

**Outsourced at Our Expense:
The High Cost of Construction Industry
Reliance on H-2B Guest Worker Visas**

April 2020

Lucas Franco, Ph.D.

Local Jobs
NORTH DAKOTA MINNESOTA

The H-2B guest worker visa program was authorized by Congress in 1986 to help U.S. employers meet seasonal demand for non-agricultural labor without displacing U.S. workers. The Immigration Reform and Control Act established two types of guest worker visas - the H-2A visa for agricultural workers and the H-2B visa for non-agricultural workers.¹

Under the H-2B visa program, employers apply to hire foreign guest workers on a temporary basis to fill seasonal positions where local workers are not available. The program has grown rapidly in recent years, with the number of H-2B visas issued jumping 45 percent, from 69,684 in 2015 to approximately 101,000 in 2020.² H-2B visas were intended to meet seasonal workforce demand without displacing available U.S. workers, and to provide high-quality short-term employment opportunities to guest workers. Unfortunately, there is growing evidence that the program is failing on both fronts.

H-2B employers are nominally required to solicit applications from U.S. workers and hire qualified candidates before turning to foreign guest workers. In practice, however, the requirements are minimal, and easy for employers to meet without making meaningful efforts to hire local workers.³ Further, program officials appear to rely heavily on information provided by applicants when making determinations regarding the need for foreign guest workers, rather than forming independent assessments based on relevant data.⁴ The result is a program that, in the words of the AFL-CIO, “displaces U.S. workers, lowers wages, and exposes foreign guest workers to exploitation.”⁵

At the same time, the H-2B program has faced criticism from immigrants’ rights organizations and worker advocacy groups. These groups allege that employers use their disproportionate power to exploit vulnerable migrant workers.⁶ In *Close to Slavery: Guestworker Programs in the United States*, a report published by the Southern Poverty Law Center, authors Mary Bauer and Meredith Stewart found that H-2B workers were “routinely cheated out of wages... forced to

¹ Mary Bauer and Meredith Stewart, Southern Poverty Law Center, “Close to Slavery: Guestworker Programs in the United States”, February 18, 2013, pg. 1-2:

<https://www.splcenter.org/20130218/close-slavery-guestworker-programs-united-states>

² Michelle Hackman, “Trump Administration to Make 35,000 Additional Seasonal Worker H-2B Visas Available,” March 5, 2020:

<https://www.wsj.com/articles/trump-administration-to-make-35-000-additional-seasonal-worker-h-2b-visas-available-for-summer-11583431680>.

³ Tom Krohn, “Area union group protests co-op project,” Mankato Free Press, May 23, 2017:

http://www.mankatofreepress.com/news/area-union-group-protests-co-op-project/article_c4c4fc18-3ffc-11e7-857e-072a406831f5.html.

⁴ For example, applicants often use low unemployment rates and general descriptions of the difficulties of recruiting seasonal workforce to justify the need for foreign guest workers, while ignoring the existence of large groups of low-wage and underemployed workers for whom the jobs in question would represent a step up, not to mention the existence of competitors who navigate the same labor market without relying on H-2B visas. See Arne L. Kalleberg, “Good Jobs, Bad Jobs: The Rise of Polarized and Precarious Employment Systems in the United States, 1970s-2000s,” 2011, Russell Sage Foundation.

⁵ AFL-CIO, “Fact Sheet on Why the H-2B Program is Bad for Working People,” AFL-CIO, June 23, 2016.

⁶ Mary Bauer and Meredith Stewart, Southern Poverty Law Center, “Close to Slavery: Guestworker Programs in the United States”, February 18, 2013, pg. 1-2:

<https://www.splcenter.org/20130218/close-slavery-guestworker-programs-united-states>

live in squalid conditions, [and] denied medical benefits for on-the-job injuries.”⁷ Unlike U.S. workers, Bauer and Meredith observe that “guest workers do not enjoy the most fundamental protection of a competitive labor market -- the ability to change jobs.” Instead, they report that H-2B visa holders are too often “held captive by employers or labor brokers.”⁸

Advocates report that H-2B workers can be, paradoxically, *more* vulnerable to exploitation than undocumented workers, who often manage to navigate local labor markets despite their lack of legal status. H-2B workers are bound to a single employer, and are well aware that a single complaint could jeopardize their continued participation in the program. Thus, as currently structured, the Economic Policy Institute contends that the H-2B program has allowed “unscrupulous employers to carve out an even larger rights-free zone in the low-wage labor market.”⁹

Previous research has considered the impact of the H-2B program on foreign guest workers and their U.S. counterparts, but little effort has been made to assess the program’s impact on local economies in markets where foreign guest workers make up a growing share of the labor force. While foreign guest workers may contribute to business operations in the same manner as a local worker, our analysis indicates that their contributions to local economies are much more limited.

The goal of this report is to estimate the local economic impact of growing reliance on foreign guest workers in North Dakota’s construction industry. Construction is of particular interest for two reasons: first, foreign guest workers on H-2B visas have not historically played a significant role in construction, and still make up a small, if growing, share of total industry employment; and second, the construction industry typically offers higher wages than most occupations in the H-2B program and should therefore have an easier time attracting local workers.

Our economic model is based on data supplied by North Dakota construction employers that applied for permission to employ foreign guest workers between 2008 and 2020.¹⁰ While the data contained in H-2B visa applications data do not provide precise information on wages paid and spent in local communities, we believe that they provide a solid foundation for an estimate of impacts. Further, we are fortunate that the leading employer of H-2B visa workers in North Dakota’s construction industry has provided detailed information in its applications that can be used to refine our estimates of pay rates, work hours, total wages paid, and ultimately the economic impact to local communities.

⁷ Mary Bauer and Meredith Stewart, Southern Poverty Law Center, “Close to Slavery: Guestworker Programs in the United States”, February 18, 2013, pg. 2-3.

⁸ Ibid, pg. 2-3.

⁹ Daniel Costa, Economic Policy Institute, “H-2B visas and labor shortages: Latest data do not justify a cap increase”, July 17, 2017:

<https://www.epi.org/publication/h-2b-visas-and-labor-shortages-latest-data-do-not-justify-a-cap-increase/>

¹⁰ Application and certification data for 2008 through 2019 were obtained by accessing annual H-2B program disclosure files from the U.S. Department of Labor’s Office of Foreign Labor Certification Performance Data web page: <https://www.foreignlaborcert.doleta.gov/performancecdm> Application data for 2020 were obtained by searching the U.S. Department of Labor’s Season Jobs web page for H-2B positions located in North Dakota: <https://seasonaljobs.dol.gov/archive>

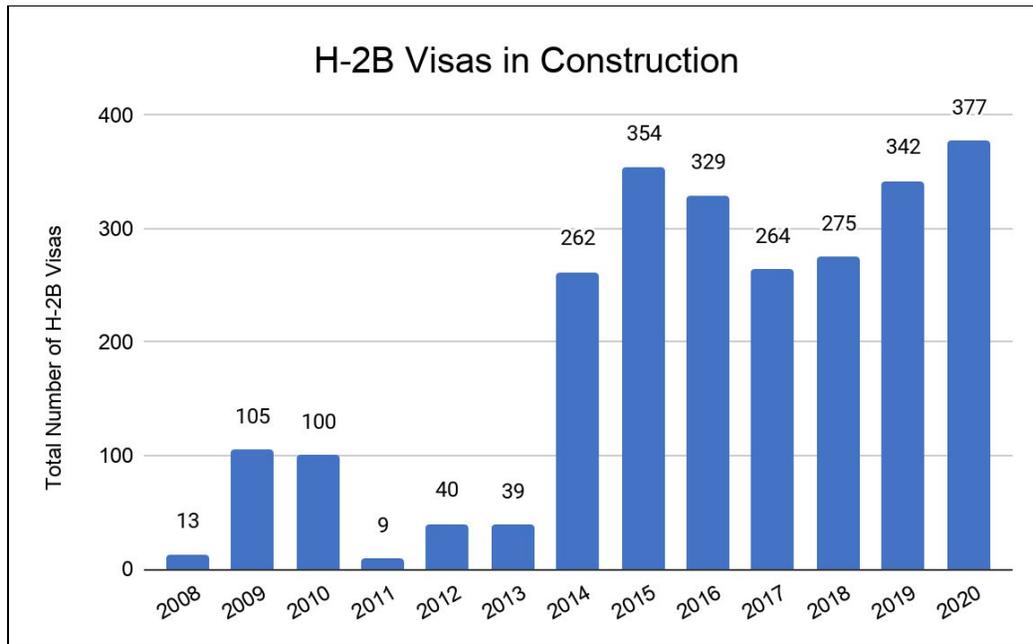
Based on a review of the available data and projections of associated economic impacts, we find the following:

