

ONTARIO'S AGRICULTURAL WORKERS AND COLLECTIVE BARGAINING: A HISTORY OF STRUGGLE

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INTRODUCTION

On November 17, 2008, the Ontario Court of Appeal unanimously ruled that agricultural workers in Ontario have a constitutional right to bargain collectively with their employers. This decision brought an end to an exclusionary system of labour relations in the Ontario that denied substantive rights to some of the province's most marginalized workers. However, like virtually all other legal rulings, it did not come without its limitations.

This paper explores the history of Ontario's labour laws as they relate to agricultural workers, examines the way these laws have been interpreted by the judiciary, provides an overview of the most recent case affirming the right of agricultural workers to bargain, and analyzes the likely effects of the Court of Appeal's recent decision. In so doing, it provides commentary on the relationship between the labour movement, human rights and the legal system more generally, and provides specific commentary on this situation as applies to agricultural workers in Ontario.

This paper is informed largely historical institutionalism, an approach which illuminates how political struggle and political actors are influenced by institutional settings (Thelen and Steinmo, 1992; Hall and Taylor, 1996). As such, it analyzes various state and societal institutions which shape how political actors- in this case the Canadian labour movement- defines their interests and structure their power in relation to that of other groups (Thelen and Steinmo, 1992: 2). The first part of the analysis begins with an overview of the relationship between the Ontario legislature, agricultural workers, and collective bargaining rights and highlights the struggles of their reliance on the legislature for progressive change. The second part of the analysis is predominantly legalistic and identifies the Charter and the Supreme Court of Canada as central institutions within the Canadian polity. It then examines the relationship between the labour movement and these institutions in recent years. An analysis

of this struggle contains important theoretical implications for the labour movement. This study not only highlights both the uses and limitations to the construction of labour rights as human rights, it also forces a re-evaluation of the increasingly legalistic strategy employed by the labour movement.

In recent years, the Canadian labour movement has focused significant attention on the constructing labour rights as human rights (D. Fudge, 2006; Adams, 2006; NUPGE/UFCW, <http://www.labourrights.ca>). The notion of labour rights falling under the rubric of human rights builds on the popularity and salience of rights discourse in Canada, and is accelerated by decisions in a number of Charter challenges. As a result, the construction of labour rights as human rights necessitates that the labour movement should actively embrace the Canadian Charter of Rights and Freedoms, International Labour Organization (ILO) decrees and accords, and other human rights codes as tools to further the rights of working people (Adams, 2008). At the same time, the labour movement has been less reliant on its social democratic allies in the New Democratic Party (NDP) and traditional forums such as workplace action and public protests as vehicles for social change. While these strategies remain, to varying degrees, viable avenues for the labour movement, rights-discourse and Charter-based arguments have become increasingly important. In short, the Canadian legal system, and specifically the Supreme Court of Canada, has been the institution in which labour has fought its most important battles in recent years.

The recent embrace of rights discourse and the Charter by unions in Canada is drastically different from the labour movement's original response to the Charter. Larry Brown, formerly of the Saskatchewan Government and General Employees Union (SGEU), aptly summarized the labour movement's historic antipathy toward the court. He maintained that "working people have made their progress in the streets and on picket lines, in meetings and demonstrations, in struggle and confrontation...not in the halls of justice" (SGEU, 1985: 3). Indeed, in the early 1980s, the Canadian Labour Congress (CLC) and its affiliate unions were noticeably absent from the process of patriating Canada's constitution and establishing the Charter. While various reasons for this absence have been proposed (Mandel, 1994: 261; Weiler, 1986: 213; Savage, 2007), the labour movement was unwilling to engage itself in debates around the Charter.

The embrace of a legal strategy and a reliance on the Charter to protect the rights of workers can be seen through a number of case studies. One of these is the plight of agricultural workers in the province of Ontario. The struggle of workers employed in Ontario's agricultural industry has been a long one, and the union most active in organizing these workers- the UFCW- has increasingly constructed labour rights as human rights and relied on the Charter to protect and promote the rights of these workers. In so doing, they have moved beyond a

sole reliance on the provincial legislature to foster progressive social and economic change.

