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## Protecting the Rights of Migrant Farmworkers in Quebec: To what Extent can Unionization Overcome the Effects of Precarious Immigration Status?

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## **Protecting the Rights of Migrant Farmworkers in Quebec: To what Extent can Unionization Overcome the Effects of Precarious Immigration Status?**

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### **Abstract**

Very little literature in Canada offers in-depth examination of efforts to unionize migrant farmworkers. Drawing on an empirical case study of farmworker unionization efforts in Quebec, this article makes the argument that, if the monumental efforts of the UFCW are unable to overcome the entrenched anti-union positions of consulates and employers, it is principally due to farmworkers' precarious immigration status. We argue that both the willingness of the Quebec state to create policy excluding farmworkers from collective bargaining rights and farmworkers' own doubtful evaluation of the relative costs and benefits of attempting to unionize are innately tied to an immigration system that places migrant farmworkers in a situation of "conditionality of presence and access" (Goldring & Landolt, 2013, p.3). We begin this article with an overview of the precarious and dangerous work conditions that would lead advocates to favour unionization, before turning

to a literature review on the perspectives of different actors on farmworker unionization across Canada. Within Quebec (and in other provinces), the UFCW made exceptional efforts to organize this workforce, and here we present their struggle to achieve the right to unionize within the province. Ultimately, these unionization efforts failed, but what are their future prospects in Quebec? How do different Quebec actors—employers, consulates, advocates, and workers themselves—view unionization? We present original data from interviews before turning to a final discussion about the relative contributions and shortcomings of the potential unionization of migrant workers. While unionization can offer significant protections, we must also anticipate and address its shortcomings given the precarious immigration status of so many agricultural workers and invest in alternative forms of collective action.

Keywords: migrant workers, farmworkers, unionization, Quebec, immigration policy

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## 1.0 Introduction

On March 11, 2013, the Quebec Superior Court rendered a historic decision: seasonal agricultural workers would have the same rights to unionization as all other workers in Quebec. After nearly ten years of outreach and organizing by the United Food and Commercial Workers (UFCW), Local 501—and seven years after the first submissions for accreditation to represent seasonal workers—Quebec Superior Court declared that the exclusion of agricultural workers from the right to unionization was unconstitutional. When the Parti-Québécois came to power later in the spring of 2013, they passed up the chance to appeal the decision and instead committed to revising the current law within the year allotted. Among workers and their advocates, celebrations ensued.

However, this victory was short-lived for the agricultural workforce. To workers' and advocates' dismay, when the Liberal Party returned to power in 2014, the government chose to, once again, treat seasonal agricultural workers as exceptional. Rather than simply removing seasonal agricultural workers' exclusion from the regular unionization regime, the Liberals proposed the widely criticized Law 8 in June 2014. By October of the same year, seasonal agricultural workers were denied the true right to unionize. Today in Quebec—echoing the situation in Ontario—workers have the right to present their concerns to their employer, and the employer has an obligation to listen—a far cry from collective bargaining.

Very little literature in Canada offers in-depth examination of the efforts to unionize migrant farmworkers. Drawing on an empirical case study of farmworker unionization efforts in Quebec, this article makes the argument that if the monumental efforts of the UFCW were unable to overcome the entrenched anti-union positions of consulates and employers, it is principally due to farmworkers' precarious immigration status. We argue that both the

willingness of the Quebec state to create policy excluding farmworkers from collective bargaining rights and farmworkers' own doubtful evaluation of the relative costs and benefits of attempting to unionize are innately tied to an immigration system that places migrant farmworkers in a situation of "conditionality of presence and access" (Goldring & Landolt, 2013, p.3). We begin with an overview of the precarious and dangerous work conditions that would lead advocates to favour unionization, before presenting a literature review on the perspectives of different actors on farmworker unionization across Canada. Within Quebec (and in parallel with efforts made in other provinces), the UFCW made exceptional efforts to organize this workforce, and here we present their varied tactics in the struggle to achieve the right to unionize within the province. We already know how that turned out, but what are the future prospects in Quebec? How do different actors—employers, consulates, advocates, and workers themselves—view unionization? We include original data from interviews with these actors and conclude with a discussion on the relative contributions and shortcomings of the potential unionization of migrant workers. While unionization can offer significant protections, we must also anticipate its shortcomings given the precarious immigration status of so many agricultural workers and invest in alternative forms of collective action.

## **2.0 Theoretical Framework: Precarious Work, Precarious Status**

At the core of our reflection here is the impact of precarious status—as a social and legal construct—on the possibilities that are feasibly available to migrant farmworkers. Empirically based studies of the union experiences of farmworkers in Canada are rare (e.g., Vosko, 2018; Basok & López-Sala, 2016). While others have offered insightful legal and policy analyses (Russo, 2011; Rolland, 2017; Soussi, 2019), we offer an empirical case study of the particular Quebec experience of migrant farmworkers. What is it that makes Quebec legislators feel justified in treating farmworkers differently from all other workers, including other seasonal workers? While there has long been a feeling of agricultural exceptionalism in Canada (Mimeault & Simard, 1999; Gabriel & Macdonald, 2014; Hanley, Stiegman, Speirs & Lavigne, 2018), the fact that this sector today has a heavy representation of racialized migrant workers likely plays a role in maintaining this discriminatory treatment (Perry, 2012). While Law 8 does not mention immigration status, it cannot be denied that it affects temporary foreign workers more than any other group (Soussi, 2019). The majority of seasonal agricultural workers in Quebec are either from Mexico (on the Seasonal Agricultural Workers Program 'SAWP') or Guatemala (as 'Low-Wage' Temporary Foreign Workers 'TFW' in the Agricultural Stream) (Rolland, 2017).

