

# A History of Legal Exclusion Labour Relations Laws and British Columbia's Agricultural Workers, 1937–1975

Heather Jensen

Volume 73, Spring 2014

URI: <https://id.erudit.org/iderudit/1025168ar>

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## Publisher(s)

Canadian Committee on Labour History

## ISSN

0700-3862 (print)

1911-4842 (digital)

[Explore this journal](#)

## Article abstract

Access to labour relations legislation is generally seen as a prerequisite to unionization of agricultural workers in Canada. British Columbia is one of eight Canadian provinces that now include agricultural workers in provincial labour relations legislation. But agricultural workers were not always included. Although union organizing and strike activity were not unheard of in BC's agricultural sector in the 1930s, the Industrial Conciliation and Arbitration Act of 1937 excluded agricultural workers. This exclusion followed a larger pattern of excluding agricultural workers from employment-related legislation. Agricultural workers continued to be excluded until the mid-1970s, when the efforts of NDP backbenchers persuaded their own government that agricultural workers ought to be included in provincial collective bargaining laws. As demonstrated in a brief overview of the two campaigns to unionize agricultural workers under BC's labour relations legislation since 1975, although small numbers of workers have been able to form unions and achieve collective agreements under the legislative protections of the Labour Code, those collective bargaining relationships have thus far proven unstable and often short-lived.

## Cite this article

Jensen, H. (2014). A History of Legal Exclusion: Labour Relations Laws and British Columbia's Agricultural Workers, 1937–1975. *Labour / Le Travail*, 73, 67–96.

## ARTICLE

# A History of Legal Exclusion: Labour Relations Laws and British Columbia's Agricultural Workers, 1937–1975

**Heather Jensen**

## Introduction

ACCESS TO THE LEGAL PROTECTIONS of labour relations legislation during the process of forming a trade union and collective bargaining with an employer is generally seen as a prerequisite to the unionization of agricultural workers in Canada.<sup>1</sup> British Columbia is one of eight Canadian provinces that now include agricultural workers in labour relations legislation, but these workers have not always been included in the province's labour laws.<sup>2</sup> When BC first enacted comprehensive provincial labour relations legislation in 1937, agricultural workers were excluded.<sup>3</sup> In this article, I look at the circumstances present when this legislative exclusion was created, and the factors that came together when agricultural workers were included in BC's labour relations legislation in 1975.<sup>4</sup>

1. See *Dunmore v. Ontario (Attorney General)*, 2001 scc 94, para. 41.

2. Alberta and Ontario exclude farmworkers from their general provincial labour legislation. In Ontario, workers are covered by the *Agricultural Employees Protection Act, 2002*, S.O. 2002, c. 16, which does not provide the same rights and protections as contained in the province's *Labour Relations Act*, S.O. 1995, c. 1. The *Agricultural Employees Protection Act, 2002* was the subject of a *Charter* challenge in *Ontario (A.G.) v. Fraser*, 2011 scc 20.

3. *Industrial Conciliation and Arbitration Act*, S.B.C. 1937, c. 31. Domestic servants were also excluded from this legislation.

4. *Labour Code of British Columbia Amendment Act, 1975*, S.B.C. 1975, c. 33, s. 1.

Both historically and today, many hired agricultural workers in BC experience precarious employment. The standard employment model encountered by most North American industrial workers in the 20th century was characterized by continuous, full-time, indefinite contracts of employment with one employer, often in a unionized industry with a degree of regulatory protection and an adequate wage and benefits package.<sup>5</sup> This employment model has never been the norm for agricultural workers. Agricultural employment in BC, particularly the hand harvesting of berries and other crops, has often been characterized by seasonal work, exemption from basic employment standards, remuneration by piece rates sometimes averaging below the minimum wage, child labour, inadequate access to drinking water, toilets, and sanitation facilities, substandard housing on growers' properties, and unsafe employer-supplied transportation.<sup>6</sup> Substandard working conditions are not a new phenomenon for waged agricultural workers in BC, or indeed, in Canada.<sup>7</sup> The lives of agricultural workers are made precarious by seasonal and casual low-wage work for multiple employers, formally or practically outside of regulatory protections, sometimes isolated from family and social support. Working conditions for agricultural workers, both in the 1930s and today, suggest that agricultural workers are among those most in need of legislative protections and state support for decent working conditions and collective bargaining. This examination of the exclusion of agricultural workers from BC's first comprehensive labour relations legislation in 1937 and their eventual inclusion in 1975 helps to illustrate a greater pattern of exclusion of agricultural workers from protective employment-related legislation and regulation.

I begin this article with a discussion of the problem the BC government was responding to when it introduced new comprehensive labour relations legislation in 1937. Next, I examine the role of agriculture in the province's economy in the 1930s and some characteristics of agricultural workers. This context helps explain why agricultural workers were excluded from the BC *Industrial Conciliation and Arbitration Act*. I then turn to the political record. I trace a pattern of exclusion of agricultural workers from employment-related legislation, and I describe the 1937 debates in the Legislative Assembly regarding the issue. Agricultural workers continued to be excluded until the mid-1970s, when the efforts of a few NDP backbenchers were successful in persuading

5. Judy Fudge and Rosemary Owens, "Precarious Work, Women, and the New Economy: The Challenge to Legal Norms," in Judy Fudge and Rosemary Owens, eds., *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms* (Oxford 2006), 10–12.

6. Graeme Moore, *Hand-Harvesters of the Fraser Valley Berry Crops: New Era Protection of Vulnerable Employees* (Vancouver 2004), 31–38; Luis L.M. Aguiar, Patricia Tomic, and Ricardo Trumper, "Mexican Migrant Agricultural Workers and Accommodations on Farms in the Okanagan Valley, British Columbia," Working paper no. 11-04, Metropolis British Columbia, Centre for Excellence for Research on Immigration and Diversity, Vancouver, 2011.

7. Kathryn Neilson and Innis Christie, "The Agricultural Labourer in Canada: A Legal Point of View," *Dalhousie Law Journal*, 2 (1975), 330.

then-Labour Minister William King that agricultural workers ought to be included in provincial collective bargaining laws. After this, at least as far as labour relations law was concerned, formal legislative equality with other workers in the province was achieved. Inclusion in the *Labour Code of British Columbia* does not, however, mean that agricultural workers in BC have been able to form stable and lasting collective bargaining relationships with their employers. I conclude the article with a brief overview of the two main campaigns to organize agricultural workers under BC's labour relations legislation. Although small numbers of workers have been able to form unions and achieve collective agreements under the legislative protections of the *Labour Code*, those collective bargaining relationships have thus far proved unstable and often short-lived.

## New Labour Relations Laws of the 1930s

IN THE 1930S, GOVERNMENTS throughout North America faced a problem of instability in labour relations. Workers could, and did, join together to protest against their employer and working conditions through strikes and other concerted activity. Employers could, and did, refuse to hire union members and fire workers for participating in strikes. The existing labour relations laws did not apply to many sectors of the economy, and the legislated conciliation and mediation processes often were dependent on the consent of the employer and union.<sup>8</sup> Frequently, this consent was not given. The existing laws did little to prevent and solve industrial disputes over union recognition, contract negotiation, and administration without strikes, lockouts, and mass firings.

In September 1937, BC's Labour Minister George S. Pearson wrote a memorandum to newly re-elected Premier T.D. Pattullo, setting out the reasons why the government needed new legislation in the area of labour relations.<sup>9</sup> British Columbia's voters had returned the provincial Liberal Party to government on 1 June 1937.<sup>10</sup> The official opposition was Conservative, and the

8. For a detailed examination of the labour relations regimes existing before 1937, see Judy Fudge and Eric Tucker, *Labour Before the Law: The Regulation of Workers' Collective Action in Canada, 1900–1948* (Don Mills, ON 2001). See also A.W.R. Carrothers, *Collective Bargaining Law in Canada* (Toronto 1965), and H.D. Woods and Sylvia Ostry, *Labour Policy and Labour Economics in Canada* (Toronto 1962).

9. British Columbia Archives (hereafter BCA), Pattullo Papers (hereafter PP), GR 1222, Box 142, File 142-7, Memorandum from George Pearson to Duff Pattullo, 10 September 1937. George Pearson, who was a Nanaimo wholesale grocer before being elected, has been described as a progressive reformist within the Liberal cabinet: see Martin Robin, *Pillars of Profit: the Company Province 1934–72* (Toronto 1973), 12–13.

10. See Robin Fisher and David J. Mitchell, "Patterns of Provincial Politics Since 1916," in Hugh J. M. Johnston, ed., *The Pacific Province: A History of British Columbia* (Vancouver 1996), 259. For an account of the Liberal Party's first term in government and the "Work and Wages" reformist program of socialized capitalism, see Margaret A. Ormsby, *British Columbia: A History* (Vancouver 1964) and Robin, *Pillars of Profit*.

**Table 1: Labour Disputes in BC, 1928–1937**

Year	Number of strikes and lockouts in BC	Total number of employees affected	Total number of working days lost
1928	8	2,662	30,506
1929	12	691	9,876
1930	7	231	3,149
1931	21	3,576	85,894
1932	18	4,409	38,295
1933	15	2,403	27,392
1934	22	4,249	140,787
1935	20	6,740	117,937
1936	15	5,709	75,122
1937	18	1,583	46,244

Data compiled from Canada, Department of Labour, *The Labour Gazette* (Ottawa 1929–38).

Co-operative Commonwealth Federation (CCF) was the third party in the Legislative Assembly.

In his memo to the premier, Pearson said that the province's ability to deal with labour disputes was "practically nil."<sup>11</sup> Despite large and sometimes violent demonstrations and protests in Vancouver and elsewhere by thousands of unemployed workers from relief camps in the mid-1930s, Pearson described labour relations in the fall of 1937 as "fairly peaceful."<sup>12</sup> Table 1 shows the numbers of labour disputes and employees directly affected in the decade leading up to the legislation. In the years before 1937, the numbers of disputes were reasonably stable and even declining.