COLLECTIVE BARGAINING RIGHTS, 1943 TO 2002

With increasingly labour militancy on the home front throughout the period of the Second World War, the Ontario government introduced the Collective Bargaining Act (CBA) in 1943, which provided statutory protections and regulations to both organizing and bargaining collectively for the majority of private sector workers and many public sector workers in Ontario. One of the exclusions from the CBA, however, was workers employed in the agricultural industry. Following the end the war, the government introduced a more comprehensive system of labour law in 1948, known as Labour Relations Act (LRA), which, provided basic rights to most private sector trade unions and was predicated on the concepts of ‘fairness and balance’ between capital and labour (Smith, 2008). Nevertheless, agricultural workers were barred from organizing and could not legally bargain with their employer.

The exclusion of agricultural workers from the Labour Relations Act was, according to the government, fully consistent with its prevailing conception of fairness and balance in the field of labour relations. For example, they argued that the exclusion of agricultural workers from the Act was the result of agricultural being a seasonal industry with a limited growing season, the perishable nature of food products, the added costs that unionization would add to the industry, and the dominance of small, family farms within the industry. Despite many amendments to the Labour Relations Act throughout the post-war era, workers in the agricultural industry were still excluded from organizing and bargaining collectively.

Following the election of the New Democratic Party (NDP) in 1990, the new government introduced the Agricultural Labour Relations Act (ALRA) in June 1994, which provided agricultural workers with the ability to organize a trade union and bargain collectively with their employer (Smith, 2008). The new government argued that this conception of labour relations respected the rights of agricultural workers and was sensitive to the nuances of the agricultural sector. Following the passage of the ALRA, the United Food and Commercial Workers (UFCW) took the lead in organizing the provinces’ agricultural workers.

However, any sense of justice for agricultural workers was short lived. Following the defeat of the NDP in 1995 and the election of the Progressive Conservative Party, Ontario’s system of labour relations underwent a drastic change. Although still premised on achieving a sense of fairness and balance in the field of labour relations, the passage of the Labour Relations and Employment Statute Law Amendment Act (LRESLAA) in November 1995 repealed the provisions of the former Agricultural Labour Relations Act and

once again excluded those employed in the agricultural industry from organizing and bargaining. Furthermore, the one workplace at which the UFCW had won a certification order for under the ALRA was repealed and the two other workplaces at which the UFCW had filed certification applications for were dismissed. Within one week of the passage of the LRESLAA and the subsequent repeal of the ALRA, the UFCW brought forward a legal challenge against the government arguing that the exclusion of agricultural workers from organizing and bargaining collectively was a violation of the workers' freedom of association and equality rights under sections 2(d) and 15 of the Canadian Charter of Rights and Freedoms.

Although the lower courts ruled against the UFCW and found the government's legislation to be constitutional, the case was eventually granted leave to the Supreme Court of Canada. The Supreme Court delivered its verdict for the case, known as *Dunmore v. Ontario (Attorney General)*, in 2001. The Court found that agricultural worker's exclusion from the LRA impeded their freedom to organize and argued that "legislative protection is absolutely crucial if agricultural workers wish to unionize" (*Dunmore v. Ontario*, para. 42). The Court also recognized the vulnerable position of agricultural workers and the power imbalance between managers and marginalized workers, such as those employed in agriculture, noting "their political impotence, their lack of resources to associate without state protection and their vulnerability to reprisal by employers" (*Dunmore v. Ontario*, para. 41). Lastly, the Court saw the formal exclusion of agricultural workers from the LRA as unconstitutional because it "delegitimizes associational activity and thereby ensures its ultimate failure" (*Dunmore v. Ontario*, para. 48).

The ruling in this case represented an important development in the evolution of the meaning of freedom of association rights under section 2(d). The Court was explicit on the fact that freedom of association included freedom to organize (into a trade union) and that it would be impermissible for the legislature to deny this right. However, despite finding the prohibition on organizing to be unconstitutional, the Court's decision was not without its shortcomings. Despite their noting that "without certain minimum protections, the...freedom to organize...would be a hollow freedom," they dismissed the second, and perhaps more important, part of the union's claim that section 2(d) should also consist of the freedom to bargain collectively, effectively hollowing out the meaning of the freedom to organize in process (*Dunmore v. Ontario*, para. 42). Indeed, for a worker looking to join a union, the freedom to organize meant little if it did not also encompass an explicit freedom to bargain. This limitation would continue to pose a problem for agricultural workers and is illustrative of the shortcomings of legalistic strategy.

