹⁰¹

Stakeholder analysis, however, must expand beyond this supply-chain perspective. It must also address *why* such a campaign was necessary. To do this, one must consider the legal and political status quo, and the stakeholders exercising their influence to maintain it. Though the potential stakeholders are expansive, they can be meaningfully mapped onto influential areas of law and policy that shape conditions for farmworkers. Consider, for example, the above analysis on labor laws, in which it was detailed that the secondary boycott on Taco Bell would be illegal if the CIW were a formal union. The origins of the NLRA, which prioritized the implementation of policy in which African Americans were excluded from beneficial labor laws, outlines the complex stakeholder landscape in policymaking. State government and the executive federal government were crucial stakeholders beyond the legislature that influenced strategy and policy. In several cases in the late 1990s after several federal prosecutions for acts of forced labor, CIW noted that growers were never prosecuted, instead only mid-level supervisors were imprisoned.¹⁰² This decision from the U.S. Department of Justice may reflect economic policy, limited resources, or a federal government with minimal sympathy for undocumented workers. This demonstrated the need for an alternate strategy from the CIW where different stakeholders outside of the government must be leveraged.

The analysis above on health care is similarly illuminating. Public health implicates so many dimensions of stakeholder analysis. Though massive healthcare conglomerates carry great influence, healthcare costs affect all people, either directly or through taxation. An important focus during COVID-19 that has emerged, however, is the necessity of local medical care organizations and their day-to-day influence. PPE and medical care in the contemporary moment is crucial. Without a government mandate, however, it is difficult to compel growers to comply with guidance on things like social distancing. Larger employers with greater capital flexibility and lower turnover are more likely to be subject to organizing action in response to substandard conditions and abuse. But, as is noted above, smaller growers with greater turnover and lower or

⁹⁹ It is worth noting that this conclusion was considered neither axiomatic nor an academic consensus. Though wage stagnation for agricultural workers was a known phenomenon, this holistic approach of the corporate supply chain emphasizing downward price pressure due to the demand of megabrands was coalesced in a way that it had not been previously. “Confirmation” of CIW’s message came later in publications such as Oxfam America’s “Like Machines in the Fields: Workers Without Rights in American Agriculture” report. It is an important study in the necessity of primary field research and the amplification of voices in marginalized communities.

¹⁰⁰ Coalition of Immokalee Workers, “Boycott the Bell! End Sweatshops in the Fields! Boycott Brief,” CIW – Taco Bell Boycott Headquarters, 2001, http://www.ciw-online.org/tz_site-revision/breaking_news/boycott_in_brief.html. As Romeo Ramirez said in this report “... and we have only one weapon. But that weapon -- the truth -- is the most powerful thing on earth.”

¹⁰¹ Asbed and Hitov, “Preventing Forced Labor in Corporate Supply Chains,” 508.

¹⁰² Asbed and Hitov, “Preventing Forced Labor in Corporate Supply Chains.”

nonexistent capital reserves may have neither the ability nor the desire to comply with mitigating health procedures. In the face of great demand for agricultural produce and employment, the influence of stakeholders such as competing growers, farmworkers, and enforcement outlets, is greatly diminished.

Conclusion

The stakeholder landscape that produces the current work environment in Immokalee is complex and inconceivably vast. Proper coverage of it would include addressing the expansion of ICE funding and enforcement in the Trump administration, the influence of agricultural chemical manufacturing conglomerates on farmworker health, and an economic and public health analysis of the key labor suppliers for the region such as Mexico, Haiti, and Guatemala. The guiding principle, however, is that there is a relationship between all parties, and the influence of stakeholders is often disproportionately weighed toward availability of capital rather than their volume or personal stake. Their motivations must be constantly reevaluated in the face of changing conditions and information, and in the face of an unprecedented pandemic, one must firmly center the rights of all people to health and opportunities to work safely.