- Construction firms were certified to hire foreign guest workers to fill nearly 2,100 craft positions in North Dakota between 2008 and 2019, and seek to employ 377 more in 2020.
- The Fargo-Moorhead market accounts for nearly half of total H-2B visa usage in the state's construction industry, and the number of visas issued is expected to top 1,100 by the end of 2020.
- Use of H-2B visas has grown rapidly in North Dakota's construction industry -- from just 13 workers certified in 2008 to nearly 350 in 2019, and from zero to more than 150 in the Fargo area over the same period.
- Use of H-2B visas has been greatest in concrete construction, which accounts for nearly 55 percent of construction-related visas certified in North Dakota between 2008 and 2019, and approximately 84 percent of visas requested in 2020. Our analysis indicates that H-2B visa workers account for a large share of Fargo's concrete workforce, and employed by leading area concrete contractors.
- There is no apparent relationship between use of H-2B visas and overall demand for construction labor: for example, H-2B certifications for construction laborers and cement masons surged nearly 800 percent in the Fargo area between 2012 and 2018 even as total employment in these occupations fell by 10 percent.
- Employment of foreign guest workers in North Dakota's construction industry appears to be dominated by a handful of H-2B "super-users" that account for roughly 68 percent of certifications and applications filed since 2008.
- We estimate that the typical H-2B visa worker employed in North Dakota's construction industry could earn approximately \$45,000 during a season -- more than twice the average annual income of local workers in the hospitality industry.
- Wages paid to local construction workers are expected to contribute around three times more to local economies than wages paid to non-local workers under the H-2B visa program, (\$1.37 vs. \$0.42 per payroll dollar), generating an estimated net economic loss of \$0.96 for every dollar paid to non-local rather than local workers.
- Construction contractors' reliance on the use of H-2B visas will have cost the state of North Dakota an estimated \$85 million in lost economic activity by the end of 2020, including losses of \$39 million in Fargo-Moorhead area, \$8 million in Bismarck, and \$23 million in Western North Dakota.

A Growing Reliance on the H-2B Guest Worker Program

Use of H-2B visas has more than doubled in North Dakota from 316 in 2008 to 743 anticipated in 2020. The pace of growth is even more rapid in the construction industry. In 2008, there were about a dozen H-2B guest workers employed in North Dakota’s construction industry.¹¹ In 2020, we expect total employment of foreign guest workers in construction to exceed 370 -- a nearly 30-fold increase.¹²

Graph 1: Use of H-2B Guest Worker Visas in North Dakota Construction Industry¹³



A small number of “superusers” that have apparently been certified or applied for 100 or more construction industry H-2B visas based on a review of available documents account for a large share (68%) of the total construction industry visas. The list includes concrete contractors Adelman/All Finish (Fargo), Dirt Dynamics (Fargo), Genuine Builders (multiple locations), Outdoor Concepts (Fargo), and Winn Construction (Western); pipeline contractor Loenbro (Western); and roofing contractor Tecta America (multiple locations).

The growing reliance on H-2B guest workers in the construction industry suggests a fundamental change in business practices. Nowhere is this transformation more apparent than in Fargo-Moorhead and the region’s concrete construction market.

¹¹ We relied on Standard Occupational Classification (SOC) Codes and other information contained in H-2B applications and job orders, supplemented with other publicly-available information where necessary, to identify construction employers.

¹² The 2020 total is based on the number of workers requested because data on certified visas is not yet available. In past years, the number of visas certified has typically matched the number requested.

¹³ Ibid.

How H-2B Visas Are Reshaping the Fargo-Moorhead Construction Workforce

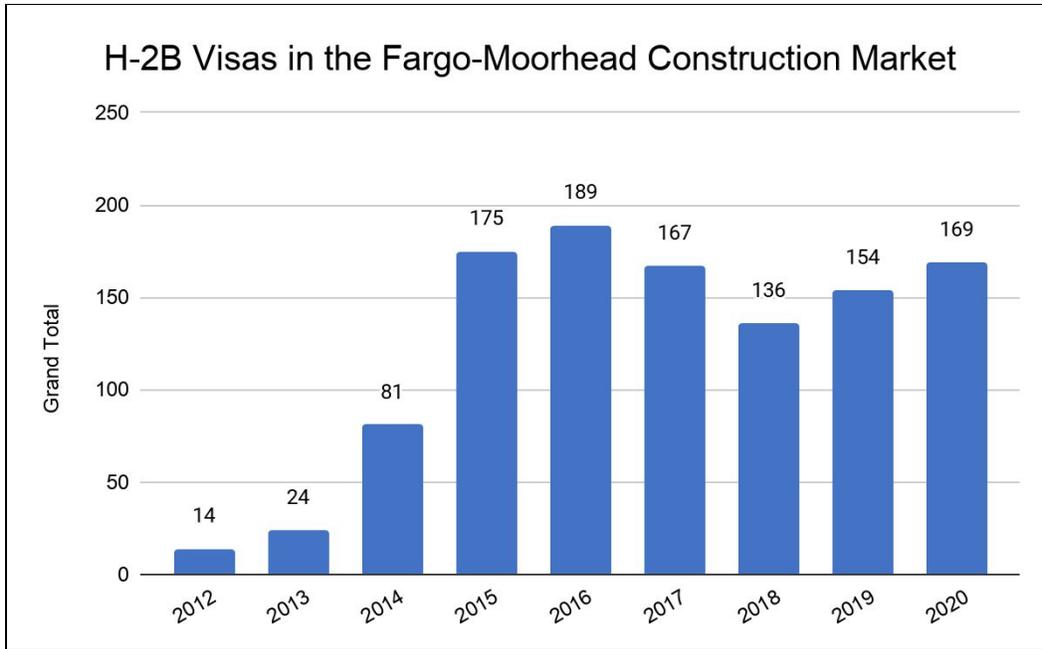
Fargo-Moorhead construction employers did not begin to employ H-2B visa workers until 2012, when a single concrete contractor was certified to employ 14 workers, according to our review of publicly-available documents. The next few years saw exponential growth in both the number of participating employers and H-2B visa certifications, each of which roughly doubled year-over-year before reaching about seven employers and 175 workers in 2015. Utilization of the program by contractors operating in the Fargo-Moorhead area has remained high since 2015, with more than 150 visas certified last year and 169 requested for 2020.

Use of H-2B visas is not evenly distributed across the Fargo-Moorhead construction industry, but is instead highly concentrated among concrete contractors, which account for roughly 80% of certifications and applications.¹⁴ The impact of the program on concrete construction, which employs several hundred construction laborers and cement masons across the region, has been profound. While it is difficult to derive exact figures, we roughly estimate that foreign guest workers could account for a third of those placing and finishing concrete on Fargo-Moorhead construction sites. Moreover, a large majority of the region's leading concrete contractors now apparently rely on the H-2B visa program to recruit workforce.

Graph 2: Use of H-2B Visas in Fargo-Moorhead Construction Industry¹⁵

¹⁴ We relied on several sources of information, including H-2B applications and job orders, company and business listing websites, and conversations with local industry insiders when assigning the contractors that utilize H-2B visas to a construction specialty. Employers were identified as "concrete" contractors for purposes of this report when our sources indicated that concrete was a primary or sole scope of their construction work; or if publicly available H-2B filings indicated that concrete construction was the primary work to be performed under the program.