THE AGRICULTURAL EMPLOYEES PROTECTION ACT

In response to the Court's decision in *Dunmore*, the ironically named Agricultural Employees Protection Act (AEPA) was introduced and passed into law. However, it is difficult to see how the AEPA purported to protect the rights of agricultural workers as the rights it 'protected' were already guaranteed through other provincial statutes or the Charter. Of course, the AEPA was fully consistent with the Court's ruling as it allowed agricultural workers to join an association, but failed to provide any meaningful protection to bargaining collectively.

The new legislation differed from the normal structure of labour relations in the province in a number of ways. For example, it did not oblige employers to bargain in good faith with employee associations. This regime promoted a scheme of voluntarism and was reminiscent, in many respects, of pre-war labour relations. While employees had the opportunity to make submissions to their employer, there was no mechanism available to solve 'bargaining' impasses. Furthermore, if the employer did agree to any of the workers' demands, there was nothing in place to ensure their enforcement.

This scheme of labour relations also departed significantly from the norm of labour relations in the province in that it promoted a concept of non-majoritarian and non-exclusive representation. There was no requirement that the associations formed under the AEPA would be supported by a majority or even a plurality of employees. Furthermore, the new Act also allowed the existence of multiple associations for the same job classification, which promoted disunity and divisiveness within the workplace and allowed individual employees to 'bargain' outside of the association(s) at the workplace. Additionally, it provided no financial security to these organizations through mandatory dues check off, ensuring that they would be little more than an empty shell devoid of the capacities for any real action independent of a reliance on income from voluntary donations.

For agricultural workers seeking meaningful union representation, the AEPA offered no hope. It provided only for the narrowest forms of representation and any gains made were based largely on the goodwill of employers. For trade unions seeking to represent these workers, it denied them any real criteria to organize workers in a meaningful way. While associations, specifically unions, had constitutional protection of their right to exist and organize workers, they were still devoid of their main purpose, collective bargaining.

Although the legislation did not enforce typical standards on majority representation, exclusivity, or good faith collective bargaining, it did not preclude agricultural employees from becoming members of trade unions or from a trade union making representing a group of workers. Indeed, following the passage of the AEPA in 2002, the UFCW continued to have an active presence

in the agricultural sector as workers approached the union for some form of representation. At Rol-Land Farms, a mushroom factory in Kingsville, over 70% of the workers became members of the UFCW, who eventually filed a certification application to represent these workers. The UFCW also had success at organizing workers at Platinum Produce, a greenhouse operation in Chatham.

Despite the majority of support the UFCW had garnered from the workers at Rol-Land, the employer refused to afford voluntary recognition to the union as the workers' bargaining agent, prompting the UFCW to file a formal certification vote (which passed 132-45, despite employer intimidation tactics). Following the vote, the UFCW sought to meet with management at Rol-Land to commence negotiations. Consistent with the legal terms of the AEPA but in violation of the democratic will of the workers, Rol-Land refused to negotiate in good-faith with the union. The UFCW received a similar response from Platinum Produce after attempting to bargain on behalf of workers there, prompting the union to challenge the constitutionality of the AEPA. This case is known as *Fraser v. Ontario (Attorney General)*.

