I wanted to pass along a message I received for a petition. Please consider supporting it.

Dear LAWCHA members,

Please consider signing the letter below to influence new rules governing collective bargaining for farmworkers in New York State. You don't need to be a New Yorker to sign.

All the best,

Cindy

Cindy Hahamovitch
Vice-President, LAWCHA
B. Phinizy Spalding Distinguished Professor of History
The University of Georgia

--------- Forwarded message --------
From: Maggie Gray <gray5@adelphi.edu>
Date: Thu, Feb 24, 2022 at 3:30 PM
Subject: Request to sign open letter re NY ag worker Coll Bargaining
To:

Hi Friends,

The NY State PERB which oversees farmworker collective bargaining put out proposed rule changes that do not address:

- delays in the PERB process that deter union formation
- the prioritization of farm worker cases and access issues
- PERB’s need to develop specific processes for vulnerable private sector employees instead of using the existing public worker processes
Some labor scholars and academics have put together a public comment response that may also go public at a later date.

In the initial ask to mostly NY-based folks yielded 45 signatures. The hope is for another 25 signatures.

Would you be interested in signing on? The text is here and below. Signatures collected until March 1.

You can respond to me directly and I will forward your information or you can add your name to the google doc.

Thanks,
Maggie

DRAFT:

Comments by Labor Scholars and Academics Opposed to the Proposed PERB Rule Changes under the New York State Employment Relations Act and the Farm Laborers Fair Labor Practices Act

Via Email

Sarah Coleman
Deputy Chair
NYS Public Employment Relations Board
PO Box 2074, ESP, Bldg. 2, Floor 20,
Albany, New York 12220-0074
scoleman@perb.ny.gov

March 4, 2022

The undersigned labor scholars and academics from multiple disciplines oppose the proposed rules drafted by the New York State Public Employment Relations Board (PERB) under the New York State Employment Relations Act, as amended in 2019 by
the Farm Laborers Fair Labor Practices Act (FLPA).

When New York State enacted the State Labor Relations Act in 1937 to grant workers the right to organize and to bargain collectively it excluded farm workers and domestic workers from statutory protections. The vast majority of farm workers are people of color and immigrants. Their exclusion from labor protections rendered them second-class workers in New York.

After decades of protests, lobbying, and litigation, a New York appellate court ruled in 2019 that the exclusion of farm workers from state collective bargaining protections violated the New York State Constitution provision that all workers “have the right to organize and to bargain collectively through representatives of their own choosing.” While unstated, this landmark ruling is equally applicable to the still existing statutory exclusion of domestic workers, who are primarily women.

Following the ruling, the Legislature passed FLPA which extended statutory collective bargaining rights to farm workers in New York. During negotiations over FLPA, the bill was amended to prohibit farm workers from striking in exchange for an expeditious union certification process and a clear prohibition against employer anti-union conduct. The new law came into effect in January 2020, just prior to the onset of the COVID-19 pandemic.

In January, PERB announced proposed new rules that would apply to farm worker organizing and unfair labor practices. In our judgment, PERB’s proposed rules are deficient as they do not address the needs of New York farm workers, nor reflect the spirit of the law. PERB must adopt procedures that do not discourage or delay union certifications, prioritize farm worker cases and needs, and recognize that Taylor Law processes for public workers are not appropriate for these vulnerable private sector employees. The proposed rules should be withdrawn and substantially changed.

Below are some particularly egregious aspects of the proposed rules:

Farm Worker Cases Must Be Handled in an Expeditious Manner

It is well known that delay is a central component of employers’ union avoidance strategies. Delay gives an employer the opportunity to use legal and illegal means to stop an organizing campaign.

Labor history demonstrates that the mere existence of laws against retaliation do not stop employers from using their power to terminate, discipline, and threaten workers
for seeking to unionize and improve their working conditions. Employers know that the firing of a key union supporter or related threats deter other workers from asserting their rights.

Despite the role delay plays in employer anti-union campaigns, PERB’s proposed rules do not require expedited treatment of farm worker cases, rather, they give farm employers many built-in opportunities to delay both union formation and the adjudication of unfair labor practices. These include unnecessary conferences and hearings and inevitable adjournments. Statutory labor rights for farm workers and prohibitions against farmers from discouraging union activities mean very little if it takes PERB months to issue a certification or determine a charge. Such delays are unconscionable because of the legal shackles placed on farm workers from striking or even engaging in slowdowns.

The delays are also grievous considering that the majority of New York farm workers are immigrants who experience an extreme power imbalance with their employers. In short, their fear of retaliation is more acute than for workers in other industries. Even those who have signed union cards may give in to employer pressure and renounce union activity out of fear. The longer they must wait for a union certification, the more likely this becomes. The fear is exacerbated by the fact that for many New York farm workers, the loss of a job is also the loss of their home. PERB procedures must not incentivize employers to engage in intimidation, by continued unnecessary agency delays in issuing union certifications and determining unfair labor practices cases.

In 2014, the National Labor Relations Board adopted new representation procedures to eliminate administrative delays that employers had frequently used to defeat organizing campaigns. The NLRB changes included expedited procedures for representation cases. It is disconcerting that PERB’s proposed rules do not include similar procedures to ensure that farm worker, and other private sector worker, cases are accorded the highest agency priority.

Farm Worker Cases and Issues Must Be Prioritized

PERB’s primary mission is the enforcement of New York’s Taylor Law. The agency and its staff have extensive experience handling disputes between government workers and government employers. They have very little experience with New York’s private sector law or the farm worker population that is primarily foreign-born with limited English skills.
The proposed rules provide us with no confidence that PERB will process farm worker representation and unfair labor practice cases with appropriate expediency. Instead, farm worker cases are likely to join the agency’s well-known backlog. We must emphasize that we do not blame PERB’s leadership and staff for the backlog because we know that state policymakers have chosen not to adequately fund the agency.

Moreover, from the proposed rules, it does not appear that PERB plans to provide needed remote bilingual services and assistance to farm workers. Instead, the rules envision farm workers and their representatives interfacing with PERB via snail mail and long trips to agency offices. Such a vision is blind to the fact that workers living in employer-provided housing are likely to have their mail monitored by their employers, and that farm workers face challenges traveling and getting time off work (for which they would not be paid).

FLPA represents the largest increase in state private sector collective bargaining rights in over 50 years. PERB must prioritize farm worker cases and create processes that carefully attend to their specific access needs.

Farm Worker Cases Should Not Be Determined Under the Taylor Law or its Processes

The proposed rules seek to apply existing PERB procedures under the Taylor Law to farm worker cases. Under those public worker processes, filings are strict scrutinized and dismissed or delayed for even minor technical errors. Farm workers with limited resources, ability to travel, and English proficiency will be required to receive and respond to mailed notices that set forth hyper-technical reasons for why their cases are not moving forward. Instead of a timely process that encourages collective bargaining, the proposed rules are designed to create bureaucratic procedural hurdles that will discourage farm worker unionization and the assertion of labor rights.

In summary, the proposed rules will constitute a roll back on hard-earned labor rights for farm workers under the New York State Constitution and state law. Unless substantially modified, the rights of farm workers will be deprived by these procedural rules. We urge PERB to rescind the proposed rules and promulgate new rules to require that private sector representation and unfair labor practice charges be processed in an expedited manner.
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Margaret (Maggie) Gray, PhD, Associate Professor
Political Science, Adelphi University
ON SABBATICAL 21-22
Adelphi University’s Long Island campuses are located on Sewanhacky, “The Island of Shells.“
faculty profile