

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

ASOCIACION DE TRABAJADORES §  
FRONTERIZOS, SANDRA MORA,  
SOLEDAD RENTERIA, RODRIGO §  
MORIN, JOSE DE LA CRUZ,  
MARISELA RODRIGUEZ, and RAUL §  
TREJO

Plaintiffs, §

v. §

**EP02CA0131-PM**

TEXAS WORKFORCE COMMISSION, §  
DIANE RATH, T.P. O'MAHONEY, §  
RON LEHMAN, Commissioners and §  
CASSIE CARLSON REED, Executive §  
Director of TEXAS WORKFORCE §  
COMMISSION; UPPER RIO GRANDE §  
WORKFORCE DEVELOPMENT BOARD §  
INC., MARTIN AGUIRRE, Chief Executive §  
Officer, UPPER RIO GRANDE WORK §  
FORCE DEVELOPMENT BOARD, and §  
U.S. DEPT OF LABOR, ELAINE CHAO, §  
Secretary of U.S. DEPT. OF LABOR §

Defendants

**FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF  
AND FOR PRELIMINARY AND PERMANENT INJUNCTION**

**I. Introduction**

1. Asociacion de Trabajadores Fronterizos (Association of Border Workers), and six displaced workers who have been through re-training programs under the Trade Adjustment Assistance Program of the Trade Act of 1974, two of whom are currently enrolled for a second time in re-training, Plaintiffs in this action, seek declaratory and injunctive relief against the entities administering the re-training programs for failing to provide effective language relevant re-training opportunities to displaced workers who are

limited English proficient. Plaintiffs challenge Defendants' policies and practices in the administration and implementation of training benefits because limited English proficient workers are deprived from enrolling in job skills training unlike other workers, and instead, are limited to non-vocational classroom instructional programs, contrary to the purposes of the Trade Act of 1974, as amended. Plaintiffs allege violations of their rights under Title VI of the Civil Rights Act of 1964, the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. §1983.

## **II. Jurisdiction**

2. Jurisdiction is conferred on this Court by 28 U.S.C. §§1331 and 1337 with respect to all defendants, in that this action arises under the Constitution and laws of the United States, the Trade Act of 1974 and NAFTA TAA, 19 U.S.C. §2291 *et seq.* and §2331 as amended, an act of Congress related to commerce and Title VI of the Civil Rights Act of 1964.

3. Jurisdiction is also conferred on this Court by 28 U.S.C. §1343(3) and (4), in that this is an action arising under 42 U.S.C. §1983, which provides for redress from deprivations under color of state law, ordinance, regulation, custom, or usage of rights secured by the Constitution and laws of the United States.

4. Declaratory relief is authorized by 28 U.S.C. §2201 and 2202. The United States federal government is charged by statute with responsibility to administer the TAA program.

## **III. The Parties**

5. Plaintiff, Asociacion de Trabajadores Fronterizos ("ATF") or Border Workers Association is an advocacy and self-help workers' organization comprised principally of

displaced garment workers and other workers. ATF is a project of the Center for Popular Education and Community Organizing, a non-profit organization. Since 1996, ATF has organized workers and represented their interests on numerous issues in different settings and forums. ATF has offered counseling, assistance, and referral services to workers experiencing displacement. See Affidavit of Guillermo Glenn, a copy of which is attached hereto and labeled Exhibit A.

6. Plaintiffs Soledad Renteria, Rodrigo Morin, Jose De La Cruz, Marisela Rodriguez, Sandra Mora, and Raul Trejo are residents of El Paso County who lost their employment in 1998, 1999, 2000 and 2001. Their former employers were certified as trade-affected by DOL and Plaintiffs were found eligible for Trade Act re-training benefits. Their language aptitude was assessed and they were determined to be limited English proficient (LEP) and were enrolled in the training programs approved by Defendants. At all times relevant, Plaintiffs complied with the requirements of the programs by submitting to language assessment; cooperating with counselors, advisors, training providers, and instructors; attending classes; and completing their class assignments to the best of their ability.