RIGHTS-BASED LITIGATION: THE FRASER DECISION

While the UFCW's application was originally denied at the Ontario Superior Court of Justice, which ruled that the AEPA was consistent with the framework established in the *Dunmore* decision, the legal landscape regarding collective bargaining changed considerably shortly thereafter. In 2007, in the case *Health Services and Support- Facilities Subsector Bargaining Association v. British Columbia*, the Supreme Court of Canada determined that "s. 2(d) of the Charter protects the capacity of members of labour unions to engage, in association, in collective bargaining on fundamental workplace issues" and that "if the government substantially interferes with that right, it violates s. 2(d) of the Charter" (*Health Services*, para. 2 and 19). In short, the Court ruled for the first time ever that collective bargaining was a fundamental freedom that governments could not deny. While this case does have its shortcomings, its precedent was immediately viewed as having potential ramifications on prima facie prohibitions on collective bargaining, specifically Ontario's ban on collective bargaining for agricultural workers. With a government unwilling to change the law (Urquhart, 2007), and a new legal precedent established, the UFCW proceeded to appeal the lower court's decision in *Fraser*.

Relying heavily on the Supreme Court's ruling in *Health Services*, and, to a lesser degree, the ruling in *Dunmore*, the Ontario Court of Appeal found the AEPA to be unconstitutional as it substantially impaired the rights of the provinces' agricultural workers to bargain collectively as the government failed to provide requisite statutory protections to ensure that collective bargaining could be realized. In coming to this reasoning, the Court found that: (1) the

activity of collective bargaining was, in fact, a valid associational activity; (2) the appellants were seeking a positive right to government action (not simply freedom from government action); (3) that their claims stemmed from a fundamental freedom protected by sec. 2(d); (4) that they demonstrated that their exclusions from the statutory regime (a combination of the LRA and the AEPA) substantially interfered with their freedom to organize and to bargain; and (5) that the government was responsible for the workers' inability to exercise their fundamental freedoms.

The Court's previous ruling in *Health Services* was of considerable importance. Indeed, the passage of the AEPA effectively failed to provide sufficient protections to ensure the realization of meaningful collective bargaining, frustrated the union and its members in engaging employers in good-faith negotiations, and was the result, in part, of state (in)action. Had it not been for clear state (in)action, in this case a *prima facie* prohibition on meaningful collective bargaining, the Court would have rejected the union's claim.

While the state has become increasingly coercive in regards to workers' rights in the current neo-liberal era (Panitch and Swartz, 2003), many workers' inability to bargain collectively is not linked directly to state (in)action. This is particularly true for those workers lacking a collective agreement in the growing low-wage service sector in industries such as retail, hospitality, and food services, suggesting that this ruling will have little to no effect on this growing and marginalized workforce. However, as state action was clearly involved in this case, the union's appeal was successful. Indeed, the Court found that "the exclusion of agricultural worker from a collective bargaining regime has a chilling effect on their efforts to exercise their right to bargain collectively. Accordingly, the inability of agricultural workers to bargain collectively is linked to state action" (*Fraser v. Ontario*, para. 107). In coming to this conclusion, the Court reasoned "that the government has violated [the workers'] s. 2(d) right to bargain collectively" (*Fraser v. Ontario*, para. 108).

Despite this victory for the UFCW and the province's 100 000 agricultural workers, the ruling in *Fraser* did not come without its limitations.¹ In addition to arguing that the AEPA violated section 2(d) of the Charter, the UFCW also argued that the section 15 equality rights of agricultural workers were being violated as the AEPA, in combination with the LRA, denied benefits to agricultural workers that were available to other workers in Ontario. Specifically, they argued that the status of a being an agricultural worker was central to one's identity and should thus be considered an analogous ground of discrimination for the purposes of section 15.

The Court dismissed this part of the claim, agreeing with the government that the distinction of being a worker is not an enumerated or analogous ground for discrimination under section 15. This denial is problematic, despite the final

outcome of the case. The denial of equality rights means that certain types of workers can be treated differently from other workers, so long as other Charter rights are protected. This means that in end, while agricultural workers will likely be able to bargain collectively, they may be subjected to different rights or terms of unionizing and bargaining than other workers in Ontario. Furthermore, by denying employment status as an analogous ground for discrimination, the Court has effectively ensured that social or economic class stays out of the Charter and constitutionalizes some discrimination against the working class, especially its most vulnerable members.