Pearson was concerned, however, with the increased organizing activity of labour unions in the fall of 1937. In particular, he wanted tools to deal with what he perceived to be the rising influence of the Communist Party as a "forceful element in the labour unions in this Province."<sup>13</sup> Compared with other regions in Canada, more conservative business unionists maintained more control of BC's union movement throughout the 1930s.<sup>14</sup> Nevertheless, communist influences were present. The Workers' Unity League, connected to the Communist Party, had been active and organizing workers in BC until it was disbanded in 1935. The minister was also concerned about the American-

11. BCA, PP, GR 1222, Box 142, File 142-7, Memo Pearson to Pattullo. See also Andrew Parnaby, "What's Law Got to Do with It? The IWA and the Politics of State Power in British Columbia, 1935–1939," *Labour/Le Travail*, 44 (Fall 1999), 9–10.

12. BCA, PP, GR 1222, Box 142, File 142-7, Memo Pearson to Pattullo.

13. BCA, PP, GR 1222, Box 142, File 142-7, Memo Pearson to Pattullo.

14. Stuart Marshall Jamieson, *Times of Trouble: Labour Unrest and Industrial Conflict in Canada, 1900–1966*, Task Force on Labour Relations Study No. 22 (Ottawa, ON 1968), 264.

based Congress of Industrial Organizations and increased union-organizing activity spilling over the US border. Pearson drew a connection between the influence of communism within organized labour and employer resistance to unions and collective bargaining:

The activity of the communists, latterly the C.I.O. [Congress of Industrial Organizations] has caused the great majority of larger employers in British Columbia to resist any kind of organizing for the purpose of negotiations between employer and employee. This condition, however, cannot stand for long as it is an unnatural condition. Every sensible person will admit the justice of the claim of men to organize themselves for the purpose of discussing their problems with their employers and negotiating terms of employment. This being the case I am convinced that as labour conditions settle themselves in the United States a definite attack will be made upon British Columbia to completely organize it under the two great international organizations, the A.F. of L. [American Federation of Labor] and its offspring, the C.I.O. During this attempt industry will suffer tremendously in this Province, through strikes, unless we are prepared to meet it.<sup>15</sup>

Pearson's comments reflect many of the reasons put forward to justify labour relations legislation. Through collective bargaining, workers have a voice and the ability to participate in the decisions that govern their working lives. Collective bargaining processes recognize the human dignity inherent in labour, and refuse to treat labour as only a commodity. Government support for collective bargaining recognizes that employer–employee relationships are not wholly contained within commercial contractual relations, but instead exist within a system of self-government at work. Workers' ability to be involved in decisions that affect their working lives has importance apart from any of the instrumental goals of collective bargaining processes.<sup>16</sup>

Pearson's comments also reflect an understanding of trade union activity and collective bargaining based on principles of freedom of contract. Men organize, he wrote, in order to negotiate terms of employment.<sup>17</sup> In a legal system that values freedom of contract, statutory support for collective bargaining can be justified on the basis that it puts employers and employees in a more equal bargaining relationship, where real discussion and agreement about terms and conditions of employment are possible.<sup>18</sup> Although an employer may disregard the demands of an individual worker without negative consequence, an employer will have more difficulty ignoring all the workers together. In this way, collective bargaining may address some of the inequalities of bargaining power in the employment relationship, while maintaining

15. BCA, PP, GR 1222, Box 142, File 142-7, Memo Pearson to Pattullo.

16. See for example, H.D. Woods, "Canadian Collective Bargaining and Dispute Settlement Policy: An Appraisal," *The Canadian Journal of Economics and Political Science*, 21, no. 4 (1955), 453.

17. BCA, PP, GR 1222, Box 142, File 142-7, Memo Pearson to Pattullo.

18. A version of this justification of North American labour legislation can be found in Harry H. Wellington, *Labor and the Legal Process* (New Haven, CT 1968), 28–32.

a commitment to freedom of contract and the idea that parties themselves, rather than an external agency, know best how to manage their affairs.

The most often repeated theme in Labour Minister Pearson's memorandum to Premier Pattullo was that industry and the provincial economy would suffer unless the government had the ability to prevent and control strikes. In the absence of labour legislation, collective bargaining processes often involve workers collectively stopping work to pressure an employer to recognize the union and accept shared control over employment issues, to negotiate and resolve the substantive content of the collective bargaining agreement, and to resolve disputes over the application of the collective agreement.<sup>19</sup> Strikes and lockouts disrupt not only the workers and employers directly involved but also affect the services and goods available to the public, and the stability of the economy generally. In order to ensure stable and predictable conditions in a wage-labour economy, the 1937 BC government introduced legislation in an attempt to reduce or eliminate the disruptive effects of industrial disputes and work stoppages.<sup>20</sup>

Labour Minister Pearson and the government of the day had several legislative models to draw from when designing British Columbia's new labour relations legislation in the fall of 1937. Labour legislation models from New Zealand and Queensland, Australia recognized a legitimate and legal role for trade unions in setting terms and conditions of employment, and created mandatory conciliation and arbitration procedures to resolve industrial disputes.<sup>21</sup> Canadian federal legislation similarly provided a model focused on the resolution of specific disputes through government-assisted investigation and conciliation procedures, which on the initiative of the employer or union required both parties to meet in an attempt to resolve their issues.<sup>22</sup> American legislation provided a different model, it focused on creating a framework for

19. This characterization of the major types of industrial disputes is explored in greater detail in Woods, "Canadian Collective Bargaining and Dispute Settlement Policy," 447.

20. See Woods, "Canadian Collective Bargaining and Dispute Settlement Policy," and Paul Graham Knox, "The Passage of Bill 39: Reform and Repression in British Columbia's Labour Policy," MA Thesis, University of British Columbia, 1974. The government of BC was not entirely successful in this, and amended the legislation many times to deal with perhaps unintended and unanticipated consequences of the more repressive aspects of its legislative scheme.

21. Noel S. Woods, *Industrial Conciliation and Arbitration in New Zealand* (Wellington, NZ 1963); Queensland, Australia, *Industrial Conciliation and Arbitration Act of 1932*, 23 Geo. V. no. 36.

22. *The Industrial Disputes Investigation Act, 1907*, S.C. (6-7 Ed. v11), c. 20, was available to regulate negotiation of collective agreements in the mining, transportation, communication, and public service utility sectors. It applied throughout Canada until the 1925 decision *Toronto Electric Commissioners v. Snider*, [1925] 2 D.L.R. 5 (J.C.P.C.). The BC Legislative Assembly extended the federal legislation to sectors of the provincial economy with the *Industrial Disputes Investigation Act (British Columbia)*, S.B.C. 1925, c. 19. The *IDIA (BC)* was repealed by the *Industrial Conciliation and Arbitration Act* in 1937.



an ongoing relationship, rather than a solution to the immediate dispute. The American *National Labor Relations Act*<sup>23</sup> (also known as the Wagner Act) of 1935 created mechanisms for employees to choose union representation free from employer interference, and compelled an employer to recognize and bargain with the union.<sup>24</sup>

Three Canadian provinces had also passed new labour relations legislation earlier in 1937. The Nova Scotia *Trade Union Act*<sup>25</sup> required employers to recognize and bargain with unions and relied on statutory penalties enforced by the courts as a compliance mechanism. The Alberta *Freedom of Trade Union Association Act*<sup>26</sup> recognized the formation of trade unions and the process of collective bargaining as legal, but did not contain detailed enforcement mechanisms. These two acts followed to some extent the draft model trade union legislation recommended by the Trades and Labor Congress of Canada at the time.<sup>27</sup> The Manitoba *Strikes and Lockouts Prevention Act*<sup>28</sup> did not explicitly recognize trade unions as legal or require collective bargaining, and did not follow the Trades and Labor Congress of Canada model legislation. Instead, it created mandatory conciliation procedures and prohibited strikes or lockouts during the conciliation process, an approach similar in some respects to the BC legislation.<sup>29</sup>

A preliminary draft of the BC *Bill respecting the Right of Employees to organize and providing for Conciliation and Arbitration of Industrial Disputes* from early November 1937 contains a note that it was based mainly on industrial relations legislation from New Zealand, Queensland, and Nova Scotia.<sup>30</sup> The legislation thus appears to have drawn upon many models.

The BC *Industrial Conciliation and Arbitration Act*<sup>31</sup> recognized collective bargaining as lawful, and created penalties for employers who refused to

23. (US) ch. 372, 49 Stat. 449 (1935).

24. James R. Watson, *Legislative History of the Exclusion of Agricultural Employees from the National Labor Relations Act of 1935 and the Fair Labor Standards Act of 1938* (Washington 1966); National Labor Relations Board, *Legislative History of the National Labor Relations Act, 1935*, vol. 1 (Washington 1949).

25. S.N.S. 1937, c. 6. This Act was passed on 17 April 1937.

26. S.A. 1937, c. 75. The Act received royal assent on 14 April 1937.

27. A copy of this model draft legislation can be found among the documents in the folder devoted to 1937 labour legislation in BCA, PP, GR 1222, Box 142, File 142-7.

28. S.M. 1937, c. 40. This Act received royal assent on 17 April 1937.

29. The Manitoba legislation did not include mandatory interest arbitration. It did not expressly recognize the formation of trade unions as lawful, nor prohibit interference in the formation of a trade union. See *Strikes and Lockouts Prevention Act*, S.M. 1937, c. 40.

30. A full copy of this draft, date stamped 3 November 1937, can be found in BCA, PP, GR 1222, Box 142, File 142-7.

31. *Industrial Conciliation and Arbitration Act*, S.B.C. 1937, c. 31.



bargain with employees (but not trade unions). The Act also established conciliation and arbitration machinery that could be set in motion by employees, the employer, or the minister of labour. Once a dispute was in conciliation or arbitration, strikes and lockouts were prohibited until conciliation and arbitration processes were complete. Neither side, however, was compelled to accept recommendations from the conciliation or arbitration process. The Act failed to provide the mechanisms to resolve jurisdictional disputes between unions or disputes relating to the identity of the parties in the collective bargaining relationship. In other words, it did not address disputes in which the employer refused to recognize the union or association representing the majority of workers. As originally enacted, the legislation has been described as primarily “a device to prevent strikes and lockouts.”<sup>32</sup>

The *Industrial Conciliation and Arbitration Act* applied broadly to the private sector, except in the areas of domestic service and agriculture. Was there something about agriculture or agricultural workers at the time that explains the exclusion?