7. Plaintiffs, Sandra Mora and Raul Trejo were displaced a second time in December 2001. Their last employer was VF Jeanswear. Plaintiffs Mora and Trejo had been previously displaced from Levi Strauss & Co. They have again received orientation, completed paperwork, submitted to language assessment, and have been determined to be limited English proficient. They are enrolled in the training that was available to them at the time, and are currently attending classes.

8. Defendant Texas Workforce Commission (“TWC”) is a cooperating state agency and recipient of federal financial assistance under the Trade Act. As a cooperating state agency

it is charged with receiving applications for, and providing payments pursuant to 19 U.S.C. §§2271 *et seq.* Cassie Carlson Reed is sued individually and as Executive Director of the Texas Workforce Commission. Defendant Reed is responsible for the general direction of the TWC's activities in administering the federal funds used for the training programs. The Commissioners are sued in their official capacity.

9. Defendant Upper Rio Grande Workforce Development Board, ("URGWDB") is a state-created regional agency and a recipient of federal financial assistance. Martin Aguirre is sued individually and as Chief Executive Officer of the Upper Rio Grande Workforce Development Board. Defendant Aguirre is responsible for the general direction of the local workforce development board's activities in administering the training programs locally.

10. Defendant Elaine Chao is sued in her official capacity as Secretary of the U.S. Dept. of Labor, ("DOL").

#### **IV. Statutory Framework**

11. The Trade Act of 1974, as amended 19 U.S.C. §2291, *et seq.*, created a program of trade adjustment assistance (TAA) to help workers return to suitable employment after they have become unemployed as a result of foreign competition. The TAA program includes training and cash allowances (called Trade Readjustment Allowances or TRA), which are paid to dislocated workers after they have exhausted their regular state unemployment compensation.

12. In 1993 Congress extended the Transitional Adjustment Assistance Program to workers affected by the North American Free Trade Agreement ("NAFTA").

13. DOL administers the dislocated worker assistance programs, including TAA/TRA. 19 U.S.C. §2317 and NAFTA-TAA 19 U.S.C. § 2331.

14. The Secretary of DOL may enter into agreements with cooperating state agencies whereby a state agency will act as an agent for the United States in administering TAA and TRA 29 U.S.C. §2311(a).

15. A two-step process must be completed before an individual worker is eligible to receive TAA/TRA benefits. A petition for certification of the employer must be filed with DOL. Certification depends on whether the group was adversely affected by import competition or a shift in production. If a certification is granted, the workers may then apply to the state agency for TAA/TRA benefits. The state agency determines whether an individual is covered by the certification and whether TRA and TAA benefits should be awarded. 19 U.S.C. §2311(a), 20 CFR §617.10(a).

16. All of the named plaintiffs worked at facilities which were certified by DOL as adversely affected by foreign competition and thus eligible for TAA/TRA benefits. Each of the named plaintiffs was subsequently found by TWC to be eligible for TAA re-training benefits.

17. Prior to 1988, TAA claimants who exhausted their state unemployment benefits could collect up to an additional 26 weeks of cash (TRA) benefits without regard to whether they were enrolled in an approved retraining program.

18. In 1988, Congress also made TAA training an entitlement, whereas it previously had been contingent upon available funding. Since 1988, the Act has required that training shall be approved for an otherwise eligible worker if the Secretary determines that—

- (A) there is no suitable employment . . . available for an adversely affected worker,
- (B) the worker would benefit from appropriate training,
- (C) there is reasonable expectation of employment following completion of such

training,

(D) training approved by the Secretary is reasonably available to the worker from either governmental agencies or private sources . . . ,

(E) the worker is qualified to undertake and complete such training, and

(F) such training is suitable for the worker and available at a reasonable cost . . . ,

19 U.S.C. §2296(a)(1).

19. The Trade Act at Section 2293 requires affected workers to enroll in approved training programs within certain time periods of their most recent total separation from employment or certification of eligibility. Failure to comply strictly with the time requirements renders a worker ineligible for the program and results in the loss of thousands of dollars in training and monetary benefits to each worker.