¹⁵ The 2020 total is based on the number of workers requested because data on certified visas is not yet available. In past years, the number of visas certified has typically matched the number requested.



We found no evidence that growth in employment of H-2B workers reflects a change in workforce demand or supply. Bureau of Labor Statistics data show very little change between 2012 and 2018 in area construction employment, including occupations such as Construction Laborer and Cement Mason, where H-2B workers make up a growing share of the workforce. Total construction employment increased by less than one percent over the period, from 6,500 to 6,550, while total employment of construction laborers and cement masons actually fell by 10 percent.

Instead, the jump in the use of H-2B visas appears to reflect the embrace of an emerging business model. Contractors that evidently relied on local workers a half-dozen years ago now claim that they must import workers, despite the fact that demand seems to have changed little since 2012.

Table 1: Major Fargo-Moorhead Area H-2B Visa Employers in Concrete Construction¹⁶

<i>Employer Name</i>	2012	2013	2014	2015	2016	2017	2018	2019	2020 ¹⁷	Total
Adelman Concrete & Excavating/All Finish Concrete	14	24	30	50	45	50	50	45	53	361
AJ Construction Inc			6	10	12	12	12	12	12	76
Dirt Dynamics				10	15	17	21	25	30	118

¹⁶ Figures are based on compilation of Office of Foreign Labor Certification H-2B files performance data and review of listings and job orders posted on the Seasonal Jobs web page, and are based on the number of visas certified for the employer in question (or requested for 2020).

¹⁷ 2020 figures are based on the number of visas requested, which typically match the number certified.

Flat Rate, Inc							2		2	4
Key Contracting					9	7		12	12	40
Northern Improvement				9				5	5	19
Outdoor Concepts LLC			20	40	40	40	40	40	40	260
Grand Total	14	24	56	119	121	126	125	139	154	878

Adelman Concrete and Excavating, which was recently acquired by All Finish Concrete, apparently pioneered the use of H-2B visas in the Fargo-Moorhead area based on our review of publicly-available documents, beginning with approval to employ 14 foreign guest workers in 2012. Adelman was joined two years later by AJ Construction and Outdoor Concepts, LLC, the next year by Dirt Dynamics and Northern Improvement; and in 2016 by Key Contracting, according to the documents reviewed for this report. Today, reliance on H-2B visas seems to be the rule rather than the exception for Fargo’s concrete contractors.

In just eight years, Fargo-Moorhead’s concrete construction industry has clearly been transformed. A construction specialty that once evidently depended on local workers who pursued careers as construction laborers and cement masons now seems to rely on importing workforce from other countries. Our research suggests that growing reliance on labor outsourcing undercuts the availability of job opportunities for area residents and is likely costing local communities tens of millions of dollars in lost economic activity.

Case Study: The Impact of a Growing Reliance on H-2B Guest Workers

Growing use of H-2B visas clearly has the potential to affect current construction workers and others who seek to pursue careers in the construction industry by shrinking the pool of available job opportunities, and by discouraging employers from aggressively recruiting local workforce. But the program’s impacts are not limited to workers themselves.

A growing body of research finds that reliance on non-local construction workforce can significantly undercut the socioeconomic benefits of construction activity. Recent work from Franco (2019)¹⁸ and Franco and Hatt (2018)¹⁹ detailed the costs of this growing reliance on non-local workers in wind farm construction in both Minnesota and North Dakota. Analysis by

¹⁸ Lucas Franco, “Catching the Wind 3.0: The impact of local versus non-local hiring practices on wind farms in North Dakota,” October 2019, Local Jobs North.

¹⁹ Lucas Franco and Katie Hatt, “Catching the Wind: The impact of local vs. non-local hiring practices on construction of Minnesota wind farms,” June 2018, The North Star Policy Institute.

Nissen and Zhang (2006)²⁰ and Davidson (1989)²¹ documented the community impact of construction outsourcing on major entertainment and health care facilities.

Nissen and Zhang (2006) analyzed the consequences of using local versus non-local workers on two major government-funded projects in Florida: renovation of the Orange Bowl Stadium and an expansion of the Jackson South Community Hospital. They found that if the two projects relied entirely on non-local labor, the regional economy would miss out on between \$85.7 million and \$93 million in payroll, 2,335 to 2,593 jobs, \$21.2 to 38.2 million in local spending and \$241,000 to \$433,00 in tax revenue.

Franco and Hatt (2018) developed a model based in part on Nissen and Zhang's work to estimate the impact of a growing reliance on non-local workers in the wind industry in Southern Minnesota. They analyzed the possible socioeconomic impacts of different levels of local labor utilization on seven proposed wind farm projects in the region. They found that a reliance on 30% local workers versus 70% local workers would cause the region to miss out on an estimated \$45 million in economic activity.

Franco (2019) replicated Franco and Hatt's model to explore the cost of labor outsourcing in North Dakota's wind energy industry. Franco detailed how wind farm projects under construction between 2017 and 2018 in North Dakota and Minnesota were relying on an average of 20% local labor. He estimated that a reliance on 10-30% versus 50-70% local workers to build nine wind farm projects seeking permits or in pre-construction in 2019 would cost North Dakota communities \$14.9 in lost economic opportunities.

In all of these models, there is clear evidence of a high cost to local communities of a reliance on non-local labor. Based on this past scholarship, we attempt to estimate the socioeconomic impacts of the growing reliance on H-2B construction workers in the Fargo-Moorhead region and the state as a whole.²² We begin by looking at the case of Adelman Concrete and Excavating (now doing business as All Finish Concrete), which led the local industry in use of H-2B visas based on our review of publicly-available data. We then used information derived from our analysis of the Adelman/All Finish case to model the likely impacts of use of H-2B visas by construction employers, both in the Fargo area and statewide.

We begin with the Adelman/All Finish case because many of Adelman's certification forms provide an unusual level of detail, including estimates of straight-time and overtime hours and wage premiums available to the highest H-2B earners. The documents suggest that use of overtime, which is common in the construction industry, is likely to be significant for H-2B construction workers, and could account for nearly a third of hours worked.

²⁰ Bruce Nissen and Yue Zhang, "Hiring Our Own? The impact of local vs. non-local hiring practices in two county GOB projects," August 16, 2006, Research Institute on Social and Economic Policy at Florida International University.

²¹ Carlos Davidson, "The Impact of Out-of-Area Workers in Non-Residential Construction on Contra Costa County: A Case Study of the USS-POSCO modernization," July 1989.

²² We define this region as a 14-county area encompassing Minnesota Economic Development Region 4 and North Dakota Planning Region 5. Adelman evidently performed most of its work in this region between 2013 and 2018.

Adelman is a North Dakota based construction company that was founded in 2004.²³ The company was acquired by Fargo-based All Finish Concrete in May of 2018.²⁴ Since 2012, Adelman has evidently relied heavily on H-2B workers, and participation in the program continued since the company was acquired by All Finish. Between 2012 and 2019, the U.S. Department of Labor certified Adelman or All Finish Concrete to employ 308 construction laborers and cement masons under the H-2B visa program, according to the available data.²⁵ A review of the company's 2020 application indicates that All Finish applied for permission to employ 53 additional H-2B workers this year, and appears likely to be allowed to hire most or all of them based on past practice, which would bring the total to 361.

²³ Adelman Concrete & Excavating originally filed with the North Dakota Secretary of State on March 4, 2004, under the name Adelman, Inc. File history available here: <https://firststop.sos.nd.gov/search/business>.

²⁴ Adelman Concrete & Excavating re-registered with the North Dakota Secretary of State on May 4th, 2018. As of that date, All Finish Concrete, Inc, was listed as the owner: <https://apps.nd.gov/sc/busnsrch/busnSearch.htm>.