Quebec society has a romanticized notion of the family farm as a small enterprise, handed down through the generations, and run by hard-working people who have difficulty making ends meet. In reality, today's surviving family farms are more likely to be large enterprises, integrated into a network of industrial farms (Mimeault & Simard, 1999; Hanley et al., 2018; Rolland,

2017). There may well be a family heading up these enterprises, a fact used to dissuade workers from filing complaints or trying to organize. The idea of unionizing under this scenario can seem like an affront to what is presented as a benevolent relationship; farmworkers are often told that they are “like one of the family”. Social relations may well develop, but the employer-employee relationship remains (Reid-Musson, 2017; Pantaleón & Castracani, 2017). In the case of migrant workers, it is well established that the employer may give or deny access to basic resources, can order repatriation and decides whether or not to recall workers for the next season (McQueen 2006; Basok, 2004; Basok & López-Sala, 2016; Gibb, 2006; Hennebry & Preibisch, 2012; Preibisch, 2010; Verduzco & Lozano, 2003; Rolland, 2017; Hanley et al., 2018). The employer undoubtedly holds the balance of power.

The situation of agricultural workers has received much attention from the media, researchers, and advocacy groups in the past 15 years. In the mid-2000s, there was a real awakening among urban Quebeckers about the presence of thousands of migrant workers in the agricultural fields surrounding our cities. Their living and working conditions have been recognized as difficult, but it was the UFCW Local 501 who envisioned using unionization as a tool in defending farmworker rights; farmworkers also represent thousands of potential members at a time when union membership, in general, has been declining. That being said, there were a number of factors related to precarious work and precarious status, which rendered workers both apt and simultaneously reluctant to unionize. Specifically, the UFCW Local 501 decided to pursue TFW unionization not only when the law proscribed their right to unionize, but in a context in which the nature of agricultural work itself, the structure of these migration programs, and the socioeconomic profile of the workers made this an uphill battle.

### **2.1 Precarious Work**

The seasonal nature of farm work in Quebec, its physical difficulty and long hours, its exclusion from overtime pay, the implicit danger of the industry (Hartling, Pickett, & Brison, 1998; Cook, 2004; Basok, 2000; Verma, 2003; International Labour Organization [ILO], 2011; Wells, McLaughlin, Lyn, & Díaz Mendiburo, 2014), its geographic and social isolation, the myth of the family farm and, finally, the stratification of this workforce along lines of race, gender and national origin (Carpentier, 2012; Pantaleón & Castracani, 2017) all contribute to a power imbalance. In this context of precarious work, unionization—even if seasonal workers were not excluded—represents a serious challenge.

### **2.2 Precarious Status**

The difficult nature of agricultural work intersects with the structural constraints of the TFWP’s precarious status to reinforce the lack of power held by workers in relation to their employer. In addition, a key element for the consolidation of gains made in agricultural production (57% increase in

SAWP-related agricultural production over 15 years (Weston, 2007)) is a reliable source of workers who are willing to accept the difficult work conditions offered in this sector (Gravel, Bernstein, Hanley, Villanueva, & Crespo-Villareal, 2014; Preibisch, 2010; Rolland, 2017). Big farms require access to a ‘just-in-time’ workforce, and the SAWP and TFWP respond to this demand (Brem, 2006; Weston, 2007; Wells et al., 2014).

Those who migrate under the SAWP and the agricultural stream of the TFWP are excessively dependent on their employer not only for their job security, but also for their essential needs (housing, food, transport, access to medical care). The elements of the immigration program that pose challenges to unionization include: a temporary resident visa tied to a single employer; the obligation to live on the employer’s premises; repatriation in cases of illness or contract termination; lack of job security from one season to the next; exclusion from permanent residency; and competition between workers on the two programs for contracts.

Furthermore, it is already well documented that agricultural workers’ precarious immigration status places them under significant economic and immigration risk if they decide to defend their labour rights, whether directly with their employers or via government agencies (Goldring, Berinstein, & Bernhard, 2009; Anderson, 2010). Research shows that precarious immigration status increases vulnerability to abuse (economic, sexual, physical) and diminishes the capacity to control one’s environment at work and at home (Beatson, Hanley & Ricard-Guay, 2017; Perry, 2018). Migrant workers’ structural position within the economy, therefore, puts them not only at great risk of violation of their labour rights, but also of losing their jobs if they resist (Perry, 2012; Hanley et al. 2012; Baines & Sharma, 2002).

In summary, the agricultural TFWP and SAWP expose workers to poor work conditions, creates dependency on their employers, and offer little recourse for violation of their rights. The choice to maintain these workers under temporary status persists, despite the fact that demand for their labour is permanent (workers with 20 years of seasonal experience are not hard to find) and even increasing (Consejería agroalimentaria de México en Canadá, 2008). In a context of globalization, the temporary nature of the TFWP, where workers are dependent on their employer for their legal status, creates a serious power inequality (Verma, 2003; Rolland, 2017) and constitutes an unfree labour regime (Choudry & Smith, 2016; Malhaire, 2017).

### **3.0 Previous Studies on the Unionization of Migrant Farmworkers in Canada**

Across Canada, different constraints hamper the unionization of farmworkers. As of 2016, Ontario and Quebec are the only two provinces that restrict collective bargaining rights among farmworkers—Alberta’s legislature has permitted farmworker unionization since December 2015. Regardless of the different legislative regimes operating across Canada, it is important to explore the perspectives of key stakeholders regarding

unionization specifically with respect to migrant farmworkers, as these views may have implications not only for the formal realization of collective bargaining rights among this precarious group in Quebec, but also their effective exercise.

### **3.1 Migrant Farmworkers**

Apart from the precarious work and status issues discussed in the previous section, migrant farmworkers generally have a socioeconomic profile that hampers unionization. These workers face barriers and hold preoccupations that are not shared with traditional union members. Evidently, one of the primary challenges is the linguistic and cultural difference. However, the UFCW has, from the beginning of its campaign, overcome this challenge by hiring organizers who fluently speak Spanish and, oftentimes, are Latinx themselves.