20. The Workforce and Economic Competitiveness Act, the state enabling legislation, gave authority to local workforce development boards to 1) plan and oversee the delivery of workforce training and services; and 2) evaluate workforce development in the workforce development area. The responsibility of local boards, *inter alia*, is to plan and oversee all workforce development programs in the workforce development area and to ensure effective outcomes. Texas Government Code §2308 *et seq.*

## **V. STATEMENT OF FACTS**

21. For several years, Plaintiff ATF has been advocating strenuously for language-relevant job skills training for its members, that is, vocational training in a language they understand.

22. Defendant officials have been unresponsive and persist in assigning workers to non-vocational classroom instruction consisting of English as a Second Language (“ESL”)

and General Educational Development (“GED”) courses, which fail to provide limited English proficient workers with meaningful job training opportunities on an equal basis as English-speaking workers.

23. Defendant officials have further failed to take meaningful action to increase the training opportunities of limited English proficient displaced workers. For example, Defendants have failed to promote the creation of training programs or recruitment of training providers that will offer meaningful job skills training to these workers.

24. The training opportunities of ATF members who will be displaced in the future will continue to be wasted unless Defendants are ordered to provide meaningful job skills training to LEP displaced workers.

25. Plaintiffs signify the thousands of workers for whom TAA/TRA “training benefits” failed to impart any meaningful job skills and failed to improve job opportunities for them. Six of the Plaintiffs were enrolled and participated in approved ESL and GED programs until their TRA (monetary benefits) were exhausted. They received no meaningful job skills training or a GED certificate in English. They have been unable to secure employment that pays close to their wage rate prior to displacement.

26. Plaintiffs received the following training:

a. Sandra Mora and Marisela Rodriguez, were displaced from Levi-Strauss in June 1998. Sandra Mora and Marisela Rodriguez took classroom instruction consisting of office clerk training and ESL classes, however they were unable to secure office clerk jobs after the training because the amount of English gained and skills learned were insufficient. Sandra Mora went to work for VF Jeans as a sewing machine

operator and Marisela Rodriguez went to work for a day care center. Sandra Mora, who has been displaced again is enrolled to take the same training once more.

b. Rodrigo Morin and Soledad Renteria were displaced from CMT, a local garment factory, in late 1998. They were advised to enroll in the only “training programs” available to them. They took ESL and GED classes for 10-18 months until their benefits were exhausted. They learned insufficient English, and received no job skills training.

c. Jose Manuel de la Cruz was displaced from SUN APPAREL in June 1999. He attended GED classes at El Paso Community College, but was unable to receive a GED, learn sufficient English or gain any job skills.

d. Raul Trejo was displaced from Levis-Strauss in June 1998 and again in December 2001 from VF Jeans. Although he wanted to take electrical training after his first displacement, he was channeled to ESL and GED classes. He gained insufficient English and no meaningful job skills. Raul Trejo has been displaced again, this time from VF Jeans and is again eligible for training.

27. The earnings of Plaintiffs prior to displacement and after receiving “training”

changed as follows:

<u>Plaintiff</u>	<u>Prior Wages</u>	<u>Current or Most Recent Wages</u>
Rodrigo Morin	\$15.00 per hour	\$7.00 per hour
Soledad Renteria	\$9.50 per hour	\$5.15 per hour
Sandra Mora	\$9.75 per hour	\$7.03 per hour at VF Jeans
Marisela Rodriguez	\$10.00 per hour	\$6.80 per hour
Raul Trejo	\$9.85 per hour	\$5.15 per hour at VF Jeans

Jose M. De la Cruz    \$11.00 per hour        \$5.75 per hour

28. VF Jeanswear displaced workers were notified that they must first enroll in existing ESL and GED classes by April 5, 2002 or lose their eligibility for training benefits. For example, see copy of Defendant URGWDB's notice to VF workers, a copy of both a Spanish and an English version is attached hereto and labeled Exhibit B. The vocational or job skills training available is very limited and inadequate. The workers understood the deadline to enroll was April 5, 2002 or risk losing their eligibility.

29. Defendants are aware of the failure of the training programs including the non-vocational classes with respect to limited English proficient workers, yet they continue to rely on the Training Provider Certification System "TPCS" and approve the same non-vocational classroom instruction, the same providers with the same curriculum, and without demanding waivers or modifications to ensure appropriate job skills training for these workers.