### British Columbia's Agricultural Workers in the 1930s

UNLIKE MUCH OF THE REST of Canada, British Columbia's economy in the early 20th century was not primarily agricultural. Instead, it was highly dependent on fishing, forestry, and mining. Because of BC's mountainous geography, the vast majority of the province is unsuited to agriculture. High elevations, low rainfall, poor soil, and geographic isolation made agricultural production impossible or uneconomical in most of the province. In the 1930s, most of BC's agricultural produce was consumed within the province, and only a small proportion was sold to export markets.<sup>33</sup> Agricultural production was concentrated in pockets on Vancouver Island, the Lower Mainland, and the Okanagan Valley.<sup>34</sup> By the 1930s, agricultural production was differentiated according to the geographic, climatic, and economic demands of the province's diverse regions: wheat and cattle production in the Peace River region; cattle in the interior grasslands; tree fruit in the Okanagan; and dairy, market garden produce, and berries around urban settlements, particularly near Vancouver in the Fraser Valley region.<sup>35</sup> This distribution of agricultural production persists today. At the start of the 1930s, 12.8 per cent of agricultural land was dedicated to field crops, 1.3 per cent to orchards, 0.2 per cent

32. Carrothers, *Collective Bargaining Law*, 51.

33. Margaret A. Ormsby, “Agricultural Development in British Columbia,” *Agricultural History* 19 (January 1945), 14.

34. See Jean Barman, *The West Beyond the West: A History of British Columbia*, 3rd ed. (Toronto 2007), 256–58.

35. Cole Harris with David Dermeritt, *The Resettlement of British Columbia: Essays on Colonialism and Geographical Change* (Vancouver 1997), 245.

to market gardens, 34.2 per cent to woodlands, and 38 per cent to grasses or natural pasture.<sup>36</sup> The harvesting of tree fruits, berries, and market garden produce are labour-intensive activities, and require a large seasonal workforce at key times.

Primary agriculture employed a relatively small proportion of the provincial workforce.<sup>37</sup> In 1931, the sector accounted for 14 per cent of the total British Columbian workforce, including owner-farmers, some unpaid family members, foremen, and paid labourers.<sup>38</sup> Paid labourers – the employees who had an interest in collective bargaining with their employer owner-farmers – accounted for only 4 per cent of the total provincial workforce at the time.<sup>39</sup> Wages for farm labourers in BC in the 1930s were above the Canadian average for agriculture, but still lagged behind the average wages for labourers in other sectors in the province. For example, in 1934, a male agricultural labourer was paid on average \$24 per month in wages, and was provided with room and board worth an estimated average \$19 per month.<sup>40</sup> In contrast, a general labourer employed by the city of Vancouver was paid between \$60 and \$93.60 in wages per month.<sup>41</sup> A construction labourer in Vancouver was paid between \$56 and \$88 per month.<sup>42</sup> Rates for general labourers in other cities in BC were within a similar range, if not slightly higher. The average 1934 agricultural worker's wages and board was only 46 to 77 per cent of what general labourers in other sectors of the economy in BC were paid in wages.

36. Canada Dominion Bureau of Statistics, *Seventh Census of Canada, 1931* (Ottawa, ON 1931) volume VII, xl.

37. In the 1920s, one in three men was employed in agriculture across Canada, except in BC, where it was one in six: Barman, *The West Beyond the West*, 256–57.

38. Canada, *Seventh Census of Canada, 1931*, volume VII, table 40, 168–69. The total workforce for all gainfully occupied aged 10 and over was 262,515 men and 43,748 women. Of these, 42,209 men and 1,429 women were occupied in agriculture, with 12,613 men and 195 women counted as waged farm labourers. See also the comments in footnotes 39 and 44, below, regarding the under-counting of women working on farms in the 1931 Census.

39. In 1931, occupation was treated by the census as a fixed characteristic, rather than an activity that changes over time. Temporary, casual, and part-time workers were more likely to be uncounted or listed as unemployed. As a result, labourers who worked for only part of the year on farms were not necessarily captured in census counts. Frank T. Denton and Sylvia Ostry, *Historical Estimates of the Canadian Labour Force* (Ottawa, ON 1967), 3.

40. Canada, Department of Labour, *Wages and Hours of Labour in Canada, 1929, 1934, 1935*, Report No. 19, Supplement to *The Labour Gazette*, January 1936 (Ottawa, ON 1936).

41. Canada, *Wages and Hours of Labour in Canada, 1929, 1934, 1935*.

42. Canada, *Wages and Hours of Labour in Canada, 1929, 1934, 1935*.

In the 1930s, the BC agricultural workforce was ethnically mixed.<sup>43</sup> In 1931, the male<sup>44</sup> agriculture workforce, including owner-farmers and hired labourers, was 56 per cent British, 10 per cent Chinese, 6 per cent Scandinavian, 6 per cent German and Austrian, 5 per cent East Indian, 5 per cent Eastern European, 4 per cent Japanese, 2 per cent French, and 4 per cent other ethnic origin. According to the 1931 Census, Chinese, East Indian, and Japanese men made up 14 per cent of the total male workforce in the province, but represented 18 per cent of the male agricultural workforce. There was a slight concentration of Asian and South Asian workers in agriculture, but not as great a concentration as could be found in the forestry, fishing, and trapping sectors, where 28 per cent of the male workforce was Chinese, Japanese, or East Indian.<sup>45</sup>

The agricultural workforce of the 1930s was a relatively small and poorly paid segment of the overall provincial workforce. Agricultural labourers were a diverse group, but not more so than workers in other sectors included in labour legislation. As in other sectors of the economy, Asian and South Asian agricultural labourers and owner-producers were subjected to prejudice and discriminatory practices and policies in British Columbia in the 1930s.<sup>46</sup> However, ethnicity alone does not provide definitive clues as to why agriculture workers were excluded from the *Industrial Conciliation and Arbitration Act*.

Labour Minister Pearson's primary stated concern in proposing new labour legislation was to address a need for more tools to deal with labour disputes. One may ask, then, whether there were any labour disputes in agriculture at the time. From 1928 to 1937, only 3 out of the 115 strikes and lockouts in BC reported in the *Labour Gazette* were in the agricultural sector.<sup>47</sup> Keeping in

43. For a more detailed discussion of the ethnicity of BC's agricultural labourers focusing on the Okanagan, see Mario Lanthier and Lloyd L. Wong, *Ethnic Agricultural Labour in the Okanagan Valley: 1880s to 1960s* (British Columbia 1996), <http://142.36.5.21/thomp-ok/ethnic-agri/index.html> (date of access: 22 January 2013).

44. The 1931 Census of Canada did not count women who worked occasionally or for a short time each day in farm, dairy, livestock, or poultry work as "farm labourers." See Canada, *Census of Canada, 1931*, volume VII, xi. As such, the 1931 Census likely does not provide a precise representation of the productive agricultural work done by women at the time.

45. Canada, *Census of Canada, 1931*, volume VII, table 62, 954–55. Note that forestry workers were covered by the *Industrial Conciliation and Arbitration Act* and other employment-related legislation in BC.

46. Throughout the 1930s, similar to other sectors of the economy, "white" agricultural producer groups were concerned that agricultural production and marketing by Asian and South Asian producers threatened them. For example, see "Warns of Chinese Produce Conditions," *Victoria Daily Times*, 3 November 3 1936. See also Gillian Creese, "Exclusion or Solidarity? Vancouver Workers Confront the 'Oriental Problem,'" *BC Studies* 80 (1988), 24–51.

47. Canada Department of Labour, *The Labour Gazette* (Ottawa, ON 1929–38). Union activity and labour disputes appear to have been rare in agriculture not only in BC, but across Canada

mind that waged non-owner agricultural workers only accounted for 4 per cent of the workforce at the time, labour disputes in agriculture were few in number, but not unknown. A brief consideration of the details of these three strikes shows how the agricultural sector at the time exemplified some of the concerns Labour Minister Pearson had with communist influences, some employers' refusal to bargain collectively with employees, and disruption and instability for employers, employees, and the general public.

In September 1933, approximately 1,200 hop pickers in the Fraser Valley went on strike for two days.<sup>48</sup> The hop pickers included men and women of both European and Japanese ethnicity. At least some of the workers involved in this strike were affiliated with the Workers' Unity League, which was connected to the Communist Party of Canada. The workers demanded an increase in the piece-rate from 1.25 cents to 2 cents per pound, a weigh scale in the field, clean drinking water, fire protection, improved housing, and no discrimination for having participated in the strike. The piece-rate was increased to 1.75 cents per pound and the employees succeeded in gaining their other demands.

In the spring of 1934, a total of 93 hop field workers in Chilliwack and Sardis struck for increased wages, clean drinking water, improved living conditions, and an end to the contract labour system.<sup>49</sup> Rain would have prevented work for six of the seven strike days. The workers achieved their goals, including an increase in the hourly wage rate from 20 to 25 cents.

A third strike occurred on 6 September 1937.<sup>50</sup> Thirty-eight fruit pickers in Vernon struck for increased wages. The employer fired all 38 workers on the first day of the strike. The employer hired replacement workers and the strike ended.

These three instances of strike activity demonstrate the barriers workers faced when they organized without statutory support for union recognition and collective bargaining. Like other workers, agricultural workers were free to form associations and refuse to work in order to pressure the employer to accept their demands. And as the Vernon fruit picker strike illustrates, employers were also free to fire striking workers and replace them with other workers. In two of the strikes, agricultural workers successfully persuaded

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at the time. A notable exception was sugar beet growing in Alberta: see John Herd Thompson and Allen Seager, "Workers Growers and Monopolists: The 'Labour Problem' in the Alberta Beet Sugar Industry During the 1930s," *Labour/Le Travail*, 3 (1978), 153–74.