The economic preoccupations of migrant workers are also distinct (Cook, 2004; Verduzco & Lozano, 2003; Villanueva, Crespo-Villareal, Bernstein, Hanley, Gravel, & Ostiguy, 2015). These workers often become indebted in order to obtain their Canadian employment, using debt to finance medical exams, traveling within their country of origin for the worker selection process, airplane tickets, and, for some individuals, bribes. This ‘investment’ seems to be worth the cost—as their families rely on their salary (Preibisch, 2003; Gesualdi-Fecteau, 2014)—but, once in Canada, risking their salary to try to unionize can be too risky (Basok, 2004; Grez, 2005; Hanley et al., 2018). Altogether, these factors can render unionization to be quite arduous.

### **3.2 Consulates**

Consulates have conflicting roles with respect to the migrant workers leaving their countries to work in Canada. The SAWP is predicated upon a bilateral agreement between Canada and the sending country, suggesting that government officials, including those stationed at consulates, further the interests of their workers in this program. In contrast, the Agricultural Stream of the TFWP is not structured around such agreements, depriving these workers of the protections assumed to be operative for the SAWP, such as a governmental representation of their interests (Gabriel & Macdonald, 2014; Preibisch, 2010). One would imagine, then, that consular officials mandated with protecting the interests of workers in the SAWP would not be hostile to their unionization. Paradoxically, consular officials in British Columbia and Manitoba, for example, have expressed animosity towards such efforts (Russo, 2011; Vosko, 2016).

Though unionization may actualize the rights and protections of individual workers, these officials are cognizant of the ramifications collective bargaining may have for the sending country due to the structure of the SAWP, as the countries are implicitly put in competition to provide the most enticing and submissive workforce for employers (Preibisch, 2010). Consulates seek to avoid this loss in job placements because of the attendant

economic implications for the sending country, as the remittances from these workers to their families are a great boon to the economy (Bridi, 2013; Carvajal Gutierrez & Johnson, 2016). In light of these considerations, consulates in British Columbia and Manitoba have been found to have engaged in unscrupulous practices to dissuade TFW from unionizing, prevented unionized workers from returning to Canada, or dismantled unions altogether by pressuring the workers to decertify (Russo, 2011; Vosko, 2016). In sum, the conflict of interest inherent to the role of consular officials, in representing these workers but also maintaining the remittances to their country, engender hostility to unions (Hennebry & Preibisch, 2012; Vosko, 2016).

### **3.3 Advocates**

Advocates have often carved out a separate sphere for pursuing the interest of temporary migrant workers in agriculture in contrast to the traditional union organization. Justicia for Migrant Workers (J4MW), for example, is a volunteer-based collective composed of activists that split from UFCW's Agricultural Worker Support Center in Leamington (Ontario) in 2002, because they perceived the union's efforts as too hierarchical and failing to centralize migrant leadership in initiatives (Barnes, 2013). Another example, the Immigrant Workers' Center in Montreal, was founded in 2000 by Filipino-Canadian union organizers, activists, and academic allies, partly in response to the barriers experienced by some of its founders in organizing union drives at the workplace. Both organizations sought to prioritize migrant worker's control over their efforts, as opposed to the professionalization of collective bargaining efforts after workers have been unionized. In addressing this limitation, the Centre's emphasis on migrant-led initiatives results in modes of organizing that are responsive to workers outside of union structures, such as ethnic- or race-specific organizing, direct action, and lobbying strategies. The centre also supports workers in receiving adequate representation from their respective unions (Choudry & Thomas, 2013; Hanley & Shragge, 2009). Despite the perceived shortcomings of unions, community advocates continue to collaborate with unions to meet the needs of workers, recognizing them as critical resources for these individuals who lack an array of protections (Choudry & Thomas, 2013; Malhaire, Castracani and Hanley 2017).

### **3.4 Employer**

Though it may be incorrect to assert that every employer is hostile to unionization among their seasonal farmworkers, the legal struggles in various provinces to attain collective bargaining rights for migrant workers are indicative of the industry's pervasive bias against such efforts. In British Columbia (BC), for example, the UFCW managed to unionize SAWP workers at Greenway Farms in 2008. In response, the employer, with the support of the Western Agricultural Labor Initiative and the BC Agricultural Council, sought to decertify the union, claiming that the provincial Labor



Relations Code, which empowered workers to unionize, did not apply to the federal SAWP (Russo, 2011). Notably, the support of the BC Agricultural Council, representing approximately 30 farm sector associations across the province, illustrates that this animosity to unionization is not constrained to just a few employers (BC Agriculture Council, n.d.).

In Quebec, this distaste for unions has been institutionalized in a different manner. When a local union sought certification for seasonal agricultural workers (SAW), they simultaneously challenged the constitutionality of a provision in the provincial labor code that essentially excluded seasonal farmworkers from unionizing. According to the Attorney General of Quebec, who intervened in the case, the union had to demonstrate that they could not have reached an agreement with the employer in order for the issue to be heard by the CRT (Labour Relations Board). Finally, the CRT found that making this determination was unnecessary, given the employer's objection to these efforts and that he had contributed to a fund organized by FERME to oppose such attempts. The industry's widespread bias against such efforts is highlighted by the fact that FERME, a private organization composed of employers in Quebec to process requests for foreign workers, have pooled funds to counter unionization efforts (Rolland, 2017).

Similarly, the Ontario Federation of Agriculture, a farmer-led organization representing the interests of 37,000 farm members, intervened in *Ontario v. Fraser* (2011) to counter a constitutional challenge to the Agricultural Employees Protection Act (2002), which precludes agricultural workers from unionizing under the Labour Relations Code; instead, it established a deficient organizational process that failed to ensure good faith bargaining on the part of the employer, among a number of other issues (Ontario Federation of Agriculture, n.d.; *Ontario v. Fraser*, 2011).