²⁵ Pre-2020 H-2B data is available from the Department of Labor here:

<https://www.foreignlaborcert.doleta.gov/performancecdm>. 2020 data is available here:

<https://seasonaljobs.dol.gov/jobs>. We rely on these expected employment needs from the company for our analysis. The first page of the company's 2018 application is included as *Appendix 1: Adelman H-2B Visa Application 2018 - Total Position Request*.

Table 2: Total Number of H-2B Visas Certified or Requested for Adelman or All Finish

Year	Number of Certified H-2B Workers	Period of Intended Employment	Weeks of Permitted Work
2012	14	04/16/12 - 11/15/12	30
2013	24	04/15/13 - 11/15/13	30
2014	30	05/01/14 - 12/01/14	30
2015	50	05/01/15 - 12/01/15	30
2016	45	04/25/16 - 11/15/16	29
2017	50	04/01/17 - 11/25/17	34
2018	50	04/01/18 - 12/15/18	36
2019	45	04/01/19 - 12/15/19	36
2020 ²⁶	53	04/01/20 - 12/15/20	36

In each of its H-2B applications, the company lists worker pay rates as follows:

Table 3: Reported Compensation for Adelman/All Finish H-2B Visa Workers

Year	Expected Straight-Time Hours	Expected Overtime Hours	Straight-Time Pay Rate	Premium Pay Rate	Standard Overtime Rate	Premium Overtime Rate
2012	40	Not Available	\$12.55	N/A	\$18.82	N/A
2013	35	25	\$12.87	N/A	\$19.31	N/A
2014	35	30	\$11.55	N/A	\$17.33	N/A
2015	35	25	\$10.15	N/A	\$15.23	\$23.25
2016	35	5	\$14.99	\$25.00	\$22.49	\$37.50
2017	35	N/A	\$16.47	\$33.00	\$24.71	\$49.50
2018	40	N/A	\$17.52	\$36.00	\$26.28	\$54.00
2019	40	N/A	\$18.49	\$32.00	\$27.74	\$48.00
2020	40	N/A	\$19.73	\$32.00	\$29.60	\$48.00

Firms that employ H-2B workers are required to pay minimum rates of pay that are established by the U.S. Department of Labor based on wages commonly paid to workers in a given occupation and labor market.²⁷ But employers may also choose to offer higher rates of pay to

²⁶ Based on requested H-2B certifications, which is the only data available at the time of this publication.

²⁷ The H-2B program requires that workers are paid “no less than the highest of the prevailing wage, applicable Federal minimum wage, State minimum wage, or local minimum wage during the entire period of the approved H-2B labor certification.” The “prevailing wages” cited by H-2B rules are not the prevailing wages commonly paid

H-2B workers who are more experienced or productive, just as they might for non-H-2B employees.

Beginning in 2016, Adelman's application published "optional" premium wage rates that were apparently paid to some members of the company's H-2B workforce. While other H-2B employers evidently offered premium rates to certain workers, according to their applications, most applicants did not specify how much more an H-2B worker could earn in hourly wages. For example, a 2018 job order for Genuine Builders states that, "Applicants may be offered higher than the advertised wage rate due to experience or merit."²⁸

Total Earnings

We can estimate the average and total wages paid to Adelman's H-2B workers based on the duration of employment, weekly hours, and pay rates listed in each H-2B visa application.²⁹ Weekly wages are calculated based on the standard and overtime hours stated in the company's H-2B applications, or estimated based on past practice where figures are not provided.³⁰ Total annual earnings for each category are calculated by multiplying estimated weekly wages by the number of weeks elapsed between the start and end date for each H-2B visa application (see Table 1).

to construction workers as determined by Federal or state industry surveys, but are instead calculated under rules specific to the H-2B program.

²⁸ Job Order available here: <https://seasonaljobs.dol.gov/job-order/H-400-18342-420036>.

²⁹ We assume for purposes of this analysis that employers employed the full complement of guest workers permitted under an H-2B visa certification for the full permitted duration during each year studied. It is conceivable that the company may have employed fewer workers or failed to employ all workers for the full duration in certain years. If that were the case, however, we would expect to see those employers requesting visas for fewer workers or shorter periods in succeeding years. Inasmuch as the number of workers requested by top H-2B users such as All Finish/Adelman have tended to increase and work periods have remained consistent, we believe the evidence suggests that available visas have been fully utilized.

³⁰ Estimates of H2B workers' weekly straight-time and overtime hours provided in documents filed by Adelman for 2013 through 2016 averaged 56.25 hours per week. Adelman evidently ceased providing estimates for weekly overtime after 2016, but 56.25 hours per week appears to be a reasonable figure in an industry where use of overtime is common, and where similar studies estimated a typical work week at 60 hours.

Table 4: Estimated Weekly and Seasonal Earnings for Adelman/All Finish H-2B Visa Workers

Year	Weekly Wage (Standard Pay)	Weekly Wage (Premium Pay)	Seasonal Earnings (Standard Pay)
2012	\$808	\$0	\$24,235
2013	\$933	\$0	\$27,996
2014	\$924	\$0	\$27,725
2015	\$736	\$937	\$22,080
2016	\$637	\$1,063	\$18,476
2017	\$1,050	\$2,207	\$35,691
2018	\$1,128	\$2,158	\$40,603
2019	\$1,190	\$2,220	\$42,854
2020	\$1,270	\$2,060	\$45,727

Adelman/All Finish provide a substantial level of detail on their H-2B applications including both optional standard and optional overtime pay for more experienced employees and, in some cases, details about average overtime hours. Where overtime hours are not available, we derive estimates based on information provided in previous years.

In Table 5, we estimate total after-tax earnings. First, we multiply the estimated seasonal earnings of each H-2B guest worker by the total number of H-2B workers certified or requested by construction employers in North Dakota. We use seasonal earnings estimates based on standard rather than premium rates of pay because the H-2B certification documents do not provide information on the number of workers earning the higher rates.

Second, we estimate the total amount of gross earnings paid in taxes.³¹ Local and non-local H-2B guest workers are under the same Federal and state tax obligations, and are assumed to pay similar taxes on their earnings. State tax rates were assigned to reflect the population distribution of Minnesota and North Dakota residents in the Fargo-Moorhead metropolitan area.

³¹ Tax rates are based on the assumption that 75% of workers pay North Dakota rates and 25% pay Minnesota rates. These estimates are based on the share of population in the Fargo-Moorhead metropolitan area. Approximately 75% of the 245,000 residents in the Fargo-Moorhead metropolitan area live in North Dakota and 25% live in Minnesota. Based on this population distribution, we estimate that 75% of workers pay North Dakota tax rates and 25% pay Minnesota tax rates. Tax estimates are based on Smart Asset’s online tax estimator available here: <https://smartasset.com/taxes/income-taxes>.

Table 5: Total Estimated Earnings for Adelman/All Finish H-2B Visa Workers

Year	Weekly Earnings	Seasonal Earnings	Gross Earnings	Total Tax Payment	After-Tax Earnings	Total H-2B Workers
2012	\$808	\$24,235	\$339,287	\$47,107	\$292,180	14
2013	\$933	\$27,996	\$671,904	\$100,434	\$571,470	24
2014	\$924	\$27,725	\$831,735	\$123,780	\$707,955	30
2015	\$736	\$22,080	\$1,104,000	\$144,700	\$959,300	50
2016	\$637	\$18,476	\$831,416	\$97,954	\$733,462	45
2017	\$1,050	\$35,691	\$1,784,554	\$293,175	\$1,491,379	50
2018	\$1,128	\$40,603	\$2,030,130	\$374,013	\$1,656,118	50
2019	\$1,190	\$42,854	\$1,928,408	\$334,834	\$1,593,574	45
2020	\$1,270	\$45,727	\$2,423,542	\$468,586	\$1,954,955	53
TOTAL			\$11,944,974	\$1,984,582	\$9,960,392	361

Cumulative estimated total after-tax earnings for this group of workers are **\$9.9 million**.

