

Governor's Council on Migrant Labor Minutes

Thursday, August 26, 2021

9:00 AM – 11:30 AM

Via WebEx

Call to order: 10:00 a.m.

Roll Call

MEMBERS PRESENT:

Lupe Martinez, John Bauknecht, Erica Sweitzer-Beckman, Laura Waldvogel, Jose Martinez, Erica Kunze, Kate Lambert, and Aimee Jo Castleberry

MEMBERS ABSENT:

Senator Bob Wirch, Guadalupe "Wally" Rendon, and Jeanine M. McCain, Senator Jerry Petrowski

DWD STAFF PRESENT:

Katie Mueller (Section Chief – BJS), Andy Janssen (Program & Policy Analyst – BJS), Jennifer Cole (DWD Legislative Liaison), and Jennifer Wakerhauser (DWD Chief Legal Counsel)

AGENDA ITEMS

1. Call to Order:

Vice Chair Lupe Martinez called the meeting to order. The roll was taken and there were 8 members present, constituting a quorum.

2. Approval of Agenda:

Laura Waldvogel moved approval of Agenda. The motion was seconded by **Jose Martinez**. The motion was approved on a voice vote.

3. Approval of Minutes:

There was discussion about amendments to the minutes of April 21, 2021.

Laura Waldvogel requested that the last name of Alfonso be added to the minutes, since he made a comment in chat. Page 4 the second to last line, the last name of "Zepeda Capistran" was added to Alfonso's name.

She also requested additional changes as follows:

- Line one of paragraph two on page 5, the spelling of "Kinzie" need to be changed to "Kinsey"
- Line one of paragraph two on page 5, "Migrant" needed to be added to "Mobile Health Clinic".
- Line four of paragraph three on page 5, "carry" needed to be changed to "carrying".
- Line one of paragraph four on page 5, place "and" after the word "responsive".
- Line two of paragraph four on page 5, add "to date" after "tested".
- Line nine of paragraph four on page 5, change "to develop" to " with national groups in the hopes of supporting the development of".

Erica Sweitzer-Beckman asked that on page 6 paragraph 3 the sentence beginning with "The group wanted to go public", be stricken from the minutes.

Moved by **Jose Martinez** and seconded by **Erica Sweitzer-Beckman** to approve the amended minutes of Wednesday, April 21, 2021. The motion was approved on a voice vote.

4. Updates to DWD Administration

- New Deputy Secretary Pam McGillivray
- New Chief Legal Counsel Jennifer Wakerhauser
- New Legislative Liaison, Jenifer Cole

Katie Mueller (Bureau of Job Service Section Chief) - Provided updates to the Council on some recent changes in the DWD Secretary's Office.

She stated that Pam McGillivray who was formerly the Chief Legal Counsel is now the Deputy Secretary for DWD. In addition, former Deputy Legal Counsel, Jennifer Wakerhauser is the new Chief Legal Counsel. Katie introduced Jennifer Cole as the new Legislative Liaison. Jennifer was attending the meeting and introduced herself.

Jennifer Cole said she has been in the position since February. She has been more involved in the migrant issues and has been working to get new appointments from the Assembly to the Council. She is available to the Council if they should have legislative related questions.

5. Migrant Seasonal Farmworker Updates

Katie Mueller (Bureau of Job Service Section Chief) gave the **Migrant and Seasonal Farmworker Status Report** (as of 08/06/2021) to the Council members.

MIGRANT HOUSING APPLICATIONS

- 2020: 75 Migrant Camp Applications received
- 2021: 154 Migrant and H-2A Camp Applications Received

MIGRANT HOUSING CERTIFICATIONS

- 2020: 71 camps certified
- 2021: 188 migrant and H-2A camps certified or partially certified
 - 50 Migrant Workers Only
 - 120 H-2A Visa Workers Only
 - 18 Both

MIGRANT LABOR CONTRACTORS/CREW LEADERS

- 2020: 63 Contractors certified
- 2021: 42 Contractors and 39 Agents certified

MIGRANT AND SEASONAL FARMWORKER OUTREACH:

- 2020: 2,174
- 2021: 1,194

FOREIGN LABOR CERTIFICATION (Program year: October 1 to September 30)

Year End Report for Federal Fiscal Year 2020 (October 1, 2019 – September 30, 2020)

H-2A (Temporary Agricultural Workers):

- 109 applications received since October 1, 2019
- 2,022 workers requested; 2007 workers approved

H-2A Housing inspections since October 1, 2019

- 131 housing sites certified

Federal Fiscal Year 2021(October 1, 2020 – September 30, 2021)

H-2A (Temporary Agricultural Workers):

- 128 applications received
- 2,283 workers requested
- 1,991 workers approved

EVENTS/MEETINGS

- Governor's Council on Migrant Labor next meeting: Wednesday, October 20, 2021
- WFC COVID Response Steering Committee – ongoing

Jose Martinez on the Housing Certifications. **Katie Mueller** clarified that of the 188 migrant and H-2A camps certified that the employer indicated that 50 were only for migrant workers, 120 were for H-2A Visa workers only, and that 18 would be housing both.