The industry's efforts to curtail the collective bargaining rights of agricultural workers across Canada underscore the disdain employers have for unions. Beyond the legal challenges to permit unionization among these workers, organizers and scholars have also documented anti-union biases through the severe punitive measures employers apply to their workers if they become associated with collective bargaining efforts. Greenway Farms workers voted to decertify their union the day they obtained their right to unionize, as their employer had only recalled 12 of the 35 workers who were part of such efforts. In another instance, Floralia Plant Growers fired and repatriated 14 SAW before a certification vote (Russo, 2011). This exemplifies the critical flaw of the SAWP: the discretion it affords to employers in dismissing and repatriating workers is often used against workers implicated in collective bargaining efforts (Choudry & Thomas, 2013; Gabriel & Macdonald, 2011; Vosko, 2018).

Scholars have neglected to elucidate the direct perceptions migrant workers have of unions; however, workers' actions and those of other stakeholders shed some light on their underlying views. To remedy the inherent flaws of the TFWP, certain workers in BC perceived collective bargaining power as a

means to prevent unjust terminations and repatriations and ameliorate the recall process in order to provide greater assurance of future employment (Vosko, 2018). Thus, some workers viewed unions positively, as resources that could help give force to their rights and protections. The threat of blacklisting by consular officials, however, may induce apprehensiveness about seeking the aid of unions (Russo, 2011; Vosko, 2016). Further, the prospect of not being recalled for subsequent seasons or being terminated for challenging employment conditions may deter workers from contacting unions. Therefore, it is possible that some workers may be averse to unions, given the risk of job loss associated with them.

#### **4.0 Context: The UFCW’s Struggle for Agricultural Workers’ right to Unionization**

It is important to document the long and arduous struggle of the UFCW to unionize farmworkers in Quebec. Here we present an overview of the UFCW’s Quebec campaign to unionize farmworkers that is drawn from interviews with organizers and farmworkers as well as UFCW reports and other sources of grey literature. We wish to profile the monumental UFCW investment of time, money, and resources towards this effort. UFCW Local 501 is associated with the national movement of UFCWs, a union that has long defended the rights of agricultural workers, whether they are migrants or not, and whether they are UFCW members or not. Given the difficulties enumerated above, the UFCW Local 501 has adopted several tactics to unionize agricultural workers and promote their rights: support centers, collective lobbying, direct unionization, and the contestation of the law that denies seasonal agricultural workers from unionizing. The tactics employed by the UFCWs are commendable, yet there have also been difficulties for the group, which will be discussed at the end of this section.

##### **4.1 Support Centers for Workers**

Since 1992, the UFCW has operated support centers for agricultural workers within Canadian regions that receive many migrant workers. In Quebec, UFCW’s Patricia Perez, a Mexican activist, led the creation of the Support Coalition for workers and agricultural workers, and in 2004, the Quebec Support Center. In the beginning, the ‘Center’ was mobile in a recreational vehicle, as they could not find someone who was willing to rent them a locale in the towns close to Montreal, which have the province’s highest concentration of agricultural workers. Eventually, the UFCW managed to secure rented space in both St-Rémi and St-Eustache to operate the support centers.

Given the legal barriers to unionizing seasonal workers, as well as the trepidation of the workers to have links with a union, the UFCWs sought to win the workers’ trust through community services: popular education on the rights to work and on immigration; supporting parental insurance requests or retirement pensions; accompaniment for medical visits; mediation with

employers. In the early years, employers from the region of St-Rémi saw the Center as a real threat, and the organizers had problems just parking their recreational vehicle during the workers' grocery nights in the city. During this era, the workers believed that they were taking a risk by being seen speaking with an organizer. After some time, however, the 'danger' of the UFCWs seemed to diminish for the workers and the employers—though far from viewing the union as harmless. In their heyday, from about 2006-2014, the two Support Centers were usually open twice a week (shopping day and day off) during the high migration season (approximately May to October), staffed by two to four employees. The organizers also visited workers who were having problems, responded to phone queries, and intervened in emergency cases (e.g., sickness, work accident, conflict, dismissal). The issues identified during this groundwork served to fuel lobbying campaigns and to target worker groups who would be interested in unionization.

#### ***4.2 Lobbying for Social Policy***

The creation of the Quebec Support Center was supported by the existence of the CATTA (Coalition d'appui aux travailleurs et travailleuses agricoles) and the UFCW Local 501 has continued to nurture relationships with community organizations ever since. In its first years, the Coalition brought together groups supportive of agricultural workers in order to advocate around TFWP-related policies and labour rights. Unfortunately, however, the Coalition did not last long after the premature death of its founder, Patricia Pérez, in 2007. Over the years and depending upon the orientation of the staff, the UFCW also collaborated with Solidarity Across Borders, the Immigrant Workers Centre (IWC), Mexicans United for Regularization (MUR), etc.

At a more institutional level, the UFCW has had a long and positive collaboration with the pastoral services of the Catholic churches in agricultural regions. The UFCW also continues to work with other unions involved in agricultural businesses, in greenhouses, and in warehouses. As a member of the FDNS (Front de défense des non-syndiqués) working group on migrant workers, the UFCW collaborated with FDNS members, including representatives of major union federations (FTQ, CSN, and CSQ), on campaigns regarding the shortcomings of Minimal Labour Standards for agricultural workers.

Finally, the UFCW connected with various government agencies. In defending workers' rights, the union focused on prevention and education. Their engagement with three key Commissions for migrant workers in Quebec—the Labour Standards Commission, the Workplace Health and Safety Commission (both currently merged into the CNESST) and Quebec Human Rights Commission—contributed to preventive interventions by these institutions, such as flyers and a video on worker rights in Spanish and proactive workplace inspections. The Human Rights Commission eventually published an opinion on the numerous forms of discrimination inherent in the

TFWP (CDPDJ, 2012). In terms of agricultural workers, the points raised in its report are in parallel with those identified by the UFCW.