Spending Patterns of Local Workers and Non-Local Workers

We estimate the local economic impact of reliance on foreign guest workers rather than local residents by examining the difference in how each group is expected to spend its earnings. It is important to note that a local worker’s immigration status is irrelevant for purposes of this analysis. A local worker could be an American-born citizen or an immigrant living and working within the Fargo-Moorhead area. Conversely, the economic contribution of an H-2B worker is no different from that of a U.S. citizen who has come from Texas or Nevada to work on a construction project.

We begin our analysis by assuming that local workers performing the same job would have earned equivalent wages - a conservative assumption given the fact that many local construction laborers earn higher pay rates than H-2B workers, in addition to health and retirement benefits.³² The difference in local spending impacts is, therefore, the estimated share of wages spent locally compared to the estimated share of wages taken home by non-local workers.

³² For example, many of the laborers installing concrete on Sanford’s new Fargo Medical Center in Fargo, North Dakota, earned a total package of nearly \$40 in wages and benefits according to LIUNA North Dakota Marketing Representative Steve Cortina. This rate applied to work conducted between May 1, 2016 to April 20, 2017 in North Dakota and Moorhead, Minnesota, as determined by the Laborers’ Union Statewide Building Agreement.

Recent research of H-2B guest worker spending patterns indicate that workers prioritize sending money home to their families.³³ As one H-2B worker explained in a study of guest workers in Alabama’s forestry industry: “I save most of the money, I spend only on my expenses...we send the majority of the money home...if I make \$1,000 in 15 days I will send \$600 to \$700 [home].”³⁴ In most cases, housing costs were deducted from wages. The forestry workers studied earned an average \$97.52 per day or \$1,950 per month.³⁵ If workers were sending \$600-700 home every 15 days, their monthly remittances were \$1,200-1,400, which suggests that local spending must have been limited to \$550 to \$750 per month.

Local expenses for H-2B guest workers are dominated by housing and food. Many H-2B employers provide housing, which is often paid for by H-2B workers through deductions from earnings. For example, in 2020 All Finish Concrete offered optional weekly housing to H-2B workers at a rate of \$130 per week, or \$520 per month according to the company’s 2020 job order.³⁶ Other H-2B workers in North Dakota apparently pay a similar rate for housing according to a review of job postings and job orders. Additionally, workers must pay for food. We estimate that H-2B guest workers spend approximately \$450 per month for food, which is slightly above the minimum per-diem food allowance established for travel under the H-2B program. Thus, non-local H-2B guest workers could be expected to pay approximately \$970 in fixed costs per month. Outside of these fixed costs, workers are expected to send the remainder of their earnings back home to their families.³⁷

In contrast, local workers spend approximately 95% of their income locally.³⁸ Kyle, a Fargo area construction worker interviewed for this report, explains that, “I spend almost my entire paycheck locally...I save a little bit of each paycheck, but for the most part we spend our money around Fargo.” Kyle’s spending patterns are typical for local workers.

Based on previous research, we estimated local spending impacts from H-2B and local workers is as follows:

³³ Arnold Brodbeck IV, “Immigrant Labor in the Forest Industry: The Impacts of H-2B Employment on Local Livelihoods,” May 7, 2016, Auburn University.

³⁴ Ibid, pg. 160.

³⁵ Arnold Brodbeck IV, “Immigrant Labor in the Forest Industry: The Impacts of H-2B Employment on Local Livelihoods,” May 7, 2016, Auburn University, pg. 142.

³⁶ Housing offered in 2020 Job Order available here: <https://seasonaljobs.dol.gov/job-order/H-400-20002-224941>.

³⁷ Research from Hatt and Franco (2018) (“Catching the Wind: The impact of local vs non-local hiring practices on construction of Minnesota wind farms”) found that non-local workers in the wind industry try to minimize local spending. They found that non-local workers either save or send the majority of their earnings back to their permanent place of residence. Their research documents the differences in spending by local workers on Southern Minnesota wind farm projects versus traveling workers from states like Texas and Utah. Based on interviews with workers and industry experts, they found that non-local workers spend approximately 25% of their total income (hourly and per diem pay) locally, while sending the remainder of their earnings home.

³⁸ Bruce Nissen and Yue Zhang, “Hiring Our Own? The impact of local vs. non-local hiring practices in two county GOB projects,” August 16, 2006, Research Institute on Social and Economic Policy at Florida International University.

Table 6: Total Estimated Local Spending for Adelman/All Finish H-2B Visa Workers

Total Estimated Local Spending	
Total Earnings	\$9,960,392
H-2B Workers (Subsistence)	\$2,879,203
Local Workers (95% of pay)	\$9,462,372
Difference	\$6,583,170

Based on this analysis, we estimate that Fargo-area residents may have missed out on approximately **\$6.6 million in local spending** due to a single contractor’s reliance on the H-2B visa program. These differences in local impact grow when we account for multiplier effects of local spending. Wages earned by local construction workers tend to re-circulate within the local economy through secondary purchases and other economic transactions. This spending creates additional jobs via multiplier effects that have been well documented by economists.³⁹

Nissen and Zhang estimate the value of the earnings multiplier at 1.733 in their 2006 study of construction projects in Florida. Drawing from their research, we infer that each dollar spent locally can be expected to generate \$0.74 in additional economic activity as it circulates through the local economy.⁴⁰ By applying their methodology to use of guest workers, we can estimate the total economic losses produced by reliance on the H-2B visa program.

Table 7: Total Estimated Economic Impact for Adelman/All Finish H-2B Visa Workers

Total Estimated Economic Impact	
H-2B (Subsistence)	\$4,989,658
Local Workers (95% of pay)	\$16,398,292
Difference	\$11,408,634

When we include the economic multiplier effects, the estimated net economic loss due to use of non-local workforce grows to **\$11.4 million dollars, or \$0.96 in lost economic activity for each dollar of H-2B payroll**. In other words, the greater Fargo-Moorhead metropolitan could

³⁹ For an example of the use of multiplier effects in economic impact modeling, see “Enbridge Pipeline Construction: Economic Impact Study,” prepared for Area Partnership for Economic Expansion (APEX) by the Bureau of Business and Economic Research (BBER) at the University of Minnesota Duluth (UMD) Labovitz School, April 18, 2017.

⁴⁰ Bruce Nissen and Yue Zhang, “Hiring Our Own? The impact of local vs. non-local hiring practices in two county GOB projects,” August 16, 2006, Research Institute on Social and Economic Policy at Florida International University, pg. 8. Nissen and Zhang use an earnings multiplier specific to their region of analysis – Miami-Dade County, Florida. We do not have a regionally specific RIM II earnings multiplier for Southern Minnesota. However, we expect only minor variation from the regionally specific earnings multiplier used by Nissen and Zhang. Additional research is needed to determine the exact earnings multiplier for Southern Minnesota.

have missed out on more than \$11 million in local economic activity from 2012 to 2020 due to a single contractor's reliance on guest workers.

Employer Profile: Loenbro, Inc.

Use of H-2B visa workers has been rare in North Dakota's pipeline construction industry, despite high demand for labor during periods of peak oil production. In fact, Loenbro, Inc. of Black Eagle, Montana, is the only pipeline contractor that we identified in our review of more than 150 H-2B requests by nearly 50 construction firms.