30. Defendants are further aware that unlike English speaking displaced workers, limited English speaking workers do not receive suitable and appropriate training, do not benefit from the training they receive, and have no reasonable expectation of finding employment following the training they receive.

31. Defendants TWC and URGWDB have failed to recognize and address the training needs of LEP workers in ways that include the following:

a. By failing to seek relief from federal restrictions including requesting an extension of time requirements on behalf of LEP workers in order to identify and contract with language relevant training providers;

- b. By failing to request assistance from other state and local agencies to develop and certify training programs, which address the training needs of LEP workers;
- c. By failing to require training providers to adapt their curricula and classes to the needs of LEP workers;
- d. By failing to timely and adequately support efforts to develop appropriate language relevant job training for LEP workers;
- e. By arbitrarily assigning LEP workers to non-vocational ESL and GED classes without regard to prior educational background or interests, or to future occupational needs and job opportunities;
- f. By failing to require training providers to demonstrate some measure of effectiveness in the services they provide to LEP workers.

## **VI. Causes of Action**

### **A. Violations of Title VI By TWC and URGWDB**

32. The Texas Workforce Commission and the Upper Rio Grande Workforce Development Board receive federal funding to administer the local re-training programs and to provide financial assistance to displaced workers as the ultimate beneficiaries of the federal funds.

33. Title VI of the Civil Rights Act of 1964 at 42 USC Sec. 2000d provides, “[N]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

34. The Defendants’ custom and practice of approving non-vocational classroom instruction for limited English proficient displaced workers and approving vocational or

job skills training for English-speaking workers discriminates against limited English proficient workers based on their national origin.

35. Plaintiffs have been denied re-training opportunities by the TWC and URGWDB on a comparable basis as their English-speaking counterparts because of Plaintiffs' national origin resulting from communication barriers, in violation of Title VI.

36. Plaintiffs seek declaratory and injunctive relief against Defendants TWC and URGWDB that Plaintiffs' rights under Title VI have been violated and that Plaintiffs are entitled to receive training benefits reasonably comparable to the benefits received by non-limited English speaking displaced workers.

#### **B. Violations of Equal Protection and Section 1983 By Individual State Defendants**

37. Defendants Cassie Carlson Reed and Martin Aguirre have deprived Plaintiffs, under color of state law, of equal protection of the laws pursuant to the Fourteenth Amendment of the U.S. Constitution by discriminating against persons who are of Mexican national origin and are limited English proficient in the provision of meaningful job training benefits.

38. Plaintiffs rights to equal protection of the laws have been violated by the actions of Defendants Carlson Reed and Aguirre, in their individual capacities.

39. Plaintiffs seek redress of their rights to training benefits on the same or equal basis as trade benefit recipients who are not limited English-speaking.

#### **C. Violations of Trade Act Provisions by DOL**

40. Federal law requires DOL to ensure that states operate the TAA program as agents of DOL consistent with the state's agreement with DOL to carry out the provisions of the Trade Act.

41. DOL has violated the Trade Act by failing to ensure that the Texas Workforce

Commission and the Upper Rio Grande Workforce Development Board meet the provisions of the Trade Act, with respect to limited English proficient displaced workers, specifically that:

- (B) the workers benefit from appropriate training,
- (C) there is reasonable expectation of employment following completion of such training,
- (E) the workers are qualified to undertake and complete such training, and
- (F) such training is suitable for the workers . . .

19 U.S.C. §2296(a)(1).

42. Upon information and belief, DOL has authorized and/or acquiesced in the enrollment and placement of limited English proficient workers in non-vocational classroom instruction consisting of ESL and GED classes, instead of job skills training, notwithstanding that such actions fail to meet the Trade Act's above-stated standards and requirements.

43. The federal defendant has additionally acted contrary to the Plaintiffs' rights under the Trade Act of 1974, as amended, by failing to require through its agreement with the state defendant, that the state defendant provide meaningful job training opportunities to LEP workers on an equal basis as that provided to English speakers.

44. Plaintiffs seek declaratory and injunctive relief against Defendant DOL that Defendant DOL has wrongfully interpreted the Trade Act's provisions by tacitly approving non-vocational classroom instruction for LEP workers instead of requiring the state Defendants to provide job skills training comparable to that provided to English speakers and consistent with the Act's Congressional purpose.

