

Labor Unrest: Are H-2A Worker's Allowed to Strike?



Presented by John B. Dudrey
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THE LAW(S)

- All workers have the right to engage in concerted activity.
- Agricultural workers are exempt the federal NLRA.
- There is no law which prohibits seasonal agricultural workers from exercising their right to bargain collectively.
- **In fact, Washington law extends collective bargaining rights to workers who are not covered by the NLRA, including agricultural workers.**
- **This includes the right to strike.**

WHAT IS BLACKLISTING?

Refusing to hire, refusing to re-hire, or terminating a person.

- Generally used in relation to a person who engages in **protected legal activity, which under Washington law can include** union activity.
- **Big implications for agricultural employers who have to decide whether to invite an H2A worker back for the next season**
- **Refusing to extend an invitation to an H2A worker because of his or her strike activity presents the risk of a blacklisting claim**

WHAT HAPPENS WHEN A PERSON WALKS OFF?

- A more difficult question.
- You have a contract that requires a person to come to work.
- It does not allow – or prohibit – a walkout.
- Lockout?
- Housing?
- What about the abandonment regulation?

H-2A REGULATIONS

- The regulation generally refers to blacklisting.
- But also requires an employer to report that a worker has “abandoned” the job if the worker fails to report to work for five consecutive days.
- Striking workers probably would not be considered as abandoned.

FINAL THOUGHTS

1. Immediately Call a Meeting of workers.
2. Tell them that you are interested in learning of their issues.
3. Remind them of the contract which requires them to work.
4. Ask the workers to tell your staff about the problems.
5. Ask for one week to address the problems.
6. And ask them to return to work.
7. More with other panelists.

THANK YOU

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Farm Worker Protests



What the Public Believes



- Farmers mistreat their workers.
- Housing conditions are appalling.
- Workers forced to work in extreme heat.
- Wage theft is common.
- Workers are refused medical attention.
- Workers are threatened with firing or deportation for speaking up.

H-2A is the Issue



- H-2A takes away jobs from domestic workers.
- Forced labor “slavery”.

Uncaring Task Masters Abusing Workers

Unions can protect workers

- Wages (better pay, no theft)
- Grievance procedure
- Just Cause (fair discipline)
- Union rep's to represent workers
- Labor communications committee
- No discrimination
- Seniority for hiring, layoff's, recall
- Union contract to protect workers





Labor Unrest

South of the Border



Roxana Macias
Director of Compliance
CSI Visa Processing, SC
January 17, 2018

CSI Visa Processing

- ▶ CSI processed over 30,000 H2 workers in 2017
 - ▶ We process for associations and employers throughout the nation.
 - ▶ But wafla is our favorite. 😊
 - ▶ The Department of Labor certified more than 200,000 H-2A positions for FY 2016/2017
- ▶ 85 percent of workers processed by CSI VP are named by the employer
- ▶ CSI VP's primary role is the agent or middle man between employer and worker. We assist in the visa application process.

Not invited back? The proper role of the recruiter/agent.

- ▶ Help employer articulate legal, job (or housing) related reasons when worker isn't invited back.
 - ▶ Workers terminated for cause
 - ▶ Workers abandoned the job site
 - ▶ Workers violating company policies
 - ▶ Damage to company property (including housing)
 - ▶ Workers not meeting quality/production standards
 - ▶ Violation of state or federal laws
- ▶ Two sides to every story.
 - ▶ Communicate those reasons to workers, and listen to the worker's side of the story.
 - ▶ Is there a mutually agreeable solution? Workers are free to work elsewhere?
 - ▶ Examples include foreman wants to invite workers selected by him; regulatory violations by the employer; employer discontinues H2 program; worker is not interested in past employer (even when the employer is requesting them back), worker has multiple job offers

The two strike rule: CSI VP's Policies

- ▶ CSI does not determine returning worker eligibility, the program and employer does.
- ▶ If a worker is named by an employer, CSI will assist that worker in the visa application process, regardless of previous work history.
 - ▶ CSI can make recommendations based on a workers' immigration or criminal history, but the employer makes the final determination on whether to process
- ▶ Two strike rule: CSI VP's new worker database contains 20,000+ registrants. Once CSI has recruited a worker to different employers who do not request the worker back for legitimate reasons (two strike rule), CSI will not actively seek another opportunity for that worker.
 - ▶ If that worker is *named* by a different employer, CSI will assist them with the visa application process.

Requesting New Workers

- ▶ CSI recruits based on:
 - ▶ Job Requirements
 - ▶ Commitment to complete contract period
 - ▶ Experience Requirements
 - ▶ Region (if specified)
 - ▶ Visa Eligibility
- ▶ Some employers request workers that have not never had an H-2A visa.
- ▶ Pros and Cons to this approach.

Labor Unrest Q & A:

- ▶ **Were the workers involved in the labor disputes in 2017 recruited by CSI?**
 - ▶ No, in the two cases we studied from WA, the workers were named by the employers.
- ▶ **Does CSI ever hear about disputes before they turn into a strike?**
 - ▶ Yes. Workers complain, and we let people know. CSI's policy in 2018 will be report issues directly to the employer's HR department.
- ▶ **Why do workers go on strike? What do they tell CSI VP?**
 - ▶ Not enough employer resources to resolve issues when they take place
 - ▶ *Reported issues go unresolved*
 - ▶ Labor Unions and activists whisper sweet nothings into the workers' ears
 - ▶ Workers not understanding business practices applicable to their contracts
 - ▶ Extreme temperatures, progressive discipline policies, production requirements, meal deductions (when applicable)