Katie Mueller added that the only other item that she needed to report was that Emergency Rule 2109 (EmR2109) was extended and will expire on 10/14/2021.

Jose Martinez a follow up question about situations where migrant workers and H-2A visa workers were living in the same camp. He stated that generally, H-2A workers rate of pay was more. He wanted to know if these workers were being paid a similar rate in these situations.

Katie Muller clarified that employers must pay H-2A workers the same rate as regular migrant workers when they are in the same job positions. She stated that this is conveyed to the employers when DWD staff do their outreach.

Jose Martinez asked if there have there been violations of wage rates in these instances. **Katie Mueller** stated that the Department is not aware of any violations.

Erica Sweitzer-Beckman thanked Jose Martinez and Katie Mueller for raising and discussing this important issue.

6. Old Business:

Lupe Martinez briefly discussed the vacancies on the Council. He asked which vacancies existed. **Andy Janssen** responded that there are two vacancies for Wisconsin State Assembly representation on the Council and two employer representative vacancies. He further expressed a hope that Council members like Jose Martinez and Laura Waldvogel could possibly forward some names for the Council's consideration. He said he would be working with DWD staff on getting the Legislative members appointed. In addition, he would like to take a look at overall council member attendance to the meetings to ensure that Council members are attending the meetings.

Jose Martinez asked about the approval process for new members. **Lupe Martinez** responded that there was a gubernatorial appointment process and that Council members who have suggestions for potential members they should forward information to him and he would work through DWD to move the process forward.

7. New Business:

Lupe Martinez opened the discussion about the requirement that the Council review of the minimum hours guaranteed under s. 103.915 (4) (b) of the Wisconsin Statutes.

Erica Sweitzer-Beckman stated that it was correct that the Council needed to review the minimum hours guarantee. She feels it is too low especially at the beginning of the season.

They hear from outreach workers during this time that they get a lot of questions from workers as it relates to food insecurity. She stated that unless there is enthusiastic support from all the Council members that the issue was not going anywhere. She asked that Council members discuss this issue to see if there could be broad support for changes.

Lupe Martinez stated that if you look around other the industries, we see wage increases due to employers needing to fill positions. He feels the agricultural industry should be no different.

Kate Lambert said that they have spoken with their workers about raising the minimum hours. She said that nearly all their workers state they don't want an increase above 20 hours minimum because it impacts their ability to qualify for partial unemployment insurance (UI). She said that she doesn't know what the impact would be for increasing its effect on UI and doesn't know what the impact would be across the industry.

Aimee Jo Castleberry said that Seneca's situation is similar Kate's with the unemployment piece. They try to balance the orientation and training to not disrupt unemployment for the workers.

In addition, they are not charging workers for some housing at the beginning of the season due to the COVID quarantine protocols. In addition, if there is a canteen, they are not charging for food. They working to lessen the burden on the workers at the beginning of the season. She is not sure on raising the guaranteed hours or if they would support a change primarily due to the UI issue.

Lupe Martinez asked **Erica Sweitzer-Beckman** for suggestions on moving forward regarding the issue of guaranteed minimum hours.

Erica Sweitzer-Beckman supported creating a committee of the Council to discuss this issue and requested that someone from DWD staff the committee.

Lupe Martinez suggested that the issue be discussed at the October meeting. He asked if an employer representative would be willing to participate. **Aimee Jo Castleberry** said she would be happy to participate.

Chief Legal Counsel Jennifer Wakerhauser - said the Council should refer to Section 4 of the bylaws to create a new ad hoc committee. She stated that the Executive Committee of the Council would need to approve creation of an ad hoc committee which would need to be approved at the new meeting.

Lupe Martinez moved to approve an Ad Hoc Committee for Minimum Hours Guarantee, **Erica Sweitzer-Beckman** seconded. The motion was approved on a voice vote.