48. Canada Department of Labour, *The Labour Gazette*, vol. 33 (Ottawa, ON 1933), 984. See also Creese, "Exclusion or Solidarity?" 46. For a discussion on the role of hired labour in the production of hops, see Paige Raibmon, "The Practice of Everyday Colonialism: Indigenous Women at Work in the Hop Fields and Tourist Industry of Puget Sound," *Labor: Studies in Working-Class History of the Americas*, 3 (2006), 23–56.

49. Canada Department of Labour, *The Labour Gazette*, vol. 34 (Ottawa, ON 1934), 502. The contract labour system refers to the practice of obtaining a crew of workers through an intermediary labour-broker. The practice continues in BC's agricultural sector today.

50. Canada Department of Labour, *The Labour Gazette*, vol. 37 (Ottawa, ON 1937), 1075.

their employers to negotiate with them. These strikes involved large numbers of workers (1,200 and 93) at time-sensitive moments of seeding and harvest. Without legislation prohibiting employers from firing workers for strike activity, collective action puts workers' jobs on the line and has the potential to create significant social instability. Where workers are easily replaceable, an employer's unregulated freedom to replace them effectively denies their ability to have a collective say in their working conditions.<sup>51</sup>

Industrial disputes had occurred in BC's agricultural sector in the years and months leading up to the introduction of the *Industrial Conciliation and Arbitration Act*, and therefore it is not enough to say that labour relations in the agricultural sector were entirely different from labour relations in industrial sectors, nor that instances of collective action and labour disputes did not occur in agriculture at the time. In order to explain the exclusion of agricultural workers from that Act, I turn to the political record and legislative debates that surrounded the creation of the *Industrial Conciliation and Arbitration Act*.

### Patterns of Exclusion in the Legislative Record

IN HIS NOVEMBER 1937 BUDGET SPEECH, Premier Pattullo said his government had legislated in its first term "to improve the lot of the working man" and added "millions to the industrial payroll."<sup>52</sup> The premier went on to say that in its first term, the government had also tried to improve difficult agriculture conditions by legislating for orderly marketing boards.<sup>53</sup> In both the premier's speech and the government's legislative agenda, labour and agriculture were treated as separate categories of concern, and the waged labourer within agriculture was left out of both.

From 1933 to 1937, Premier Pattullo and the Liberal government had pursued a reformist agenda of socialized capitalism under the banner "Work and Wages" to respond to mass unemployment and the pressures of the 1930s Depression. The legislation of this first term established a pattern of excluding agricultural workers. The 1934 *Male Minimum Wage Act* and *Female*

51. As the Supreme Court of Canada noted in its 2001 analysis of the exclusion of agricultural workers from Ontario's labour relations regime, "without the necessary protection, the freedom to organize could amount 'to no more than the freedom to suffer serious adverse legal and economic consequences,'" *Dunmore v. Ontario (Attorney General)*, para. 22. *Dunmore* challenged the exclusion of agricultural workers from Ontario's labour relations legislation on the basis that it offended the *Charter*-protected freedom of association. Justice Bastarache also stated, "history has shown, and Canada's legislatures have uniformly recognized, that a posture of government restraint in the area of labour relations will expose most workers not only to a range of unfair labour practices, but potentially to legal liability under common law inhibitions on combinations and restraints of trade," para. 20.

52. BCA, PP, GR 1222, Box 142, File 142-7, T.D. Pattullo, Speech on the Budget Debate.

53. BCA, PP, GR 1222, Box 142, File 142-7, Pattullo, Speech on the Budget Debate.

*Minimum Wage Act* created gender-, industry-, and region-specific minimum wages.<sup>54</sup> The minimum-wage legislation stated it applied to all employees in any industry, business, trade, or occupation, but exempted male “farm-labourers and domestic servants” and female “farm-labourers, fruit-pickers, and domestic servants.”<sup>55</sup> The 1935 *Act Respecting the Hours of Work in Industrial Undertakings*<sup>56</sup> limited work to 8 hours per day and 48 hours per week in industry, business, and trade. It also did not apply to agriculture. Finally, although never implemented,<sup>57</sup> the 1936 *Health Insurance Act*<sup>58</sup> would have provided health insurance coverage to most BC resident employees who earned less than \$1,800 per annum. Again, agricultural labourers were excluded.<sup>59</sup>

Premier Pattullo used his November 1937 budget speech to tell the Legislative Assembly about the government’s agenda in its second term. He said the government would further “improve conditions of labour, to make for better understanding between employer and employees, provision for more effective and expeditious means of adjustment of difference between employer and employees so that there need be no resort to strike.”<sup>60</sup> He was referring to the *Industrial Conciliation and Arbitration Act*, which would continue the pattern of excluding agricultural workers from employment-related legislation.

This pattern of exclusion was not unique to British Columbia.<sup>61</sup> Not all of the labour relations legislative models from other jurisdictions excluded agricultural workers, but many did. The New Zealand legislation did not

54. S.B.C. 1934, c. 47; S.B.C. 1934, c. 48.

55. Note that the exemption of agricultural workers from the minimum wage and hours of work legislation was not achieved through the same legislative wording as the *Industrial Conciliation and Arbitration Act*, which excluded agricultural workers from the definition of “employee.”

56. S.B.C. 1935, c. 30.

57. The *Health Insurance Act* was passed in the first term of Pattullo’s government. It was supported by the CCF and organized labour, but opposed by boards of trade, chambers of commerce, and the BC Medical Association. In order to avoid alienating businesses, professionals, and workers in the lead up to elections in June 1937, the government suspended implementation of the Act and held a referendum about it at the same time as the election. Although almost 59 per cent favoured its implementation, the government continued to defer it, and the Act never came into force. See Robin, *Pillars of Profit*, 20, 29, 30, 34, 38, and Robin Fisher, *Duff Pattullo of British Columbia* (Toronto 1991), 308.

58. S.B.C. 1936, c. 23.

59. S.B.C. 1936, c. 23, s. 4. The Act also would have exempted certain Christian Scientists and members of pre-existing industrial medical service plans. It gave Cabinet the discretion to exempt domestic servants, casual workers, part-time workers, and other industries or establishments in which application of the Act would be “unnecessary or inexpedient.”

60. BCA, PP, GR 1222, Box 142, File 142-7, Pattullo, Speech on the Budget Debate, 15.

61. See also Eric Tucker, “Farm Worker Exceptionalism: Past, Present, and the post-Fraser Future,” in Fay Faraday, Judy Fudge and Eric Tucker, eds., *Constitutional Labour Rights in Canada* (Toronto 2012), 30.



exclude agricultural workers on the face of the statute, but the same effect was achieved through the country's labour arbitration court's discretionary policy decision not to apply the legislation to agriculture.<sup>62</sup> The American *National Labor Relations Act* (or the Wagner Act) excluded from the definition of employee "any individual employed as an agricultural laborer, or in the domestic service."<sup>63</sup> Canadian federal labour relations legislation prior to 1937 was not generally applicable, and instead specified the sectors of the economy that came under its authority, including public utilities and coal mines.<sup>64</sup> It did not apply to agriculture, nor to many other industries. Two out of three of the other provincial labour relations laws enacted in 1937 included agricultural workers. The Nova Scotia *Trade Union Act*<sup>65</sup> and the Alberta *Freedom of Trade Union Association Act*<sup>66</sup> included agricultural workers.<sup>67</sup> The Manitoba *Strikes and Lockouts Prevention Act* excluded agricultural workers by defining an employee as "any person employed by an employer to do any work for hire or reward in an employment to which this Act applies, but does not include employees in domestic service or in agriculture." The BC *Industrial Conciliation and Arbitration Act* defined employees, and thus excluded agricultural workers, using precisely the same words found in the Manitoba legislation.<sup>68</sup>

The *Industrial Conciliation and Arbitration Act* was passed and proclaimed into force on 10 December 1937, the final day of the 1937 legislative session.<sup>69</sup> Despite being before the Legislative Assembly for only four days, the bill was amended a number of times.<sup>70</sup> These amendments included revisions penned

62. Woods, *Industrial Conciliation and Arbitration in New Zealand*, 13–14, 74–76.

63. See Watson, *Legislative History*, 1; see also Michael H. LeRoy and Wallace Hendricks, "Should 'Agricultural Laborers' Continue to be Excluded from the National Labor Relations Act?" *Emory Law Journal*, 48 (Spring 1999), 505, National Labor Relations Board, *Legislative History*, vol. 1, 1085–86, and Austin P. Morris, "Agricultural Labor and National Labor Legislation," *California Law Review*, 54 (December 1966), 1952.

64. See for example, *The Industrial Disputes Investigation Act, 1907*.

65. This Act defined employees as excluding officers, officials, or persons employed in a confidential capacity, and did not apply to mines covered by the *Coal Mines Regulation Act*.

66. This Act did not exclude any category of employee.

67. A copy of the Trades and Labor Congress model draft legislation can be found among the documents in the folder devoted to 1937 labour legislation in BCA, PP, GR 1222, Box 142, File 142-7.

68. *Industrial Conciliation and Arbitration Act*, s. 2.

69. British Columbia, Legislative Assembly, *Journals of the Legislative Assembly*, 19th Legislature, 1st Session, vol. 67 (7 and 10 December 1937), 134, 164.