#### ***4.2 Direct Unionization***

Evidently, as a union, one of the UFCW 501's priorities was to increase its membership. Knowing that broaching the topic of unionization too quickly could dissuade migrant workers from mobilizing, organizers first built connections with workers through the Support Center. Many workers knew that the UFCW organizers worked for a union, however, and from time to time, the migrants seemed open to having a discussion about unions. Whether it was because the workers themselves had an activist experience in their country of origin or, more likely, that the problems experienced on the farm left them with few options, several workers took the step to sign union cards and apply for certification. The process of unionizing must be done with even more discretion than simply defending rights. Namely, the UFCWs and the workers have several stories of unionized workers who were unjustly fired or simply not called back the following year.

The first three pioneering farms requested unionization in 2007. One of them was accredited, but the other two were refused because there were not at least three employees working on a year-round basis. This refusal put several efforts for unionization on thin ice, as workers did not want to take risks with so little chance that their request would be recognized. The UFCWs expected this negative response from the Labor Relations Board but making the requests served as a basis on which they could contest the constitutionality of the law.

#### ***4.3 Contesting the Constitutionality of Excluding Workers from Unionizing***

All of these actions led to the contestation of the law. Following the accreditation rejection of the two workplaces, the UFCW sought to advocate for the right to unionize all seasonal agricultural workers in court. The decision to pursue this tactic could not have been taken lightly. Not only would the case be extremely costly for the UFCW, but a victory would be necessary to pursue their objective of mobilizing workers, an objective in which they had already been investing for ten years. For the workers implicated in the case, pursuing the contestation represented a painful prolongation of an arduous conflict with their employer. Thus, several workers used their contacts elsewhere to exit this precarious situation and obtained employment on other farms.

The eventual devastating legal resolution to the UFCW's long battle for the right to unionize in Quebec, via Law 8, led to the closing of Quebec's two Support Centres. The impossibility of unionizing workers has put a damper on the UFCW's willingness to continue investing resources in outreach and support efforts.

#### **4.4 New Prospects of Attaining Collective Bargaining Rights in Quebec**

Though the Superior Court of Quebec upheld the CRT's decision that the provincial labor code's provisions excluding SAW from collective bargaining were invalid, it essentially invited the provincial legislature to pass an analogous bill to Ontario's Agricultural Employees Protection Act (AEPA), which had survived the Supreme Court's scrutiny in *Ontario v. Fraser* (2011). Notably, this decision affirmed the province's ability to establish a less effective collective bargaining regime for farmworkers, clarifying that the freedom of association enshrined in the Charter does not guarantee a right to a specific model of collective bargaining, even if the right itself was protected. Further, to establish that a law infringed the right to freedom of association in the context of collective bargaining, Fraser required a determination that the impugned provisions make impossible the ability to collectively achieve workplace goals—a particularly onerous burden for workers to meet. Accepting the invitation of the Superior Court, Quebec's legislature enacted new pieces of legislation exempting seasonal farmworkers from the labor code by relegating them to a separate and unequal bargaining regime that comported with Fraser (Rolland, 2017).

Rolland (2017) argues, however, that two decisions from the Supreme Court in 2015 suggest that migrant farmworkers may be able to secure more rights. In *Saskatchewan Federation of Labour v. Saskatchewan*, the majority held there was a constitutional right to strike. Thus, the lack of protections for striking in the collective bargaining regime operative for farmworkers in Quebec is likely unconstitutional. More promising, in *Mounted Police Association of Ontario (MPAO) v. Canada (Attorney General)*, the Supreme Court eased the burden for demonstrating an infringement of the right to freedom of association, requiring only that laws or actions be shown to substantially interfere with the collective negotiation process, not the impossibility of such efforts. Further, the Court clarified the need for contextual analysis that takes into consideration the industry culture and type of workplace in determining whether the right to meaningful collective bargaining has been infringed. In light of these changes, it is possible that temporary foreign farmworkers could successfully argue that the new regime substantially interferes with their collective bargaining rights, a finding that becomes even more likely given the documented hostility of employers to such efforts and the precariousness of these workers (Rolland, 2017).

#### **5.0 Case study: Exploring the Prospects for Unionizing Farmworkers in Quebec**

In the context of the grim unionizing context in Quebec, many workers and worker advocates grew concerned about the degree to which unionization was a realistic answer to the serious challenges faced by migrant farmworkers. We know that unions tend to improve working and employment conditions and make the difference between precarious work and decent jobs (Yerochewski, 2014). In a legal context where a category of

workers are barred from unionizing—and a ten-year-long, multi-million dollar effort leading to legal success still did not result in effective access to unionization—the question begs to be asked whether it is either ethical or strategic to continue to pursue this avenue, given the heavy risk incurred by union workers. It seemed important to take stock of the perspectives of key actors on the ground in Quebec: consulates, advocates, employers, and, of course, workers. An analysis of their positions can illuminate strategic possibilities for the furthering of worker rights.

In order to accomplish this objective, we undertook a secondary analysis of qualitative interview data collected in the context of two research projects with the rights of migrant farmworkers at their core. In the first project (SSHRC-funded, Gravel (P.I.), Bernstein, Hanley & Villanueva), employers, advocates, and consulates were recruited for semi-structured interviews. They were conducted in French at the participant's place of work. In the second project (FRQSC-funded, Jill Hanley (P.I.)), workers were recruited through social networks, posters in public places frequented by migrant workers, and via referrals from community organizations. The semi-structured interviews took place at the location of the worker's choice and were conducted in English, French, or Spanish. All interviews were transcribed verbatim; Spanish interviews were translated into English or French.