Members of the Ad Hoc Committee for Minimum Hours Guarantee are **Kate Lambert, Aimee Jo Castleberry, and Erica Sweitzer-Beckman.**

The Council moved on to discussion of the Annual report as required under the Bylaws Article VI Annual Report

Katie Mueller stated from the bylaws that, " The Council shall, in August of each year, submit to the Department of Workforce Development a report on its operation during the fiscal year concluding the preceding June 30. Pursuant to Wis. Stat. § 15.09(7), the report will be on the operations of the Council."

Lupe Martinez stated that the report was a very basic document that simply outlined the annual work of the Council and may even include attendance. He stated that DWD staff prepare the report, and the Council would review it before it's released.

The Council moved on to discuss Migrant Labor Inspector staff numbers. **Lupe Martinez** stated that DWD requested an additional inspector in the budget, but it was not approved by the Legislature. He said he put it on the agenda because some members of the Council wished to make a statement about the issue.

John Bauknecht questioned whether a position could be created in the current budget of DWD. **Lupe Martinez** also asked the question whether it was possible for DWD to create a position within their current budget.

Jennifer Wakerhauser answered that she did know if DWD could immediately answer the question. She asked for clarification if it is the recommendation of the Council to the Department to fund another migrant labor inspector if the Secretary has the discretion to fund that position. **Lupe Martinez** said that this would be the case.

Jose Martinez said there continues to be an increase in H-2A workers and that it is incumbent upon the DWD to ensure there is adequate staffing to make certain workers are not being abused that that the laws are being upheld and worker rights are protected.

Lupe Martinez stated that many years ago Wisconsin created these laws to protect the workers' rights and work with employers to ensure the laws were being properly enforced. He further stated that we need enough staff to enforce these laws in place.

John Bauknecht additional would benefit the industry because questions could more easily be answered on site with more staff in place. In addition, there are increased complexities due to COVID-19 and the overall increase in the number of H-2A workers. He said this would go a long way to increased compliance and enforcement. He questioned whether we needed a motion to support DWD adding an additional inspector within their current budget.

Erica Sweitzer-Beckman said she would second a motion and echoed the sentiments already expressed.

Lupe Martinez that adding an additional inspector within DWD's existing budget was the consensus of the group and to recommend DWD act on this request.

Jennifer Wakerhauser stated that a motion was not necessary.

John Bauknecht would like a report at the next meeting about this issue.

8. Public Comment:

Lupe Martinez stated that they normally have a public comment period during the annual picnic but due to COVID it was cancelled so this is the reason that is it on the agenda. He also asked for public comment to be part of the October agenda.

Katie Mueller stated that those who wish to make a public comment enter their name in chat and they will be called on.

Ray Ozuna, owner of Pride Harvesting. He thanked the Council for allowing him to speak at this meeting. He stated that he has provided H-2A workers for employers in Wisconsin for the past 5 years. He said that this year he was notified that his transportation insurance was not meeting state standards under Wisconsin State Statutes 103.91 (8) (f) and DWD administrative Code 301.05 (8) (c). He said to be in compliance his insurance increase is over 200% for about 4.5 months of working in Wisconsin over the course of a year. He said that it is difficult to find an insurance company to meet the Wisconsin standards and that he is not allowed to cancel the higher premiums once he leaves the state.

Some contractors, including him are considering dropping Wisconsin due to this issue as they are unable to remain competitive. He would prefer that Wisconsin mimic federal MISFA guidelines that would give contractors more options to meet insurance requirements in order to stay competitive and remain working in that state.

Lupe Martinez asked if DWD would comment. **Katie Mueller** said that DWD would take the comments under advisement.

Connie Lumpkins, HR Manager with Hartung Brothers, Inc. She stated that they are a long-standing Wisconsin employer and that one of their crops has a very short season. This year was incredibly difficult to get their workers up here and to find a recruiter who would take on such a short stint. The issue was primarily the same issue of insurance that Ray talked about. She cannot find workers through recruiters who will work this three-month stint due to insurance. As an employer, she would like to see a change in the law regarding insurance especially for short season crops. She thanked the Council for the opportunity to speak today.

There were no further comments.

9. Announcements:

Erica Sweitzer-Beckman announce that Legal action is hiring a new attorney for their farmworker project. She said that information is posted on the Legal Action website. She requested for the Council to please help spread the word.

10. Migrant Labor Council Meeting Schedule:

- Wednesday, October 20, 2021

11. Adjournment:

Laura Waldvogel moved to adjourn. **Lupe Martinez** adjourned the meeting at 11:00 a.m.

DRAFT