70. The Legislative Assembly amended how collective bargaining representatives were to be chosen, restricted arbitrators under the Act to British subjects, shortened the time arbitrators had to prepare a report to fourteen days, and grandfathered in existing collective agreements: "Compulsory Arbitration Bill has Passed Through the House," *The Vancouver Daily Province*,



during a late night sitting on 9 December 1937, lasting until 1:25 a.m.<sup>71</sup> In the short time for debate, some members of the assembly raised the issue of the exclusion of agricultural workers (and domestic workers). Co-operative Commonwealth Federation leader Harold E. Winch proposed amending the legislation to include domestic and agricultural workers.<sup>72</sup> Labour Minister Pearson agreed conditions for both domestic and agricultural workers were "unsatisfactory," but said that if every ranch was organized, there would be turmoil. Members of the government also claimed that if agricultural workers could organize, BC farmers would no longer be able to compete with producers in other Pacific countries, especially Russia and Japan where labour was cheap.<sup>73</sup> The *Vancouver Daily Province* reported on legislative debate on exclusion of agricultural workers from the legislation as follows:

Hon. G.S. Pearson, Minister of labor, was also unable to accept an amendment proposed by Mr. Winch extending the scope of the act to domestic servants and agricultural laborers. Although expressing sympathy with the intentions of the amendment, the minister of labor declared conditions in the agricultural industry and among domestic servants were in such an unorganized and unsettled state he would prefer to see one year's working of the act before branching beyond its present scope.<sup>74</sup>

As it turned out, both domestic servants and agricultural workers had much longer than one year to wait before they were included in labour relations legislation.

The *Industrial Conciliation and Arbitration Act* provoked public reaction, particularly from unions. In his September 1937 memorandum, Labour Minister Pearson anticipated that both employers and trade unions would oppose parts of the legislation. He wrote,

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19 December 1937.

71. *Journals of the Legislative Assembly*, vol. 67, 160. Among these last-minute amendments was the expansion of the Act from only workplaces with ten or more employees to all workplaces large and small: "Small Firms Now Affected," *The Vancouver Daily Province*, 10 December 1937.

72. "New Labor Bill Made Law Today," *Times Victoria Daily*, 10 December 1937. Winch, who was himself unemployed and on relief before he was first elected in 1933, also proposed eliminating prohibitions on strike activity during the conciliation and arbitration process. The same newspaper article reported, "Mrs. D.G. Steeves, CCF, North Vancouver, thought if domestics were included in the Act it would be an aid to their organization. If they were not included she felt the psychological effect on them would be that the government was not interested in them. They needed organization more than anyone else, she said."

73. "New Labor Bill," *Times Victoria Daily*, 10 December 1937.

74. "Compulsory Arbitration Bill has Passed Through the House," *Vancouver Daily Province*, 19 December 1937. Prior to 1970, debates and committee proceedings were not recorded or reported in British Columbia's *Hansard*. Further, in the 1930s, not all bills were printed or bound in the official records. As such, newspaper reports for the time are a significant source of information regarding the content of debates and amendments made by the BC Legislative Assembly.

On the outside opposition will be encountered from organized labour because they are opposed to any Government measure which takes the power to deal with labour disputes out of their hands, and we may encounter some opposition from a certain type of employer who has not yet realized that the day must come when he must recognize the right of his employees to discuss as a body with him their respective rights. This Bill, while granting much wider privilege to employees than they have at the present time, places responsibilities upon them which make it impossible for them to disrupt industry without there having been a thorough enquiry into the merits of the dispute.<sup>75</sup>

As Pearson predicted, labour generally opposed the *Industrial Conciliation and Arbitration Act* when the details of the legislation became known. Throughout 1937, labour organizations had demonstrated and met with sitting CCF members of BC's Legislative Assembly to encourage them to urge the government to pass trade union legislation drafted and endorsed by the Trades and Labor Congress of Canada.<sup>76</sup> On 2 November 1937, the BC Executive of the Trades and Labor Congress of Canada met with Premier Pattullo and members of his government to ask for legislation recognizing the right of trade unions to organize and prohibiting interference with trade union activities through intimidation.<sup>77</sup> After a summary of the *Industrial Conciliation and Arbitration Act* was published in the newspaper, over twenty local unions wrote to the premier to protest the legislation, particularly the inclusion of compulsory arbitration.<sup>78</sup>

Business and employer opposition to the *Industrial Conciliation and Arbitration Act* was not so apparent. In a letter addressed to the minister of labour dated 10 December 1937, Wendell B. Farris, a lawyer who represented employers, wrote: "the legislation should be considered satisfactory from the standpoint of the employer.... [M]y advice to my clients is that the act as now drawn is in their best interests."<sup>79</sup>

None of the letters preserved in the premier's papers from either unions or employers comment on the exclusion of agricultural workers.

75. BCA, PP, GR 1222, Box 142, File 142-7, Memo Pearson to Pattullo.

76. "Labor Unions Lay Proposals Before BC Cabinet Here," *The Daily Colonist*, 3 November 1937; "Labor Plea to Mr. Pattullo," *The Vancouver Sun*, 27 November 1937; "BC Labor to Meet Over Trades Code," *The Vancouver Daily Province*, 29 October 1937; Canada Department of Labour, *The Labour Gazette*, vol. 37 (Ottawa, ON 1937), 171.

77. BCA, PP, GR 1222, Box 142, File 142-7, Memorandum on Conciliation and Arbitration Act presented to the BC Cabinet on 24 June 1938 by the British Columbia Executive of the Trades and Labor Congress of Canada (E.H. Morrison, Chairman, M. Stewart, H. Pearson, B. Showler, P.R. Bengough), 1.

78. BCA, PP, GR 1222, Box 142, File 142-7.

79. BCA, PP, GR 1222, Box 142, File 142-7, Wendell B. Farris to George S. Pearson, 10 December 1937.

## Agricultural Worker Exclusion from 1937 to 1975

SINCE 1937, BC'S LABOUR RELATIONS statute has been the subject of much legislative activity. The original *Industrial Conciliation and Arbitration Act* required employers to bargain with employees, but not with trade unions. The Act was amended in 1938 and 1943 to recognize trade unions as bargaining agents and to strengthen the status of trade unions.<sup>80</sup>

The Liberal-Conservative coalition government, led by Premier John Hart from 1941 to 1947 and by Premier Byron Johnson from 1947 to 1952,<sup>81</sup> continued to exclude agricultural workers from labour relations legislation. In 1944, the operation of the *Industrial Conciliation and Arbitration Act* was suspended (except for matters pending), to make way for the provincial application of the federal *Wartime Labour Relations Regulations*, P.C. 1003.<sup>82</sup> P.C. 1003 maintained the exclusion of agricultural workers from labour relations legislation by excluding a person employed in agriculture from the definition of employee.<sup>83</sup> In BC, the *Wartime Labour Relations Act* and the *Industrial Conciliation and Arbitration Act (1937)* were both replaced by the *Industrial Conciliation and Arbitration Act, 1947*<sup>84</sup> on 3 April 1947. Again, the definition of employee excluded a person employed in agriculture and horticulture.<sup>85</sup> This exclusion was not changed when that Act was amended a year later.<sup>86</sup>

Premier W.A.C. Bennett and his Social Credit government, in power from 1952 to 1972, positioned themselves as in favour of free enterprise, in contrast

80. See *Industrial Conciliation and Arbitration Act Amendment Act, 1938*, S.B.C. 1938, c. 23. The change permitted employees to bargain through officers of a trade union. See also *Industrial Conciliation and Arbitration Act Amendment Act, 1943*, S.B.C. 1943, c. 28 which further strengthened the status of trade unions under the Act.

81. See Fisher and Mitchell, "Patterns of Provincial Politics."

82. *Wartime Labour Relations Regulations Act*, S.B.C. 1944, c. 18.

83. The *Wartime Labour Relations Regulations* defined employee as "a person employed by an employer to do skilled or unskilled manual, clerical or technical work; but does not include (i) a person employed in a confidential capacity or having authority to employ or discharge employees; or (ii) a person employed in domestic service, agriculture, horticulture, hunting or trapping;" *Wartime Labour Relations Regulations*, P.C. 1003, attached as a schedule to *Wartime Labour Relations Regulations Act*, S.B.C. 1944, c. 18.

84. *Industrial Conciliation and Arbitration Act, 1947*, S.B.C. 1947, c. 44.

85. "Employee" was defined in the *Industrial Conciliation and Arbitration Act, 1947*, as follows: "a person employed by an employer to do skilled or unskilled manual, clerical, or technical work, but does not include: (a.) a person employed in a confidential capacity or a person who has authority to employ or discharge employees: (b.) A person who participates in collective bargaining on behalf of an employer, or who participates in the consideration of an employer's labour policy: (c.) A person serving an indenture of apprenticeship under the 'Apprenticeship Act': (d.) A person employed in domestic service, agriculture, horticulture, hunting, or trapping."

86. *Industrial Conciliation and Arbitration Act, 1947, Amendment Act, 1948*, S.B.C. 1948, c. 31.

to the socialist CCF and later New Democratic Party (NDP).<sup>87</sup> In 1954, the *Labour Relations Act* replaced the *ICAA 1947*. The exclusion of workers in agriculture and horticulture continued.<sup>88</sup> Subsequent amendments and additions to the BC labour relations legislative regime in the 1950s and 1960s did not alter the situation for agricultural workers.<sup>89</sup>

In the 1972 general election campaign, NDP candidates Colin Gabelmann (Vancouver-Seymour) and Harold Steves (Richmond) promised that, if elected, agricultural workers would be included in labour relations legislation. Gabelmann was former BC Federation of Labour director of legislation and political education. Steves was viewed as a member of the more radical Waffle wing of the NDP. Both won seats as Members of the Legislative Assembly (MLAs).

On 30 August 1972, Premier David Barrett and the New Democratic Party were elected into government and set to work on extensive legislative changes. An overhaul of BC's industrial relations climate and legislation was part of the government's agenda.<sup>90</sup> The *Labour Code of British Columbia*, enacted in 1973, was a substantial revision of the province's labour legislation.<sup>91</sup> The *Labour Code* removed some of the statutory restrictions unions had faced under the Social Credit government, restructured the regulation of strike activity, and resulted in a decline in working days lost to industrial conflict in the first year after it came into force.<sup>92</sup> The 1973 *Labour Code of British Columbia*, however, still contained a definition of "employee" that excluded agricultural workers.<sup>93</sup>

The government faced ridicule from the Social Credit opposition, who said that the NDP was going back on its election promise to include agricultural workers in reformed labour legislation.<sup>94</sup> In legislative debates, NDP MLAs Gabelmann and Steves were joined by Rosemary Brown (NDP, Vancouver-Burrard) in speaking out against their own government's continued exclusion

87. Fisher and Mitchell, "Patterns of Provincial Politics," 266.

88. S.B.C. 1954, c. 17, s. 2.

89. *Labour Relations Act Amendment Act, 1961*, S.B.C. 1961, c. 31. *Trade-unions Act*, S.B.C. 1959, c. 90; *Mediation Commission Act*, S.B.C. 1968, c. 26.