While neither of these projects had unionization as one of their research subjects, both were concerned with worker rights and the relationship between workers, employers, advocates, and consulates. We reread the interviews and coded for discussion of unions and unionization. In total, we were able to identify 40 interviews with employers, advocates and consulates, and ten interviews with workers that discussed unions. We then thematically analyzed this subsample of data to produce the analysis shared in this article.

## **6.0 Findings: Difficulties on the Ground**

In coding and analyzing the interviews, several viewpoints from various stakeholders were identified. The following presents perspectives regarding unionization from consulates, employers, workers, and other actors involved in Quebec labor and farm work. While respondents in this study often shared perspectives that will come as a little surprise to those familiar with this field, it is important to document them. Given the relative power of the different actors, we found it helpful here to consider their divergent perspectives, in order to (in the following section) analyse the challenges that face farmworkers seeking to unionize and the potential risks and benefits of doing so.

### **6.1 Consulate Perspectives**

In interviews, a representative of the Guatemalan Consulate maintained that unions and non-profit organizations (NGOs) tend to have biased views that migrant workers from Guatemala are exploited in the agricultural sector. The Consulate expressed a desire to avoid engaging with NGOs and unions because they may tarnish the relationship that the Guatemalan consulate has

with the TFWP. In addition, the Consulate remarked that unionization simply creates barriers between the worker and the employer. Likewise, the Consulate maintained that unions are not needed as conditions for Guatemalan workers would improve eventually once farm officials are satisfied with the workers' production.

According to a representative of the Mexican Consulate, there were no Mexican workers that are unionized in the agricultural industry, a view that was factually incorrect. According to the Mexican Consulate representative, there is a fear among Mexican workers that if they decided to unionize, they would not be allowed to work in SAWP again. This representative did not express any efforts to reassure workers that this was not the case. In addition, the Mexican Consulate asserted that they trust Canadian officials to manage union issues that may impact Mexican workers, explaining why they do not get involved.

## **6.2 Employer Perspectives**

Farm employers' views regarding the unionization of farmworkers were varied. One group focused on positive work conditions and/or predetermined contracts that would negate the interest of unionization, while another asserted that unionization itself would have negative effects for workers and for farm production and profitability. Several employers believed that unionizing their workers is unnecessary because their workers are treated well on their farm and never complained against their management style. One employer asserted that he and his colleagues provide legal assistance to their workers. For example, when a single mother worker had legal issues, he offered his lawyer to assist her for free. He also maintained that he provides good salaries to his workers and that he also funds their hockey group. According to this employer, workers enjoy leisure activities outside of work (Employer 1).

Similarly, an employer noted that when given the opportunity to choose another housing setting, his workers expressed a desire to remain on the farm site, demonstrating a sense of loyalty to the farm itself. The manager also noted that the Vice-President of Guatemala and the Consulate came to his farm, as they heard that farmworkers were treated well (Employer 2). Likewise, another employer asserted that workers often do not realize how privileged they are to be working in Canada. There was a sentiment that workers regularly deal with robberies in their home countries, and this is not the case in Quebec. In such a way, the manager maintains that workers have nothing to complain about, as they are earning money through legal means and can securely handle this money in Quebec (Employer 3).

Several farm employers asserted that joining unions is not beneficial for workers. Specifically, employers remarked that unions require that the workers give up some of their salary to pay for union fees, which many of their workers are not willing to do. An employer maintained that though he is not allowed to oppose unions, he simply has to mention to workers that

unions would reduce their salaries in order to dissuade them from joining the union: “We are not allowed to talk against unions, we simply say that they reduce [workers’] salaries, and that’s enough” (Employer 4). This employer questioned the role of unions, other than to collect financial contributions from the workers themselves: “That they would be paid \$5 to \$15 less per week, depending on the union. Why? To protect you? To protect you from what? I don’t know” (Employer 4).

Some employers commented on the futility of unions given that most migrant farmworker contracts are negotiated between the worker’s country of origin and the government of Canada. Therefore, one might assume that there is little that workers can do to alter these contracts once they begin working at the farm. One employer commented that the workers’ salaries are set prior to their arrival in Quebec, making him wonder what impact unions can really have: “I would say that the agency has already told us what to do; the salary and everything else was established in advance. If a union came, what would their impact be?” (Employer 5). Another employer expressed that unions are generally not interested in working with TFWs, considering that the workers have two-year work contracts. Thus, unions would lose collective numbers and, with it their negotiating powers, following the end of TFW work contracts (Employer 6).

A number of employers remarked that unions could negatively impact their farm’s production and economic situation. One employer maintained that they had to spend over \$100,000 in legal fees to prevent their workers from unionizing. The employer’s legal arguments referred to article 21.5 of the Quebec Labor Code, which states that a farm union must be comprised of at least three full-time, year-round workers, which excludes most migrant workers. The employer maintained that workers should speak to him directly instead of relying on court-related means. He commented that his workers did not seem discontent with their work conditions but were plotting against him nonetheless: “In front of the employers, everything is good, and behind their back, they work against the hand that has been feeding them for years” (Employer 7).

Similarly, another employer expressed that he would end the TFW hiring at his farm if unionization occurred, because he would not be able to handle the anticipated associated costs (Employer 8). For several employers, these costs could reduce their farms’ competitive profit edge: “For sure, for us, if there are expenses, we will stop. We must be competitive” (Employer 9). The same employer noted that unions can stall agricultural production, creating undesirable results for both his workers and for himself: “We want the project to advance and they want to make hours, it is very difficult. I have nothing against the union, but it can complicate things.”

### **6.3 Worker Perspectives**

Regarding their work conditions, workers generally felt that if they complained to their superiors, they would not be hired the following year.