Safe pipeline construction requires a skilled workforce that is prepared to operate in an environment where safety hazards are present and mistakes can have devastating consequences. Yet when Loenbro obtained permission to employ a total of 150 H-2B visa workers between 2014 and 2015, the contractor did not list employment experience or training as requirements. Instead the only required qualification was the ability to "lift and carry 50 lbs [and] bend, stoop, squat, twist, and kneel repeatedly".⁴¹

It should come as no surprise, given Loenbro's evident decision to rely on relatively inexperienced foreign guest workers, that the contractor has been hit with allegations of poor environmental and safety practices; or that a gathering system Loenbro apparently helped to build was responsible for one of the worst toxic saltwater spills in North Dakota history.⁴²

Loenbro's use of H-2B visas evidently deprived North Dakotans of 150 job opportunities that paid around \$17 per hour plus overtime. But Loenbro's use of the program could also have harmed North Dakota's environment in the state, as well as the safety of guest workers at a company that one former Loenbro employee described as "a very unsafe place to work" due to "a lot of inexperience," "unsafe rush," and rampant drug use that was "the worst thing I've ever seen".⁴³

⁴¹ See Loenbro's 2014H-2B Applications for Temporary Employment Certification: <https://d3ciwvs59ifrt8.cloudfront.net/ab500034-569b-40b1-929a-50f58ed98ad0/2c47d4b6-5650-4d48-8446-8fc32014d3e3.pdf> and

⁴² See Attachment A (Whiteford Affidavit); and news coverage of LIUNA North Dakota staff testimony to Public Service Commission on March 30, 2015 http://bismarcktribune.com/bakken/marred-by-recent-spill-pipeline-company-outlines-next-project/article_e8f996ac-7243-5df1-a8e1-4bafd170de97.html

⁴³ Hear a former Loenbro employee describe safety concerns at the end of the embedded video: <http://www.buildbetternd.org/safety>

The Cumulative Impact of the Construction Industry's Reliance on H-2B Workers

As we detailed previously, at least a half-dozen construction firms in the Fargo-Moorhead region appear to rely significantly on H-2B guest workers. We expect that nearly 170 H-2B guest workers will work in the Fargo-Moorhead area in 2020. Since 2012, regional contractors have filled an estimated 1,100 jobs with H-2B guest workers.

Using data provided in H-2B certification documents, supplemented with findings from the preceding case study, we estimate gross payroll, H-2B subsistence, local payroll spending (post-tax), and net economic impact for each set of visas certified, or requested for 2020.⁴⁴ The cumulative impact of this heavy reliance on non-local workers is staggering. In the Fargo-Moorhead region, we find that nearly \$41 million in construction payrolls could have gone to H-2B visa workers rather than local residents, resulting in a projected net loss of \$39 million in local economic activity.

Simply put, the reliance on outsourced construction labor by a dozen contractors has clearly undercut family-supporting job opportunities for Fargo-Moorhead residents and cost the region an estimated \$39 million in lost economic activity. These impacts are even greater when we look at the state as a whole.

The projected statewide impact of the program is a little more than double the figure for Fargo-Moorhead, with an estimated \$89 million in gross wages paid to H-2B workers and \$85 million in net economic losses expected by the end of 2020.⁴⁵ While Fargo seems to have been hardest hit, we find estimated net economic losses of \$8 million for the Bismarck-Mandan area, and \$23 million in Western North Dakota.

⁴⁴ In the absence of detailed information on use of overtime by H-2B employers, we assume that workers average 56.25 hours per week, which is consistent with the available data from Adelman and lower than the 60-hour estimate employed in previous studies of wind energy construction. We estimate the net economic impact of each visa by applying the per-unit figure derived from the Adelman/All Finish case study (-\$0.96 per dollar of gross payroll) to the payroll projections for each set of visas certified (or requested in the case of 2020 data).

⁴⁵ We employ the method described above for our Fargo-Moorhead estimate with the exception of estimates of gross wages and net economic impacts for workers employed by Genuine Builders, which were revised downward to reflect what is believed to be the company's use of multiple certifications to allow individual H-2B workers to work on projects in different geographic areas within the same year. Where Genuine Builders obtained overlapping certifications or made overlapping requests for the same year, estimates were derived based on the assumption that workers in a given classification (e.g. construction laborers) were employed from the earliest start date to the latest end date listed at the average of the wages listed if wage rates varied. This adjustment is designed to minimize the risk of double-counting of workers who may have worked under multiple certifications within a given year. The available data do not provide information on actual durations of employment or the identity of employees, so it is impossible to know with certainty whether our method overestimates or underestimates wages earned by H-2B employees.

Table 8: Total Estimated Spending and Net Economic Impact by Market

Local/H-2B	Gross Payroll	Net Impact
Fargo-Moorhead	\$40,761,918	-\$39,131,441
Bismarck-Mandan	\$8,178,046	-\$7,850,924
Western (Dickinson, Watford City, etc.)	\$23,721,597	-\$22,772,733
Other/Unknown	\$16,137,797	-\$15,492,285
North Dakota	\$88,799,357	-\$85,247,383

Employer Profile: Winn Construction

The new Williston Basin International Airport opened on October 10, 2019. The \$230 million publicly-funded project was built to meet the growing demand for travel in and out of the Bakken region of Western North Dakota.⁴⁶ To some, the project is a symbol of the growing wealth and vitality of the region, but to many area construction workers it exemplifies the flaws in the H-2B guest worker program.

For Daniel, a veteran concrete hand and Williston resident, the airport project represents broken promises. Daniel has lived in Williston for 10 years. He thought the airport project would provide good job opportunities for local workers. Yet, when he sought work on the project, he says he was told, "we don't need anyone right now." He heard the same story from friends that sought work on the airport project.

Daniel is still frustrated that despite promises of opportunities, local residents like him couldn't find work: "The biggest job around and we couldn't even get a job [building] the runway."

Daniel didn't realize at the time, but it seems likely that the jobs he and his neighbors sought had already been filled by foreign guest workers. Winn Construction, which was awarded concrete work for the airport paving, sitework, elevated decks, and air rescue/snow removal facility, has apparently been using H-2B visa workers since 2008 and was certified to employ nearly three dozen while the airport was under construction based on a review of H-2B certification documents.

Things could soon get tougher for local workers like Daniel. Not only has his industry been hard-hit by the COVID-19 pandemic and falling oil prices, but this year Winn Construction has

⁴⁶ Minot Daily News Staff, "Completion of new Williston Basin International Airport celebrated," Minot Daily News, October 5, 2019.

apparently applied for permission to employ more than twice the number of H-2B visa workers that the contractor was certified to employ in previous years based on job orders posted on the U.S. Department of Labor’s Seasonal Jobs web page.

Good Jobs for Local Workers

The goal of the H-2B program is to supply labor in times of workforce shortages. Many point to the unemployment rate as an indicator of labor shortages. The unemployment rate, however, is a poor measure of the availability of workers who are willing and able to work in fields such as construction that tend to offer competitive pay. The number of U.S. workers employed in low-wage, part-time, and precarious jobs has grown steadily in recent decades, and many of these workers would welcome an opportunity for a 40+ hour per week job that pays far more than most low-wage occupations.⁴⁷

Two of the Fargo-Moorhead’s largest industries in terms of total employment pay average wages that barely support a worker, let alone a family, based on analysis by the Economic Policy Institute.⁴⁸ Households that earn less than EPI’s family wage level typically require social supports, potentially including taxpayer-funded affordable housing and food stamps.

The unemployment rate in the greater Fargo-Moorhead metropolitan area was low prior to the emergence of COVID-19; yet, the number of unemployed far exceeds the number sought by H-2B employers.⁴⁹ Further, in this region, thousands of workers have been employed in low-wage, part-time positions with few opportunities for upward mobility. For example, among the roughly 223,000 workers in the Fargo-Moorhead area, many were employed in low-wage occupations, including some 45,000 working in the retail, accomodation, and food service industries.

⁴⁷ Arne L. Kalleberg, “Good Jobs, Bad Jobs: The Rise of Polarized and Precarious Employment Systems in the United States, 1970s-2000s,” 2011, Russell Sage Foundation.

⁴⁸ The EPI’s Family Budget Calculator estimates that \$32,077 is the minimum income that a single worker with no children needs in order to attain a modest yet adequate standard of living in the Fargo-Moorhead area: <https://www.epi.org/resources/budget/>.

⁴⁹ This is QCEW data for 2017 for the greater Fargo-Moorhead economic development region. We define this region as an area encompassing the Minnesota Economic Development region #4 and the North Dakota Planning Region #5. This is a 14 county area. Adelman has performed most of their work in this region from 2013-2018.