90. Paul Weiler, *Reconcilable Differences: New Directions in Canadian Labour Law* (Toronto 1980), 3.

91. For a description of the *Labour Relations Code* as enacted in 1973, see H.W. Arthurs, "The Dullest Bill: Reflections on the Labour Code of British Columbia," *University of British Columbia Law Review*, 9 (1974), 280–340.

92. Lorne J. Kavic and Garry Brian Nixon, *The 1200 Days: A Shattered Dream* (Coquitlam, BC 1978), 149–54.

93. S.B.C. 1973, c. 122, s. 1. "Employee" was defined as not including "a person who, in the opinion of the board ... is employed in domestic service, agriculture, hunting or trapping."

94. British Columbia, Legislative Assembly, *Official Report of the Debates (Hansard)*, 30th Parliament, 3rd Session, 17 October 1973, 694–95 (Chabot).

of agricultural and domestic workers.<sup>95</sup> They argued all workers ought to be treated the same and that exploitative conditions for agricultural workers should not be used to subsidize farm employers or consumers. Steves expressed particular concern for class-based discrimination, for the exploitation of Chinese and other immigrant labourers, and for agricultural working conditions which he described as "near slave labour."<sup>96</sup> Steves said, "The long tradition in agriculture has been to attract immigrants to the province and the country to work for low wages.... [T]hey come over here and find that they have to work for low wages until they find their way in the community and get a job elsewhere. And so then, more immigrants come in and work for these same low wages."<sup>97</sup> Steves argued the continuing exclusion of agricultural workers created and maintained the marginalization of immigrant and racialized groups in the province.

Labour Minister William King attempted to justify the continued exclusion in the 1973 labour legislation. He pointed to the status quo: agricultural and domestic workers had never been included in BC's labour legislation.<sup>98</sup> King said special problems arose when labour relations law included agricultural and domestic workers because of family ties between the agricultural employer and worker.<sup>99</sup> He suggested further research was needed. King added that the government's legislative agenda at the time included a number of measures to help the agricultural sector. Once these measures were in place, he said, agricultural employers "might be better able to afford competitive prices for labour costs" and "many of the obstacles to providing fair and adequate wages in the agricultural sector will be eliminated."<sup>100</sup> Like the Liberal government in the 1930s, the NDP government in 1973 perceived that both labour and agriculture needed legislative assistance. Again, labour and agriculture were treated as separate categories of legislative concern, and the waged labourer within

95. British Columbia, Legislative Assembly, *Official Report of the Debates (Hansard)*, 30th Parl., 3rd Sess., 30 September 1973, 126 (Brown); British Columbia, Legislative Assembly, *Official Report of the Debates (Hansard)*, 30th Parl., 3rd Sess., 4 October 1973, 459 (Gabelmann); British Columbia, Legislative Assembly, *Official Report of the Debates (Hansard)*, 30th Parl., 3rd Sess., 9 October 1973, 495 (Steves) and 512 (Skelly); British Columbia, Legislative Assembly, *Official Report of the Debates (Hansard)*, 30th Parl., 3rd Sess., 17 October 1973, 705 (Gabelmann) and 707 (Steves).

96. British Columbia, Legislative Assembly, *Official Report of the Debates (Hansard)*, 30th Parl., 3rd Sess., 17 October 1973, 707 (Steves).

97. British Columbia, Legislative Assembly, *Official Report of the Debates (Hansard)*, 30th Parl., 3rd Sess., 17 October 1973, 707 (Steves).

98. British Columbia, Legislative Assembly, *Official Report of the Debates (Hansard)*, 30th Parl., 3rd Sess., 9 October 1973, 516 (King).

99. British Columbia, Legislative Assembly, *Official Report of the Debates (Hansard)*, 30th Parl., 3rd Sess., 9 October 1973, 516 (King).

100. British Columbia, Legislative Assembly, *Official Report of the Debates (Hansard)*, 30th Parl., 3rd Sess., 17 October 1973, 708 (King).

agriculture was left out.<sup>101</sup> Labour Minister King's comments also reflect a view that the low wages of the working poor in agriculture are made necessary and perhaps even justified by the structural economics of agriculture.

When the section of the *Labour Code* that contained the exclusion of agricultural employees came to a vote, both Colin Gabelmann and Harold Steves voted with the opposition and against their own government. They said that they could not support labour legislation that excluded agricultural workers and domestic employees.<sup>102</sup>

The following year, Labour Minister King followed up on his suggestion that more research into the inclusion of agricultural workers was needed. On 17 June 1974, he made a motion to have the Select Standing Committee on Labour and Justice examine the exclusion of agricultural and domestic workers from the *Labour Code* and other employment-related legislation to determine if reform was needed.<sup>103</sup> The committee toured the province in October of 1974 and received submissions from the agricultural industry, trade unions, political organizations, agricultural workers, and domestic workers.

Colin Gabelmann was chairperson of the Select Standing Committee on Labour and Justice when it presented its report on 10 April 1975.<sup>104</sup> He summarized the main argument in favour of including agricultural workers in the *Labour Code* in terms of universal coverage and formal equality. He reasoned that it would be just and fair to apply the same legislative regime to all workers.

During its tour of the province, the committee heard arguments against the inclusion of agricultural workers in the *Code*. Opponents told the committee that higher wages as a result of worker unionization would force agricultural producers out of business and cause more unemployment, that workers were already paid what they were worth, and that piece-rates and child labour were necessary in the agricultural sector. The committee's response to these arguments was, in part, as follows:

The over-riding philosophy of the argument [against inclusion] is that relatively cheap food prices for the consuming public at large are socially more important than the welfare of those producing it. In addition, it also implies that there may be some justification for obliging a class of workers in our society to subsidize producers who may be inefficient or whose operations may not be otherwise economically viable. Thus, those people engaged in food production must continue to be content with poor wages and working conditions. The Committee considers this position unacceptable. Exploitation of a pool of low-skilled

101. See Marjorie Nichols, "Farm, labour bills pledged: Throne speech launches 'full working session,'" *The Vancouver Sun*, 13 September 1973, the first line of which reads: "Legislative action was promised by the NDP government today to deal with 'urgent problems' facing agriculture and labor."

102. "2 NDP backbenchers vote against gov't on bill," *The Vancouver Sun*, 19 October 1973.

103. British Columbia, Legislative Assembly, *Journals of the Legislative Assembly*, 30th Leg., 4th Sess., vol. 61, 17 June 1974, 257–58.

104. British Columbia, Legislative Assembly, *Journals of the Legislative Assembly*, 30th Leg., 5th Sess., vol. 62, 10 April 1975, 76–82.



workers should not be required at a time when numerous modern technologies and management methods are available to accomplish the tasks of production and distribution.<sup>105</sup>

In relation to the *Labour Code* specifically, the committee reported:

While most farmers do not favour trade unions, there are no valid reasons why agricultural or domestic workers should not be covered by the Code. Opposition voiced to this Act was largely on the basis of "personal" employee/employer relationships traditionally prevalent in agriculture, and a "gut feeling" that unions would destroy these relationships.<sup>106</sup>

The committee recommended that twelve employment-related laws<sup>107</sup> be amended to include agriculture and domestic workers.

On 26 June 1975, the Legislative Assembly repealed the agricultural exclusion from the *Labour Code*.<sup>108</sup> At the same time, the exclusion of domestic workers was also repealed. Since 1975, agricultural workers in BC have had access to the general provincial labour relations legislation.

The inclusion of agricultural workers in the *Labour Code* was apparently met with little opposition from agricultural employers. The manager of the BC Federation of Agriculture, Richard Stocks, said, "I don't think this is going to be a serious problem for farm owners. We're not opposed to farm labourers coming under the labor code. We feel they should be paid the same rates as other workers."<sup>109</sup> Similarly, it was also reported that the Fraser Valley Milk Producers Association president and the BC Fruit Growers' president did not oppose the inclusion of agricultural workers in the *Labour Code*.<sup>110</sup>

105. British Columbia, Legislative Assembly, *Journals of the Legislative Assembly*, 30th Leg., 5th Sess., vol. 62, 10 April 1975, 77–78. Several NDP and Liberal members spoke in the Legislative Assembly in support of the change: see for example, British Columbia, Legislative Assembly, *Official Report of the Debates (Hansard)*, 30th Parl., 5th Sess., 25 June 1975, 3977 (Anderson), 3980 (Gabelmann), 3981 (Gibson), 3981 (Steves), 3986 (Brown).

106. *Journals of the Legislative Assembly*, vol. 62, 79. This is the entire portion of the report dealing with the *Labour Code*.

107. The twelve acts were the *Annual and General Holidays Act*, R.S.B.C. 1960, c. 11, *Control of Employment of Children Act*, R.S.B.C. 1960, c. 75, *Hours of Work Act*, R.S.B.C. 1960, c. 182, *Labour Code*, S.B.C. 1973, c. 122, *Maternity Protection Act*, S.B.C. 1966, c. 25, *Minimum Wage Act*, R.S.B.C. 1960, c. 230, *Payment of Wages Act*, S.B.C. 1962, c. 45, *Truck Act*, R.S.B.C. 1960, c. 388, *Employment Agencies Act*, R.S.B.C. 1960, c. 127, *Workers' Compensation Act*, S.B.C. 1968, c. 59, and *Factories Act*, 1966, S.B.C. 1966, c. 14.

108. *Labour Code of British Columbia Amendment Act*, 1975. The exclusion of domestic workers and certain professionals was also repealed. At the same time, several changes were made to the remedial powers available to the Labour Relations Board.