## **VII. Injunctive Relief**

45. Because of the continuing nature of Defendants' denial of meaningful vocational skills training opportunities for LEP workers under the Trade Act of 1974, action which has been denied, is being denied, and will continue to be denied to LEP workers, resulting in immediate and irreparable harm, Plaintiffs are entitled to a permanent order. Defendants should be restrained from enforcing or otherwise implementing enforcement of the time requirements for enrollment and participation in training provision, 20 CFR § 617. 11, of the Trade Act of 1974, to reject, dismiss, or otherwise unfavorably dispose of or adversely resolve any claims, or to grant benefits to LEP participants or applicants that are less than the vocational training benefits afforded to English speaking participants.

46. Plaintiffs continue to suffer injury because Plaintiffs do not have access to the vocational skills training benefits that can provide them an avenue for full employment. They have been unconstitutionally denied Trade Act benefits in the past and will be denied benefits in the future unless the Court grants them the relief they seek in this suit.

## **VIII. Declaratory Relief**

47. This lawsuit involves an actual controversy within this Court's jurisdiction. The court may declare the rights and other legal relations of Plaintiffs and grant such other necessary and proper relief allowed by a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 & 2202.

## **Exclusiveness of Remedy**

48. Plaintiffs cannot adequately press and adjudicate their claims of unconstitutional deprivation in a way other than this lawsuit, and they have no means other than this lawsuit

to effectuate the policy considerations of Title VI, the U.S. Constitutions, or of the Trade Act itself.

49. Defendants operate a system, which denies limited English speakers from securing vocational skills training on the same basis as non-limited English speakers.

50. Because of the ongoing need for the training benefits to which Plaintiffs and others like them would otherwise be entitled, but for the Defendants' failure to provide adequate training opportunities, appealing individual grievances or determinations of ineligibility due to the lack of training opportunities, would result in continuous litigation of the issue but evading substantive review.

51. Declaratory and injunctive relief on behalf of Plaintiffs in this court is the only practical, justiciable manner in which limited English speaking training participants and applicants can redress the denial of vocational skills training to which they are entitled under the Trade Act.

### **IX. Conclusion and Prayer for Relief**

Wherefore Plaintiffs pray that this Court:

- A. assume jurisdiction over this matter;
- B. declare that Defendants' provision of non-vocational classroom instruction consisting of ESL and GED classes to limited English proficient participants denies them meaningful job training and denies them equal protection of the law; equality under the law; guaranteed by the U.S. Constitution, Title VI of the Civil Rights of 1964 and 42 U.S.C. 1983.
- C. declare that Defendants' failure to provide language-relevant job training to Plaintiffs violates the legislative intent of the Trade Act of 1974 and NAFTA/TAA;

- D. enjoin Defendants from continuing to approve individual training contracts for LEP participants with training providers who offer only non-vocational ESL and GED classes;
- E. enjoin Defendants from continuing to approve training providers who purport to serve LEP workers and who fail to provide language relevant job training;
- F. enjoin Defendants from enforcing the deadlines imposed by 19 U.S.C. §2293 against LEP participants who are unable to access language relevant trainings within the time constraints of the federal statute and regulations;
- G. enjoin Defendants from relying on the Training Provider Certification System “TPCS” and order Defendants to identify and approve training providers who will meet the needs of LEP participants and provide language relevant job skills training to them;
- H. enjoin Defendants from approving individual contracts for LEP participants without first providing the workers with the following pre-training services:
- information on the regional job opportunities;
  - educational and aptitude assessment;
  - vocational or occupational counseling;
  - information on the courses available, requirements for completion and for certification or licensing;
- I. order Defendants to provide Plaintiffs and those who have been denied meaningful job training, a second opportunity to enroll in language relevant training with all attending rights and benefits, or in the alternative, order Defendants to pay Plaintiffs the value of training benefits afforded to non-limited English speakers;
- J. appoint a Master to coordinate the efforts of Defendants in providing training benefits and any relief granted to Plaintiffs through this action;

K. award Plaintiffs costs incurred, together with all other relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

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