Table 9: Largest Industries in Fargo-Moorhead Regional Area⁵⁰

Industry	Average Employment	Average Hourly Wage	Average Weekly Wage	Average Annual Wage
Health Care and Social Assistance	37,305	\$22	\$877	\$45,604
Manufacturing	26,439	\$26	\$1,025	\$53,300
Retail Trade	25,779	\$15	\$580	\$30,160
Educational Services	18,632	\$23	\$910	\$47,320
Accommodation and Food Services	19,329	\$8	\$336	\$17,472

The retail and accommodation industries are among the industries with the heaviest reliance on part-time or temporary labor.⁵¹ These fast-growing occupational groups also rely on precarious employment relationships. Part-time positions account for 74 percent of food preparation and serving positions, and 36 percent of sales positions. In addition to 2,845 unemployed workers who could potentially have worked in concrete construction,⁵² at least 43,000 workers employed in low-wage industries might have been eager to seize an opportunity to earn higher wages in construction.

We project that foreign guest workers employed in concrete construction in Fargo in 2018 could have earned an average of at least \$22.58 per hour including overtime, or roughly \$1,270 per week. This is almost four times the average weekly earnings of a food service worker and double the earnings of a typical worker in the retail industry. The typical H-2B visa worker employed in North Dakota’s construction industry might earn \$45,000 during a season -- more than twice the average annual income of local workers in the hospitality industry.

The work performed by contractors that rely on foreign guest workers includes a wide range of private and taxpayer-supported projects in the Fargo-Moorhead area. For example, Adelman

⁵⁰ Ibid.

⁵¹ We rely on the MN DEED LMI Job Vacancy Survey for this data (<https://mn.gov/deed/data/data-tools/job-vacancy/>). This data is based on surveys of occupational groups. We match occupational groups with the industries. Similar data is not available for North Dakota. The employment trends in the regions of North Dakota and Minnesota understudy are very similar, however, so we expect similar employment patterns in North Dakota.

⁵² Unemployment data based on August 2018 estimates for the Fargo-Moorhead Metropolitan Area. Data available through the State of North Dakota job service website: <https://www.ndworkforceintelligence.com/vosnet/lmi/profiles/profileDetails.aspx?session=areadetail§ionID=20>.

was found working on the Perham High School construction project in Perham, Minnesota. The project was funded through a \$45 million dollar taxpayer referendum.⁵³ For Warren, a Perham taxpayer and long time construction worker, “it doesn’t seem right that my tax dollars aren’t being used to put local folks to work.”

Adelman also apparently performed concrete work on the \$39.5 million Cater Hall project at the University of North Dakota in Fargo.⁵⁴ Like Warren, Paul is frustrated by the reliance on H-2B workers on major taxpayer funded construction projects. “I live here in Fargo, and I would have loved an opportunity to apply to work on the Cater Hall project, but I never saw a job posting,” explained Paul. “I’ve largely had to travel for work over the last few years because I haven’t found enough work here locally.”

Nearly 900 construction companies operate in the Fargo-Moorhead metropolitan area.⁵⁵ A decade ago, not a single one relied on the H-2B visa program. Even today, 99% of area contractors seem to meet workforce needs the old-fashioned way, by recruiting local workers. One after another, however, leading local concrete contractors have indicated that they find it impossible to meet workforce needs locally.

There are reasons, however, to question the credibility of contractors that rely on H-2B visas when it comes to efforts to recruit local workforce. In 2012, for example, Adelman reported posting required advertisements for job openings in the “Fargo Moorehead [*sic*] News” on December 23rd and December 25th -- perhaps the two days of the year when unemployed workers were least likely to be searching the newspaper for job opportunities.⁵⁶ Similarly, a check of Adelman’s website in late 2017 found a list of job openings for concrete finisher, form setter, heavy equipment operator, foreman, and truck driver -- but no listing for any of the 50 construction laborer positions that the company apparently intended to fill with H-2B workers.⁵⁷

Nick Slavicek, who lives an hour from Fargo in Detroit Lakes, Minnesota, has worked in the construction industry for 18 years, and doesn’t buy the claim that concrete contractors can’t find locals willing to do the work. “I know people who are stuck in dead-end jobs working just

⁵³ Jeff Meier, “\$45.3 million upgrade to Perham-Dent School District to start construction this summer,” The Daily Journal, January 29, 2016.

⁵⁴ Wells Concrete, “Sophomores are getting more living space with NDSU’s new Residence Hall,” April 13, 2018: <https://www.wellsconcrete.com/sophomores-are-getting-more-living-space-with-ndsus-new-residence-hall/>.

⁵⁵ There are 887 contractors in the area based on data available through the State of North Dakota job service website: <https://www.ndworkforceintelligence.com/vosnet/lmi/profiles/profileSummary.aspx?session=inddetail&valueName=industry>.

⁵⁶ Recruitment information can be found on page 5 of Adelman’s 2012 Application for Temporary Employment Certification through the U.S. Department of Labor. All of their applications can be found here: <http://www.localjobsnorth.org/h-2b-applications>

⁵⁷ Adelman’s website is no longer accessible. A screenshot of their 2017 job posting is available here: <https://d3ciwvs59ifrt8.cloudfront.net/b1fb7367-8a9e-420f-b7c2-f5d1ccfad483/b5b2db60-0dd5-45ca-9e99-4e22d82f1915.pdf>

above minimum wage - at 10 or 12 bucks an hours,” explains Slavicek. “They’d love an opportunity to work in a good-paying construction job.”

There is a more credible explanation for the changes that have taken place in Fargo’s concrete construction industry, and it should concern workers and community leaders across the state. Concrete contractors are evidently using the H-2B program not as a stop-gap to address critical labor shortages, but as a strategy for replacing local workforce with a captive workers who are prohibited from changing jobs in search of better pay or conditions, and in no position to protest mistreatment or exercise basic rights.

The steady growth in the use of H-2B visas among Fargo-Moorhead concrete contractors is consistent with a recognition that reliance on foreign guest workers affords contractors in this highly-competitive industry an advantage. In effect, early and successful use of the program by Adelman appears to have touched off an H-2B arms race that may have cost the Fargo-Moorhead area more than a thousand jobs and tens of millions of dollars in lost economic activity over the past decade.

Employer Profile: Genuine Builders

Genuine Builders, a concrete contractor based in Arlington, South Dakota, and an H-2B visa “superuser,” provides a study in how the H-2B program has clearly failed to adequately hold employers accountable for violating the letter and spirit of the law. Genuine Builders claims that the company has been forced to employ foreign workers because they cannot find enough U.S. workers willing to do the job. But the company’s visa applications, together with past citations for violations of H2B program rules, suggest that Genuine Builders has not made a good faith effort to recruit U.S. workers first, evidently preferring to employ easily-exploited immigrant workers.

In 2013, Genuine Builders was required to pay more than \$180,000 in a case involving 132 workers. The company was fined \$41,698 and had to pay \$146,642 in back wages for violations of overtime laws (\$63,130) and H2B rules (\$83,512).⁵⁸ A U.S. Department of Labor investigation found that workers whose visas restricted them to one of three South Dakota counties were instead deployed across a thirteen-state area that stretched from Arkansas to Idaho. The agency also found that Genuine Builders failed to pay required wage rates or make employment opportunities available to U.S. workers; and that the company gave preferential treatment to foreign workers by offering them raises and overtime that were not advertised to U.S. workers.⁵⁹

Despite having been cited for eight separate violations of Fair Labor Standards Act and H-2B program requirements, however, Genuine Builders was apparently allowed to continue to

⁵⁸ US Department of Labor Data Enforcement website, search for Genuine Builders, accessed 7/14/2016. <http://ogesdw.dol.gov/views/search.php>

⁵⁹ See investigation summary provided by the US Department of Labor pursuant to a Freedom of Information Act request [here](#).

employ H-2B guest workers. Perhaps it was for this reason that the contractor seemingly failed to learn its lesson based on a complaint filed with USDOL in 2015 by the Fair Contracting Foundation of Minnesota. The complaint cited evidence indicating that Genuine Builders was once again employing H-2B visa workers outside their approved work area -- in this case on an Archer Daniels Midland project in Glencoe, Minnesota. The complaint further alleged that the H-2B visa workforce continued its work after the visa period had expired. According to a witness, workers said that they had been employed in other geographic markets not covered by the visas, including North Dakota, Iowa, and Washington State.