109. Rod Mickleburgh, "Labor Code Changes Hit Over New Raiding Rules," *The Vancouver Sun*, 17 May 1975.

110. Mickleburgh, "Labor Code Changes," 17 May 1975. The *Sun* quoted Milk Producers Association president Gordon Park as saying, "You can't be opposed to that in this day and age. I suppose everyone should have the opportunity to organize." BC Fruit Growers' Association president Charles Bernhardt of Summerland said trade union organizing was "something that is happening everywhere and if it helps to provide us with a continuous source of supply of



No changes were made to the other employment standards legislation considered by the Select Standing Committee on Labour and Justice in 1975.<sup>111</sup> As a result, BC agricultural workers continued to be excluded from minimum wage, statutory holiday, hours of work, workplace health and safety, and other employment-related legislation. Inclusion in collective bargaining legislation without extending the basic minimum employment standards protection had the effect of maintaining the status quo for most agricultural employers and workers. Since 1975, some of these basic employment standards, notably minimum wage protections, have been extended to agricultural workers. But it is important to note that the North American model of labour relations legislation preserves non-unionized workplaces as the norm. Unless agricultural workers take positive steps and meet the many administrative requirements set up by the *Labour Code*, the non-unionized status quo, in which the employer has unfettered private authority to make decisions governing the workplace, is preserved.

### British Columbia's Agricultural Workers in the 1970s

WHO WERE BC'S AGRICULTURAL WORKERS when they were included in the *Labour Code* in 1975? Agricultural workers made up an even smaller proportion of the overall workforce than they did in the 1930s. In 1931, the agricultural sector employed 14 per cent of the overall workforce, while in 1976, just 2.2 per cent of workers in BC were employed in agriculture,<sup>112</sup> a figure that included owner-operators and managers. Paid agricultural labourers accounted for only 0.7 per cent of employment in the province.<sup>113</sup> The agricultural sector comprised a very small proportion of the overall provincial workforce by the 1970s, but hired agricultural workers represented a much greater proportion of the primary agriculture workforce. In contrast to the 1950s, when paid workers represented approximately 24 per cent of the primary agricultural workforce in BC, by 1974 they made up 43 per cent.<sup>114</sup> Unpaid family workers still made up approximately 22 per cent of the agriculture workforce in 1974.<sup>115</sup> By 1977,

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labor, then it's a step forward."

111. *Re South Peace Farms*, [1977] B.C.L.R.B.D. No. 11 (Quicklaw). Agricultural employees in BC have, since 1973, been included in some other employment-related legislative protections, such as minimum wage regulations.

112. British Columbia Legislative Assembly Select Standing Committee on Agriculture, *The Impact of Labour on the British Columbia Food Industry: Phase III Research Report* (Richmond, BC 1979), 26. This includes paid workers, farm owners, and unpaid family members working on farms. Most figures in this report are taken from Statistics Canada.

113. Standing Committee on Agriculture, *The Impact of Labour*, 26.

114. Standing Committee on Agriculture, *The Impact of Labour*, 22.

115. Standing Committee on Agriculture, *The Impact of Labour*, 22.

Table 2: Primary Ethnicity of Workers in BC, 1971

	All Occupations		Agricultural Labourers		Farmers (owners)	
	Men	Women	Men	Women	Men	Women
<b>British</b>	57 %	60 %	49 %	40 %	44 %	52 %
<b>French</b>	5 %	4 %	3 %	3 %	3 %	3 %
<b>German</b>	10 %	9 %	11 %	18 %	18 %	16 %
<b>Italian</b>	3 %	2 %	3 %	1 %	1 %	0 %
<b>Jewish</b>	0.6 %	0.7 %	0.2 %	0 %	.07 %	0 %
<b>Netherlands</b>	3 %	3 %	7 %	9 %	13 %	4 %
<b>Polish</b>	1 %	2 %	1 %	2 %	1 %	3 %
<b>Scandinavian</b>	5 %	5 %	5 %	5 %	7 %	5 %
<b>Ukrainian</b>	3 %	3 %	2 %	3 %	2 %	3 %
<b>Other European</b>	6 %	5 %	7 %	8 %	6 %	5 %
<b>Asian &amp; South Asian</b>	4 %	4 %	6 %	7 %	4 %	5 %
<b>Aboriginal</b>	1 %	1 %	3 %	2 %	0.8 %	2 %

Compiled from Statistics Canada, *1971 Census of Canada, Occupations*, Cat. 94-733, Vol. 3, part 3, January 1975, Table 5: Labour Force, 15 years and over, by Occupation Minor Groups and Sex, showing Birthplace, Period of Immigration and Ethnic group for regions, 1971. Some totals may not add up due to rounding.

this had dropped to 18 per cent.<sup>116</sup> Paid agricultural labour (as opposed to owners and unpaid family members) was becoming a relatively larger and more important component of the agricultural workforce. Labour Minister King's concern for family ties in the employment relationship between owner-producer and agricultural labourer was not borne out by the numbers, even in the mid-1970s.

Not all agriculture operations in British Columbia hired employees. In 1976, 45 per cent of farms in the province, approximately 5,912 in total, reported hiring workers.<sup>117</sup> The Legislative Assembly Select Standing Committee on Agriculture found that BC relied more on hired agricultural workers than any other province in Canada in the 1970s, and also had the greatest proportion of seasonal agricultural workers in the country.<sup>118</sup> Only 12 per cent of all BC agricultural operations (approximately 1,582) hired workers on a year-round basis.<sup>119</sup>

116. Standing Committee on Agriculture, *The Impact of Labour*, 23.

117. Standing Committee on Agriculture, *The Impact of Labour*, 27.

118. Standing Committee on Agriculture, *The Impact of Labour*, 28.

119. Standing Committee on Agriculture, *The Impact of Labour*, 27.

The ethnicity of the agricultural workforce was somewhat mixed and matched fairly closely the ethnic diversity of British Columbia's workforce overall at the time, as can be seen in Table 2.

As Table 2 shows, British men and women were slightly under-represented in the agriculture sector generally. German women were over-represented as agricultural labourers and owners, and German men over-represented in the category of farmer. Dutch workers made up a greater proportion of agricultural workers compared with the proportion of Dutch workers in all occupations. Aboriginal, Asian, and South Asian workers were slightly over-represented in the agricultural sector.

Similar to the 1930s, agricultural workers were still paid less than workers in other sectors. British Columbia's agricultural workers earned an average of \$4.20 per hour in 1977, when the average manufacturing wage was \$8.27.<sup>120</sup>

Unlike Ontario, which had begun hiring migrant labourers from the Caribbean and Mexico in the 1970s, British Columbia's agricultural labour needs were met from within Canada. The supply of agricultural labour was not, however, left open to market forces without governmental intervention. The Canada Farm Labour Pool was a federal program established to offset labour supply problems by assisting with recruitment and transporting workers from other regions of Canada. The program had BC offices in Abbotsford, Armstrong, Duncan, Victoria, Penticton, and Kelowna.<sup>121</sup> British Columbia was also dependent on recent immigrants to Canada from other countries to fill lower paying and seasonal work. Farm labour contractor arrangements were also common in the Lower Mainland region.<sup>122</sup>

## Organizing Agricultural Workers under the *Labour Code*

AFTER THE *LABOUR CODE* was changed to include agricultural workers, the first application for certification<sup>123</sup> of a unit of agricultural workers occurred on 3 December 1976.<sup>124</sup> The employer objected to the certification application, arguing before the Labour Relations Board that collective bargaining was

120. Standing Committee on Agriculture, *The Impact of Labour*, 26.

121. Standing Committee on Agriculture, *The Impact of Labour*, 34.

122. Standing Committee on Agriculture, *The Impact of Labour*, 35–37.

123. Certification refers to the process in which the Labour Board assesses whether the union represents a majority of employees in the bargaining unit, and if so, issues a certification order. Once a certification order is issued, the employer is required to bargain with the union.

124. *Re South Peace Farms*, [1977] B.C.L.R.B.D. No. 11 (Quicklaw). The Oil, Chemical and Atomic Workers International Union, Local No. 9-686, applied to be certified as the bargaining representative of an all-employee unit comprised of sixteen employees. South Peace Farms operated a 38,000-acre mixed farm, including 1,000 head of cattle and grain and fescue operations, with approximately ten permanent employees and a further eight seasonal employees.

inherently incompatible with agricultural production. In the resulting written decision, *Re South Peace Farms*,<sup>125</sup> a panel of the Labour Relations Board headed by Vice-chairperson John Baigent rejected each of the employer's arguments. While Vice-chairperson Baigent acknowledged that the time-sensitive demand for labour at harvest makes an agricultural operation particularly vulnerable to strike activity, he also explained that canneries, food processing plants, and packing sheds all experience similar dynamics and all have long histories of collective bargaining without frequent work stoppages or food spoilage.<sup>126</sup> The difficulty agricultural employers have in increasing the sale price for products is not unique to the agricultural sector, but is experienced by many primary resource-producing employers who face product prices set by the world market. Moreover, even in the 1970s, the small family farm was of declining importance in primary agricultural production in British Columbia. The employer involved in this particular certification application was a sophisticated agribusiness operation. Vice-chairperson Baigent also commented that chronic agricultural labour shortages ought not to be seen as an argument against collective bargaining in agriculture, but instead as an argument for better working conditions and the inclusion of agricultural workers in minimum employment standards protections.<sup>127</sup> The Labour Board rejected the employer's arguments against collective bargaining in the agricultural industry,<sup>128</sup> and issued a certification order. And thus, the modern era of unionization of agricultural workers under British Columbia's labour legislation began.

Despite agricultural workers being covered by the provincial labour relations law since 1975, bargaining units in the agricultural sector have proven unstable, and the rate of unionization in primary agriculture remains low in BC and across Canada generally.<sup>129</sup> Since BC's first unit of agricultural workers

125. *Re South Peace Farms*, [1977] B.C.L.R.B.D. No. 11 (Quicklaw).

126. *Re South Peace Farms*, [1977] B.C.L.R.B.D. No. 11 (Quicklaw).

127. *Re South Peace Farms*, [1977] B.C.L.R.B.D. No. 11 (Quicklaw).