While agricultural workers have gained the right to bargain collectively with employers, they are unlikely to gain the right to strike. To be sure, in their submissions to the Court, the UFCW made it clear that they were not seeking the right to strike in their appeal (*Fraser v. Ontario*, para. 57). As a result, agricultural workers are unlikely to possess the fundamental right to withhold their work that many other unionized workers possess. The Court's recognition of the seasonal nature of farming, the sustainability of family farms, and the perishability of food products, though not posing a barrier in this case, is likely to prevent agricultural workers from ever gaining the right to strike. In any event, the Court is an institution unlikely to protect or promote the right to strike. While the labour movement has made gains under the Charter in recent years, the right to strike will be one best protected and promoted by workplace action and worker militancy, not legal challenges.

The Court's discussion of reasonable limits is another limitation to this case specifically, a reliance on the courts more generally, and to the achievement of meaningful collective bargaining rights for Ontario's agricultural workers. Indeed, even if a piece of legislation is found to be in violation of the Charter, it must pass the 'Oakes Test' of reasonable limits under section 1. The impugned legislation can be found constitutional if it represents a pressing and substantial objective and the violation of rights is reasonable and demonstrably justified (*R. v. Oakes*, 1986). In determining the latter, the rights impairment must be rationally connected to the purpose, be a minimal impairment, and proportional to the objective. In this case, the Court found the legislation's stated objective of protecting family farms and the production of food to be pressing and substantial, but that the prohibition on bargaining was unreasonable.

However, in finding the AEPA unconstitutional, the Court suspended the ruling for twelve months to allow the government to determine the proper way to proceed. The Court also indicated that it would still be possible for the government to balance the newly won rights of agricultural workers with the AEPA's stated claim of ensuring the viability of small farms in a manner that would withhold future section 1 scrutiny. The Court noted that "while a line-drawing process may be difficult, it is not impossible" and provided examples of what they deemed to be an appropriate balance (*Fraser v. Ontario*, para. 134).

They noted that in Québec, for example, agricultural workers are able to bargain collectively only if the workplace employs at least three workers ordinarily and continuously throughout the year, while in farms in New Brunswick with less than five employees are exempt from compulsory collective bargaining. Indeed, the Court noted that the problem with the AEPA was not necessarily that it limited collective bargaining for agricultural workers in general, but that “it exclude[d] all employees in the agricultural sector...” and that “there [was] no attempt to minimize the impairment by carving out family farms that are allegedly incompatible with a more formal labour relations regime. Rather, all farms, including factory farms, are excluded from collective bargaining” (Fraser v. Ontario, para. 132, emphasis in original).

Thus, the government may pass legislation that decides to draw its distinction between family farms and factory farms. Conversely, it could draw the line at ‘x’ number of employees and to prohibit smaller farms from engaging in compulsory collective bargaining. Providing that there is some rationale for the selection, it is likely the Court would be differential to the government on any future legal challenge. In the end, it is unlikely that the Fraser decision and the government’s response to it will facilitate an environment that will allow all of Ontario’s agricultural workers to enjoy the right to bargain collectively. Prohibitions and exclusions from bargaining are likely to continue, albeit in less restrictive than the current outright prohibition.

AN EVALUATION OF THE UFCW’S APPROACH TO ORGANIZING AGRICULTURAL WORKERS AND A MOVE TOWARD RIGHTS-BASED LITIGATION

Although the Fraser ruling is likely to provide agricultural workers’ with the opportunity to finally participate in meaningful collective bargaining, it does not come without its shortcomings. In addition to being subject to ‘reasonable limits,’ it also falls well short of providing justice to those employed as temporary foreign workers. In Ontario, there are approximately 16 500 temporary foreign workers employed in the agricultural industry (Lancaster House, 2008). While Justicia for Migrant Workers (J4MW), a Toronto-based grassroots organization dedicated to promoting the rights of guest workers employed in Canada, applauds the decision in Fraser, they rightly point out that “...there is still much to be done to promote migrant farm workers’ human rights” (Justicia for Migrant Workers, 2008). For example, they note migrant workers face many barriers upon coming to Canada, including: repatriation procedures that are unilateral and provide no appeal mechanism to workers, disparities in the health care system which deny equal access, mandatory fees and deductions for guest workers, a ban on attending educational institutions and problems with agricultural housing facilities, among others.