Similarly, there was wariness among returning farmworkers to warn newly arrived workers about the work conditions, because farm officials may overhear these comments and decide to exclude the discloser from the program as a result (Worker 9). Several workers asserted that they are not permitted to complain about the working conditions on their farm: “What they want is that you come here to work, don’t say anything, work like a slave, take your money, and leave. Don’t get sick. Don’t cry. Don’t have feelings.” (Worker 8); “You need to bear the pain just two years, then get out. That’s usually what their advice is.” (Worker 9).

Workers commented on how aspects of the TFWs program impeded unionization. For instance, one worker noted that it is difficult to form a union with fellow TFWs because they must leave after a temporary period of time, and unions require several years to develop: “(...) you can’t build up something because they (the workers) ’re just coming and going. You can’t build something. But it’s normal, they don’t care about it” (Worker 5). Another worker expressed that the International Organization for Migration told him and his colleagues upon arriving in Canada that it is prohibited for them to join a farmworkers union and provided them a document reiterating the same message (Worker 6).

Similarly, there were consequences for workers who engaged with the support center near the farm. One worker expressed that if farm officials saw a worker entering the center, then that worker would not be called back to the farm and prevented from participating in the program in the future: “If they saw you near the centre, you had a foot out of the company.” (Worker 7).

In addition, a worker commented that their contracts are not respected. Before arriving to Canada, they signed a contract stipulating that they would receive health insurance, which the workers paid for themselves, and that they would have a work schedule that would be applied. However, there was a lack of follow-through on these measures once they were working on the farm: “Don’t really follow schedules, don’t respect them, don’t have access to insurance but you pay for it.”

Besides commenting on farm work conditions and the TFW program, workers disclosed experiences dealing with their consulate. For instance, one worker remarked that Guatemalan officials prohibited workers from unionizing. However, the worker asserted that they were unionized through the agricultural company itself, Savoura. Confusion surrounding unions thus emerged for this worker (Worker 1). Moreover, he remarked that there was a lack of transparency regarding unions from the Guatemalan Consulate: “And so, you ask questions...I asked the Consul through an email, and he didn’t respond...he didn’t even try to respond” (Worker 1). Another worker expressed that the Consulate only cares about the interest of the employer, not that of the Guatemalan workers: “And the Consul is here in favor of the employer, not us. It’s even the consul that fires you.” (Worker 2). In addition, if a worker needed to leave the farm for any reason, the manager may understand, however, the Consulate would later tell FERME not to hire the

worker because he has caused troubles in the past for the program (Worker 3). According to a Mexican worker, the Consulate is not supportive when it comes to work-related problems that TFWs deal with at the workplace. The worker maintained that the Consulate usually aligns with the employer over the worker. If the Consulate proposes to help the worker, nobody knows when this assistance will occur. Furthermore, the type of support offered by the Consulate is relative: “If your boss tells you, I don’t like you, and you’re going back to Mexico, the best the Consulate can do is get you to another farm” (Worker 4).

#### **6.4 Other Actors’ Perspectives**

L’Union des producteurs agricoles (UPA) acts as a mediator between the federal government and Quebec agricultural producers. They process farm requests for workers and send these applications to the governmental agencies responsible for hiring workers under SAWP (UPA 2). According to one representative, the UPA would not be against unionization of the farmworkers. Specifically, he maintained that unionization would allow for at least two interlocutors to be involved in the farm, with the roles of ensuring that both workers and managers are respecting their responsibilities. However, the UPA official noted that the industry that manages the SAWP program, known as FERME, has spent  $\frac{3}{4}$  of a million dollars to dismantle and prevent any farmworkers from unionizing (UPA 3). Moreover, the representative maintained that unionization would not be needed once workers realize that their problems can be addressed through the UPA. In terms of work conditions, the representative added that the only problem that affects farmworkers relates to overtime hours: “Because presently, the labour standards are respected on the farms. The only exception is the work week, there is overtime after 40 hours.” (UPA 3).

Finally, a UFCW representative asserted that several farm managers have negative views of unions because they perceive them as policing bodies. Furthermore, he spoke about the value that unions could offer, especially in helping the farmworkers integrate into the workplace. Specifically, UFCW offers French classes to TFW, which can ensure that there is greater communication between the manager and workers (UFCW 1).

### **7.0 Analysis: The Challenges to Unionization as a Strategy in the Current Context**

This article provides an overview of the exceptional efforts of the UFCW to unionize Quebec farmworkers before offering the perspectives of four different groups of local actors on the prospect: farmworkers, employers, consulates, and advocates. Using the framework of precarious work to understand the need to unionize in this sector and of precarious status to understand the power dynamics between migrant farmworkers, their employers and the state, here we tease out part of the answer to the question of why it has been so difficult for organizers to succeed. Our principal

argument is that if the UFCW's monumental campaign to unionize farmworkers in Quebec failed, it was because of the disproportionate power of employers and consulates within an immigration framework that holds migrant farmworkers at a structural disadvantage and that simultaneously allows the Quebec government to justify (without having to mention immigration status) legally designating these workers as different from all other workers via Law 8. In the face of this massive power imbalance, farmworkers themselves often make the analysis that the risks outweigh the potential gains.

The Supreme Court's ruling in *MPAO v. Canada* (2015), underscoring the need for contextual analysis and reducing the evidentiary burden to establish an infringement of the freedom to associate, suggests that migrant workers and unions could still successfully argue that the prevailing labor regime for seasonal agricultural workers in Quebec is unconstitutional. Advocates and unions who may pursue this outcome in the future, however, should anticipate and address the shortcomings of collective bargaining rights for migrant workers.