128. The employer also argued that agricultural labour relations fell exclusively in federal jurisdiction, that the proposed unit was not appropriate, and that the specific union was not suited to represent agricultural workers.

129. In 1967, 32.3 per cent of the non-agricultural paid workers in Canada were union members, compared with 1 per cent of paid agricultural workers in the same year. In 2009, 29.5 per cent of all paid employees were union members, and 31.6 per cent were covered by collective agreements in Canada. In the private sector, 16.1 per cent were union members, and 17.7 per cent were covered by collective agreements. The agriculture sector still had significantly lower union density in 2009: only 5.3 per cent were union members and 6.3 per cent were covered by a collective agreement. See H.D. Woods, *Canadian Industrial Relations: The Report of Task Force on Labour Relations* (Ottawa, ON 1969), 24, 26, and Statistics Canada, "Unionization," *Perspective on Labour and Income* 27 (2009), 30. See also Tucker, "Farm Worker Exceptionalism," 56.

was certified in 1976, there have been two targeted, engaged, and sustained campaigns to organize agricultural workers in the province.

In the early 1980s, the Canadian Farmworkers Union (CFU) organized and filed several certification applications with the Labour Relations Board. In the eighteen months after the CFU's founding convention in April 1980 the union obtained six certifications, two collective agreements, and set in motion a process that would result in the 1983 British Columbia Human Rights Commission report on farmworkers and domestic workers.<sup>130</sup> Following changes to labour legislation that made the union more vulnerable to decertification applications, bargaining rights were lost. The introduction of mandatory secret ballot votes for all certification applications in 1984, a series of decertifications, activist burnout, and the Canadian Labour Congress's discontinuation of funding for the CFU all contributed to the union no longer actively organizing workers by the early 1990s.<sup>131</sup> Today, the Canadian Farmworkers Union continues to advocate for improved working conditions and the safety of agricultural workers by appointing board members to represent the interests of agricultural workers to the British Columbia Farm and Ranch Safety and Health Association.<sup>132</sup>

The United Food and Commercial Workers Union (UFCW) is behind the second campaign to organize agricultural workers in BC. UFCW has been actively organizing and providing advocacy and support services to agricultural workers in Canada since the 1980s, and has stepped up its organizing campaign in British Columbia since 2007.<sup>133</sup> As part of a large and well-established national and North American union, UFCW is better equipped with the resources necessary for a sustained social and legal campaign to organize agricultural workers. UFCW's organizing campaign takes a two-pronged approach. First, the union supports Agricultural Workers Alliance centres in the Lower

130. E.M. Colbert, *The Canadian Farmworkers' Union* (Geneva 1988); Murray Bush and Canadian Farmworkers' Union, *A History of the Canadian Farmworkers Union* (Surrey, BC 1995); "1,200 of 13,00 Workers Signed Up: BC Farm Union Faces Long, Tough Battle," *The Globe and Mail*, 6 October 1981; Human Rights Commission of British Columbia, "*What this Country did to us, it did to itself*": A Report of the BC Human Rights Commission on the Farmworkers & Domestic Workers (February 1983), reprinted in *Racial Discrimination, BC Farmworkers, and Suggested Reform of Laws Affecting Farmworkers* (Abbotsford, BC 1984).

131. Colbert, *The Canadian Farmworkers' Union*; Bush and CFU, *A History of the Canadian Farmworkers Union*.

132. Interview of Charan Gill by author (23 April 2012). CFU Secretary Treasurer Charan Gill also sits on the Board of Directors of the Canadian Agricultural Safety Association, a national non-profit organization that promotes safety for agriculture operators and workers.

133. Similarly, UFCW filed a number of certification applications, and was successful in reaching some collective agreements. One by one, decertification applications have been filed and the union has alleged improper and illegal interference of the employer and government of Mexico. See generally UFCW Canada, *The Status of Migrant Farm Workers in Canada 2006–07* (Rexdale, ON 2007), 5.

Mainland and Okanagan regions, which provide information, support, and advocacy for agricultural workers, particularly migrant agricultural workers, regardless of whether they join the union. Second, UFCW has engaged in formal union organizing under the *Labour Relations Code*. In 2008, UFCW Local 1518 made several applications to the BC Labour Relations Board to become the certified bargaining agent for three groups of agricultural workers. The union's certification applications were challenged by the employers involved, but the union eventually became the officially recognized bargaining agent for the three groups of workers and achieved collective agreements with the employers. By 2012, however, one group of workers had voted to discontinue representation by the union, and the other two groups of employees, the union, employers, and the Mexican government were involved in ongoing disputes about continued union representation and whether the employees were exposed to coercion or intimidation prohibited by the *Labour Relations Code*. The presence of a significant number of temporary migrant agricultural workers from Mexico and elsewhere in this legalized union organizing campaign has created many complications. Despite inclusion in and access to the provisions of the *Labour Relations Code*, which nominally protects and facilitates employees' collective bargaining with the employer, agricultural employees in BC have, thus far, had difficulty forming and maintaining stable collective bargaining relationships with their employers.

In 1937, British Columbia's minister of labour wrote that "every sensible person will admit the justice of the claim of men to organize themselves for the purpose of discussing their problems with their employers and negotiating terms of employment."<sup>134</sup> This idea has echoed down through the years, and finds expression today in legalized conceptions of collective bargaining as an exercise of democracy in the workplace and industrial self-government enhancing human dignity, equality, and the rule of law in the workplace.<sup>135</sup> Access to statutory protections and processes to support workers' efforts to form and participate in trade unions has been seen as a pre-condition to collective bargaining, particularly in the face of employer resistance to the formation of trade unions. But agricultural workers' inclusion in a statutory regime ought not to be seen as a straightforward or uncomplicated success. Just like in the labour relations legislation enacted in 1937, the current BC *Labour Relations Code* preserves individual employment relations and non-unionized workplaces as the status quo. Collective bargaining under labour relations legislation is available only when certain administrative steps are taken and technical hurdles overcome. These hurdles pose more significant barriers to seasonal, low-income workers, especially for workers whose immigration status or legal right to be in Canada is connected to their continued

134. BCA, PP, GR 1222, Box 142, File 142-7, Memo from Pearson to Pattullo, 10 September 1937.

135. See, for example, *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 S.C.R. 391, 2007 SCC 27, para. 82.

employment with one employer. Only after the preconditions are met does legalized collective bargaining become the forum for contestation and the working out of the particular problems and relations between employers and employees in the agricultural sector. The legislation also structures bargaining on an enterprise level, rather than on a regional or sectoral basis. As a result, the legalized labour relations regime does not easily comprehend a broader societal mobilization for greater equality and human dignity of seasonal agricultural workers. It also requires that unions structure themselves as responsible and bureaucratic organizations which act through legal channels rather than direct action. These constraints are not particular to agricultural workers. The compromise inherent in a legalized labour relations regime creates conditions for unions to exist as stable organizations which can work toward worker goals over time, but at the same time, imposes limits on the type of action workers can take within those organizations, if the organizations seek to be recognized as bargaining agents under the statutory regime.

## Conclusion

WHEN BRITISH COLUMBIA ENACTED comprehensive labour relations legislation in 1937, agricultural employees were excluded from the legislative regime. This exclusion fit into a more general pattern of agricultural labour exceptionalism that left agricultural workers out of statutory protections for minimum wages, hours of work, and hazardous working conditions. Even in the 1930s, some members of the Legislative Assembly recognized the precarious nature of agricultural employment and understood that farm workers were among those most in need of legislative protections to ensure decent working conditions. However, the exclusion persisted in the legislation until 1975.

A combination of factors contributed to the inclusion of agricultural workers in labour relations legislation in 1975. The NDP government of the time had a very active legislative agenda and was intent on changing and experimenting with the labour relations regime in the province. At least two members of the NDP caucus had a strong commitment to the inclusion of agricultural workers in labour relations and employment-standards legislation, so much so that they made individual campaign promises and voted against their own government when the 1973 *Labour Code* maintained the exclusion. Although the Select Standing Committee on Labour and Justice report suggested many farmers did not favour the unionization of their workers, there does not appear to have been a strong agricultural employer lobby against inclusion at the time. Indeed, presidents of several farm-owner associations publicly supported the change. Agriculture also accounted for an even smaller proportion of the workforce and economy of BC compared to the 1930s.

The inclusion of agricultural workers in labour relations legislation fit into a trend across Canadian provinces in the 1960s and 1970s. Quebec, New Brunswick, and Prince Edward Island had all included agricultural workers



in labour relations laws, and by 1975, only a minority of provinces excluded agricultural workers from labour relations legislation.<sup>136</sup> Well-publicized union organizing of agricultural workers in California at the time also had an influence. As NDP member of the Legislative Assembly Harold Steves noted, British Columbians generally supported Cesar Chavez and the United Farm Workers organizing grape pickers in California, making it more difficult to argue against organizing rights for agricultural workers in BC.<sup>137</sup> The time was ripe to include agricultural workers in labour relations legislation.

Inclusion in and access to the mechanisms under the *Labour Relations Code*, does not, however, automatically result in the realization of collective bargaining and the protections of union representation for agricultural workers in BC. Despite a legal regime that ostensibly regularizes and protects a path for agricultural workers to choose union representation and bargain collectively with their employers, union representation in BC's agricultural sector has, thus far, proved difficult to obtain and maintain.

*I acknowledge and thank both the Interuniversity Research Centre on Globalization and Work and the University of Victoria for financial support for this research. I would also like to thank Judy Fudge, Marlea Clarke, Sara Slinn, Ben Isitt, Bryan Palmer, and three anonymous reviewers for their comments and helpful advice. This paper is revised from "Unionization of Agricultural Workers in British Columbia," LLM thesis, University of Victoria, 2013.*

136. New Brunswick and PEI included farmworkers in 1971, Quebec in 1964, Newfoundland in 1952, Manitoba in 1948, and Saskatchewan in 1944. Nova Scotia included farmworkers in 1987: Tucker, "Farm Worker Exceptionalism," 51.

137. See "2 NDP backbenchers," *The Vancouver Sun*, 19 October 1973.