While the ruling in Fraser may provide most agricultural workers, including migrant workers, with the right to organize and bargain, it does not directly address the other barriers faced by migrant workers. Indeed, the Court is unlikely to provide any sort of justice on these types of barriers, and the onus will fall on to the legislature to grant them. Thus, unions, grassroots organizations, and citizens must convince the legislature to enact these changes to provide meaningful protection to agricultural workers. As a result, the labour movement must rely on a grassroots political strategy, and not a legalistic one, to see these important changes.

Although the ruling itself illustrates, on some level, that trade unions can successfully make rights-based appeals under the legal system, these are by no means quick and do not necessarily lead to favourable results. While the Ontario Court of Appeal ruled in the union's favour, the Ontario government had the option to seek leave to the Supreme Court of Canada to have the case heard on one final appeal. This leave was granted in April 2009 (UFCW, 2009). The Ontario government is hoping that the Supreme Court will overturn the Court of Appeals' decision in Fraser and rule that agricultural workers' exclusion from collective bargaining is a reasonable limit. Although the precedent established in Health Services suggests that the government will face an uphill battle in their appeal, there remains some chance that the decision will be overturned. In any event, the delay associated with the government's appeal will have the effect of continuing to deny collective bargaining rights to agricultural workers for at least a few additional months, and potentially a few additional years.

Despite the shortcomings to the Fraser decision specifically and a rights-based strategy more generally, the UFCW's long struggle to organize Ontario's agricultural workers presents some important lessons for future organizing campaigns, and not simply those in the agricultural sector. For example, the UFCW, in conjunction with the Agriculture Workers Alliance, operated eight support centres across Canada for agriculture workers throughout the 1990s and into the present day, four of which are in Ontario. This provides the union with an opportunity to be in close contact with many of Ontario's agriculture workers, despite not being able to legally bargain on their behalf. This commitment represents an important lesson for other unions attempting to organize new workplaces: a union organizing drive should not be abandoned if the union cannot get enough cards signed to prompt a vote, nor should it necessarily be abandoned following an unsuccessful vote. Indeed, operating a support centre for the targeted workplace can allow the union to offer advice to workers on their basic rights and serve as a positive, friendly environment for workers to socialize with other union members and their co-workers.

In addition to agricultural workers, there are other groups of employees who are prohibited from bargaining collectively. In the province of Ontario, this would include domestic workers, welfare recipients employed in workfare

programs, and school principals and vice-principals.² A legal challenge may afford collective bargaining rights to these workers; however, these exclusions may be found to be reasonable limits, and thus be found constitutional. In any event, a legal challenge on behalf of these workers will be a lengthy process and success is by no means guaranteed.

However, the majority of workers who are unable to bargain collectively do not face *prima facie* prohibitions on bargaining collectively, but face practical restrictions in which the law fails to promote collective bargaining to their industries. For example, the precarious nature of those employed in ‘non-standard’ work who are largely unorganized has been well documented (Carre, 2000; Vosko, 2006). This includes the growing service industry, including food service, hospitality and tourism, and retail. In these types of industries, the precarious and contract nature of employment, the small workplaces, hostile employers, a difficult certification procedure, and the hesitancy of unions themselves to organize these workers are all factors that explain the relatively low level of union density. An expanded vision of collective bargaining is needed to ensure that the right of these workers are protected and enhanced, but the Charter will be unable to provide a suitable remedy.

Despite the ruling in *Fraser* that workers have a constitutional right to bargain collectively, the decision will do precious little for those who want to organize and bargain collectively and are unable to practically do so, but face no legal prohibitions. Indeed, the only way for these workers to gain the right to bargain collectively is for an aggressive organizing strategy by the labour movement, and, ideally, the strengthening of labour law by the legislature, such as the re-introduction of card-check certification, and legislation to facilitate sectoral bargaining. In any event, the way forward for these workers does not go through the Charter or the legal system.