As the interviews demonstrate, consulates in Quebec followed the trend of being either apathetic or hostile to unionization, instead siding with the employer's needs in order to preserve the reputation of their country in the program. Thus, the conflict of interest documented in the literature that has manifested here illustrates a formidable obstacle to obtaining collective bargaining rights and ensuring their exercise among migrant workers. In the absence of the support of the consulates—even active obstruction of unionization efforts by consular officials—migrant farmworkers are unlikely to fully benefit from the right to unionize. Specifically, these interviews illustrate that consulates may not be transparent about union resources for migrant workers; further, it appears that sending countries are explicitly stating that their workers cannot join Canadian unions. It is possible, then, that even if the right to unionize was granted to farmworkers in Quebec, migrants may lack the proper information to act on this right and may not be able to attain correct information with their consulate.

A similar information gap exists among agricultural employers. Many believe that unions are not beneficial to these workers because they cannot change the rules negotiated by the sending country and Canada. Similar arguments were made by Greenway Farms in British Columbia when they challenged the right of migrants to unionize on their farms; however, the BC Labour Board ruled that these contracts do not prevent unionized migrants from securing additional rights (Russo, 2011). It is possible that even if the right to unionize is granted to farmworkers in Quebec, employers may assert that unions cannot interfere with the internationally-negotiated contracts of migrant workers. Another pressing concern is that workers (justifiably) believe that employers do not hire back those associated with unions. Collective agreements that are established by unions would establish recall provisions based on seniority, thus making it more difficult to block the return

of workers who are defending their workplace or immigration rights. However, the efficacy of these provisions can be undermined by the practices of the consulates, the sending government, recruiters, and Canada's immigration regime (Gesualdi-Fecteau, 2014; Russo, 2011; Vosko, 2018).

Even if collective agreements secured protections against unjust repatriation, these only concern the relationship between the employees and employer; consulates and the sending country, however, continue to blacklist migrant workers and prevent them from entering TFWP again (Vosko, 2016 & 2018). For example, one worker believed that even if a manager permitted a leave of absence to return to their country of origin for a family emergency, the consulate would dissuade FERME from allowing them to return to Canada, an example of blacklisting practices. It is possible that if farmworkers are given the full right to unionize in the future and they secure benefits, consulates may still engage in blacklisting practices to prevent these workers from returning in order to maintain their country's reputation. Attempts to hold consulates accountable in other provinces for unfair labor practices have been ineffective because the sovereign immunity doctrine protects the conduct of consular officials, preventing these workers from suing foreign governments in Canadian courts (Vosko, 2016 & 2018).

Unionizing migrant farmworkers is also more difficult compared to their Canadian counterparts because they must return to their country annually. As one worker voiced, the cyclical nature of their migration dissuades unionization; as temporary residents, they may not benefit fully from the union. In addition to the other structural constraints of the program, such as workers' fear of failing to be named back by the employer, we observe that unionizing efforts may be more protracted with migrant workers. A realistic possibility is that employers will repatriate workers before the certification vote for a union. The discretion the program affords employers in ending an employee's contract suggests this is a permissible practice; indeed, Floralia Plant Growers Ltd. did just that in BC. Further, even if unions appeal the repatriation of such workers and the employer is required to justify their actions, they may fabricate reasons that Labor Boards will accept (Russo, 2011; Vosko, 2018).

Finally, if unionization of migrant farmworkers were to occur, the overarching issue would be that of dealing with immigration and work permit restrictions. Examples of unionized migrant workforce in non-agricultural sectors show that collective agreements are not enough to counter the effects of Canada's restrictive TFW regime, which relies on structural coercion to limit workers' geographic and labour mobility, and creates an exacerbated imbalance of power in the labour relationship (Malhaire, 2017; Beatson et al. 2017; Soussi, 2019). To address the limitations of the collective agreements, the migrants' legal status should become permanent and their work permit should be open.

The literature offers many suggestions on how to address and overcome aspects of this imbalance of power. To address workers' lack of access to

information on their rights, it will be necessary to provide informational resources in the language these workers are comfortable with (e.g., pamphlets and media, in the forms accessible to settlement workers), regarding myths around unionization and how they can join unions (Silverman & Hari, 2016). It should also be stipulated in memorandums of understanding between Canada and sending governments that establishing equal treatment between Canadian and migrant workers requires equal access to unionization (Russo, 2011). To address the narrow issue of blacklisting, it is possible to ensure that the protocol agreement between Canada and sending countries stipulates that association with unions cannot affect workers' readmission to the program (Vosko, 2018). Modifying the agreements, however, fall beyond the power of the union, and therefore require other strategies.

### **8.0 Looking Forward: A New Priority in Securing Workers' Rights? Worker Representation in the Negotiation of Sectoral Contracts**

Migrant workers, advocates, and scholars have been documenting since, at least since the 1980s, the ways in which precarious immigration status holds workers in a situation of disadvantage and vulnerability to exploitation. Here we have documented the details of how this power imbalance plays out in the context of efforts to protect the rights of Quebec migrant farmworkers through unionization against precarious work conditions. Again and again, precarious status emerges as the ultimate barrier. Quebec organizations join with national coalitions to denounce Canada's temporary immigration system and demand access to permanent residency for all. This is surely a long-term battle; however, migrant farmworkers are generally employed under either bilaterally negotiated contracts (under SAWP) or under contracts that conform to Employment and Social Development Canada (ESDC) guidelines. The process of negotiating these contracts involves many actors—CIC and ESDC, sending governments, employer representatives—but there is one glaring omission: the workers themselves. There are no workers or any workers' representatives in the process, no voice for workers in contract negotiations, no formal appeal body to resolve disputes, no recognized group ensuring their rights are respected. The need for worker representation is made even more acute by the strong voice the employers' organizations enjoy.

In conclusion, farmworkers in Quebec obviously deserve the right to unionize enjoyed by all other workers, but their precarious immigration status remains the major limitation. Tri-partite negotiations of sectoral contracts may be the best demand—in terms of winnability and effectiveness—to defend worker rights in the current legal context. Obtaining this representation might be the next step towards better work conditions, stronger worker protections, secure status, and, in the hopefully near future, the right to unionize.

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