Worker advocates contend that Genuine Builders has made it difficult, if not impossible, for U.S. workers to pursue employment on some of the company's construction projects. One local construction worker described trying to apply for a job with Genuine Builders at a project in Brownton, Minnesota where he said it took three visits to obtain a job application, at which point he was threatened with arrest by the project owner. Other workers have had applications submitted directly to the company's owner for positions that were later apparently nonetheless filled by H-2B visa workers..

Genuine Builders has been certified for approximately 220 H-2B visas in North Dakota since 2016, and has requested 55 more for 2020. It is difficult to know the full impact of the company's labor outsourcing practices on North Dakota workers and communities. On one hand, because Genuine Builders has apparently exploited the H-2B program to create a traveling workforce, it is hard to know whether the same workers are being double-counted on multiple projects. On the other hand, Genuine Builders has been cited by the U.S. Department of Labor for employing H-2B workers outside permitted areas so it is possible that, by reviewing only North Dakota-specific visa applications, we have underestimated the full impact. Either way, it seems likely that the company's use of H-2B visas may have cost North Dakotans millions of dollars in lost economic activity.

We should not assume that impacts of the H-2B visa program on construction employment opportunities will be limited to concrete or to the Fargo-Moorhead area. The same competitive and workforce dynamics that have clearly driven growth of labor outsourcing among Fargo concrete contractors could come into play in other sectors of the construction industry and other geographic markets.

For example, Western North Dakota could see the number of foreign guest workers placing concrete shoot from 35 to 112, with Winn Construction apparently seeking to more than double its H-2B workforce from 35 to 80 visas, while fellow "superuser" Genuine Builders and Watford City-based Badger Oilfield seek permission to employ 22 and 10 workers in Western North Dakota, respectively, according to their applications. The proposed growth in Western North Dakota comes at a particularly hard time for area construction workers as the oil industry struggles with COVID and price shocks.

Meanwhile, Tand Construction, LLC, based in Mandan, has now evidently requested visas to employ foreign guest workers in "underground construction and water/sewer pipe installation"

for the second year in a row,⁶⁰ while Wilton-based Basaraba Excavating apparently made the company's first request for laborers for Bismarck-area water/sewer construction in 2020. These examples suggest that outsourcing of construction labor could continue to eat into the availability of high-quality employment and local economic activity in North Dakota until policymakers take action to reign in the program

Conclusion

This analysis has revealed how the choice of a handful of construction companies to outsource jobs to foreign guest workers could be costing North Dakota communities millions of dollars in potential economic activity. Available data indicate that both the Fargo-Moorhead area and North Dakota overall have thousands of unemployed workers, and thousands more who are (or were until recently) employed in low-wage temporary jobs, that could benefit greatly from a better paying job in construction. As a consequence, local workers are missing out on good paying construction jobs, while area communities are losing millions in local economic investment.

It is abundantly clear that the H-2B program is failing migrant workers and local communities across the U.S. The good news is that there is a better way. Rather than relying on outsourced labor, construction employers could meet their workforce needs by investing in local workers and collaborating with local workforce providers -- including registered apprenticeship programs which were recently recognized by the U.S. Department of Labor (USDOL) for their success in recruiting and training construction workers.

Contractors and their customers have a responsibility to prevent continued exploitation of guest workers, and displacement of local workers by ending the use of H-2B labor on their construction projects and teaming up with workforce providers to put local workers and economies first. Congress and USDOL also have a role to play. Lawmakers should recognize that use of H-2B visas is counterproductive in construction and remove construction trades from the list of eligible industries. Congress should also raise the bar for recruitment efforts so employers can no longer get away with burying ads in a local paper during the Christmas holiday, or generally failing to make the same efforts competitors routinely make to recruit workforce

USDOL should also expand oversight to better scrutinize claims of need, enforce program rules, and protect vulnerable workers who are in no position to complain about substandard pay and conditions. And state and local governments could also play a more active role in regulating the program and in assessing local labor shortages.

⁶⁰ See job orders for 2019 and 2020 at <https://seasonaljobs.dol.gov/job-order/H-400-18352-587017> and <https://seasonaljobs.dol.gov/job-order/H-400-20003-229822>

Appendix 1: Sample H-2B Visa Certification Form

OMB Approval: 1205-0509
Expiration Date: 12/31/2018

H-2B Application for Temporary Employment Certification
Form ETA-9142B
U.S. Department of Labor



Please read and review the filing instructions carefully before completing the Form ETA-9142B. A copy of the instructions can be found at <http://www.foreignlaborcert.dola.gov/>. In accordance with Federal Regulations, incomplete or obviously inaccurate applications will not be certified by the Department of Labor. If submitting this form non-electronically, ALL required fields/items containing an asterisk (*) must be completed as well as any fields/items where a response is conditional as indicated by the section (§) symbol.

A. Employment-Based Nonimmigrant Visa Information

1. Indicate the type of visa classification supported by this application (Write classification symbol). *	H-2B
--	------

B. Temporary Need Information

1. Job Title * Construction Laborer		
2. SOC (ONET/OES) code * 47-2061	3. SOC (ONET/OES) occupation title * Construction Laborers	
4. Is this a full-time position? * <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Period of Intended Employment	
	5. Begin Date * 04/01/2018 <small>(m/dd/yyyy)</small>	6. End Date * 12/15/2018 <small>(m/dd/yyyy)</small>
7. Worker positions needed/basis for the visa classification supported by this application		
<input type="text" value="50"/> Total Worker Positions Being Requested for Certification *		
Basis for the visa classification supported by this application <i>(indicate the total workers in each applicable category based on the total workers identified above)</i>		
<input type="text" value="50"/> a. New employment *	<input type="text" value="0"/>	d. New concurrent employment *
<input type="text" value="0"/> b. Continuation of previously approved employment * without change with the same employer	<input type="text" value="0"/>	e. Change in employer *
<input type="text" value="0"/> c. Change in previously approved employment *	<input type="text" value="0"/>	f. Amended petition *
8. Nature of Temporary Need: (Choose only one of the standards) *		
<input checked="" type="checkbox"/> Seasonal <input type="checkbox"/> Peakload <input type="checkbox"/> One-Time Occurrence <input type="checkbox"/> Intermittent or Other Temporary Need		
9. Statement of Temporary Need *		
<p>***ATTENTION CERTIFYING OFFICER. This is a FULL-TIME position for a TEMPORARY duration. The statement of need describes the temporary position in which workers are being requested; full-time hours does not presuppose permanent work. Please see duration of temporary position: ETA Form 9142B, Section B. Temporary Need Information: Period of Intended Employment. Item 5. Begin Date & Item 6. End Date. ***</p> <p>Adelman Concrete and Excavating, Inc. has been serving North Dakota since 2004. What started as a husband and wife team, has flourished into a vital business in the Fargo area.</p> <p>*** SEE ATTACHED STATEMENT OF TEMPORARY NEED ***</p>		

About Local Jobs North

Local Jobs North seeks to promote good, family-supporting construction jobs for North Dakota and Minnesota workers through research and advocacy. Our goal is to educate the public and policy makers about the social and economic benefits of using local workers. Local Jobs North is a project of LIUNA Minnesota & North Dakota, which represents more than 12,000 unionized construction laborers across Minnesota and North Dakota and is affiliated with the half-million member Laborers International Union of North America.

www.locajobsnorth.org

About the Author

Lucas Franco is the Research Manager for LIUNA Minnesota & North Dakota. He holds a Ph.D. in Political Science from the University of Minnesota and has published numerous articles and reports on employment trends in the construction industry.

Contact the author for comments or questions.

Lucas Franco

lfranco@liunagro.com

612-850-8755