CONCLUSION

The battle to achieve collective bargaining rights for Ontario’s agricultural workers has been a long struggle. Indeed, it took until November 2008, a full thirteen years after the passage of the Agricultural Employees Protection Act, for the unconstitutional law to be struck down. With an upcoming appeal to the Supreme Court, agricultural workers face yet another delay in their quest for justice. The delay associated with the appeals process illustrates yet another downfall of a legalistic strategy and is illustrative of the lengthy time period that a legalistic strategy can take. This lengthy period represents, in the case of many other workers, the span of three or four contract terms. Although the Court has now ruled that collective bargaining is a constitutional right for Ontario’s agricultural workers, the delay has been beneficial for farm owners and disastrous for workers.

Indeed, the long-term denial of workplace democracy, the substantial amount of what could have been negotiated wages and benefits not paid to employees and years of legitimate grievances that could not be filed are clearly problematic for those employed in the agricultural industry that could have otherwise been organized. Workers who, in 2009, could be building off of their old contracts and working toward improved contracts will be sitting down at the bargaining table for the first time attempting to secure a first contract. It is, of course, highly unlikely that these newly signed contracts will be backdated to 1995. In short, the denial of bargaining rights since the passage of the AEPA is clearly problematic for workers. At least those employed in the agricultural industry can look ahead to the prospects of unionization and meaningful bargaining, that is, those whom the government deems able to bargaining under their future legislation.

NOTES

1. There has been some discrepancy around exactly how many agricultural workers will be affected by this ruling. The union and some media outlets claim the number to be approximately 100 000. See, for example, United Food and Commercial Workers- Ontario court ruling opens the gate to farm rulings, retrieved from: <http://www.ufcw.ca/Default.aspx?SectionId=af80f8cf-ddd2-4b12-9f41-641ea94d4fa4&LanguageId=1&ItemId=de67f14c-925d-4b7c-bf52-accb7a6c2ac8> Nov 27 2008 and Craig Pearson, "Court ruling allows farm worker unions," *Windsor Star*, Nov 17 2008. Other media outlets and analysts figure this number to be 32 000. See, for example, Tracey Tyler and Lesley Ciarcula Taylor, "Ontario farm workers can unionize," *Toronto Star*, 18 November 2008 and Lancaster House-Labour Law Online: Recent Decisions retrieved from: http://www.lancasterhouse.com/about/headlines_nov26.asp Nov 26 2008. However, in the same article, the *Star* reports there are 35 000 farming operations in Ontario, which suggests that there estimate of the ruling effecting only 32 000 is too low. The number of workers in the agricultural industry employed as temporary guest workers is approximately 16 500.
2. Another large group of workers who face legal restrictions on their ability to organize are those deemed as "self-employed." For a detailed understanding of the nature of their work and a critical reading of the laws that prevent them from organizing, see Cynthia J. Crawford et. al, *Self-Employed Workers Organize: Laws, Policy, and Unions* (Montréal and Kingston: McGill-Queen's University Press, 2005). These workers would also likely benefit from a legal expansion of collective bargaining.

REFERENCES

PRIMARY SOURCES

Agricultural Employees Protection Act, 2002, S.O. 2002, c. 16
 Dunmore v. Ontario (Attorney General), [2001] SCC 94, [2001] 3 S.C.R. 1016
 Fraser v. Ontario (Attorney General), [2008] ONCA 760.
 Health Services and Support- Facilities Subsector Bargaining Association v. British Columbia. [2007], 2 S.C.R. 391, 2007 SCC 27.
 R. v. Oakes, [1986] 1 S.C.R. 103
 Saskatchewan Government and General Employees Union. Internal Publication. [1985]

SECONDARY SOURCES

- Adams, Roy J. (2008). "From Statutory Right to Human Right: The Evolution and Current Status of Collective Bargaining." *Just Labour: A Canadian Journal of Work and Society*, vol. 12 (Spring 2008): 48-67.
- Adams, Roy J. (2006). *Labour Left Out: Canada's Failure to Protect and Promote Collective Bargaining as Human Right*. Ottawa: Canadian Centre for Policy Alternatives.
- Carre, Francoise, ed. (2000). *Non-Standard Work: The Nature and Challenges of Changing Employment Relationships*. Ithaca: Cornell University Press. "Court orders Ontario to give farm workers right to collective bargaining." Canadian Press, 17 November 2008.
- Crawford, Cynthia J. et. al. (2005). *Self-Employed Workers Organize: Laws, Policy, and Unions* Montréal and Kingston: McGill-Queen's University Press.
- Fudge, Derek. (2006). *Collective Bargaining in Canada: Human Right or Canadian Illusion? 2nd edition*. Halifax: Fernwood Publishing.
- Hall, Peter A. and Rosemary C.R. Taylor. (1996). "Political Science and the Three New Institutionalisms." *Political Studies*, XLIV: 936-57.
- Justicia for Migrant Workers (J4MW). Press Release, 21 November 2008. Available on-line at:
[http://www.justicia4migrantworkers.org/J\\$MWPRUnionize.pdf](http://www.justicia4migrantworkers.org/J$MWPRUnionize.pdf)
- Lancaster House- Labour Law On-line. (2008). Fraser v. Ontario (Attorney General). Available on-line at:
http://www.lancasterhouse.com/about/headlines_nov26.asp
- Mandel, Michael. (1994). *The Charter of Rights and the Legalization of Politics, Revised Edition*. Toronto: Thompson Educational Publishing, Inc., 1994.
- National Union of Public and General Employees (NUPGE) and United Food and Commercial Workers (UFCW). *Labour Rights*. Available on-line at:
<http://www.labourrights.ca/>
- Panitch, Leo and Donald Swartz. (2003). *From Consent to Coercion: The Assault on Trade Union Freedoms, third edition*. Aurora, Ont.: Garamond Press, 2003.
- Pearson, Craig. "Court ruling allows farm worker unions," Windsor Star, 17 Nov 2008.
- Savage, Larry. (2007). "Organized Labour and the Canadian Charter of Rights and Freedoms." *The Supreme Court Law Review*, second series vol. 36 (2007): 175-99.
- Smith, Charles. (2008). *Fairness and Balance? The Politics of Ontario's Labour Relations*

-
- Regime, 1949-1963*. PhD. Dissertation, Department of Political Science, York University.
- Thelen, Kathleen and Sven Steinmo. "Historical Institutionalism in comparative politics." In S. Steinmo, K. Thelen, and F. Longstreth (eds) (1992) *Structuring Politics: Historical Institutionalism in Comparative Analysis*. Cambridge: Cambridge University Press, 1992: 1-32.
- Tyler, Tracey and Lesley Ciarcula Taylor, "Ontario farm workers can unionize." *Toronto Star*, 18 Nov 2008.
- United Food and Commercial Workers (UFCW). "Human rights violation of Ontario agworkers continues." <http://www.ufcw.ca/Default.aspx?SectionId=af80f8cf-ddd2-4b12-9f41-641ea94d4fa4&LanguageId=1&ItemId=2c0c4375-8986-4418-a9d8-ba9f6af3e76e> 2 April 2009.
- United Food and Commercial Workers (UFCW). "McGuinty no better than Harris Tories says UFCW Canada President." Available online at: http://www.ufcw.ca/Default.aspx?SectionId=af80f8cf-ddd2-4b12-9f41641ea_94d4fa4&LanguageId=1&ItemId=51eb8a4a-48bc-4103-9534-89e24a2fb5a6 14 January 2009.
- United Food and Commercial Workers (UFCW). "Ontario court ruling opens the gate to farm rulings." Available on-line at: http://www.ufcw.ca/Default.aspx?SectionId=af80f8cf-ddd2-4b12-9f41641ea94d4fa4&LanguageId=1&ItemId=de67f14c_-925d-4b7c-bf52-accb7a6c2ac8 17 Nov 2008.
- Urquhart, Ian. "Liberals feel labour pains as farm workers dig in." *Toronto Star* (27 June 2007) A18.
- Vokso, Leah, (ed) (2006). *Precairous Employment: Understanding Labour Market Insecurity in Canada*. Montréal and Kingston: McGill-Queen's University Press, 2006.
- Weiler, Joseph M. "The Regulation of Picketing Under the Charter." In Joseph M. Weiler and Robin M. Elliot (eds). *Litigating the Values of the Nation: The Charter of Rights and Freedoms*, eds. Toronto: Carswell, 1986