

Daily Labor Report

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NAFTA: MEXICAN GOVERNMENT ASKS DOL TO INVESTIGATE LABOR RIGHTS OF H-2B WORKERS UNDER NAFTA

By Michael R. Triplett

The Mexican government has asked the Labor Department to investigate and respond to a complaint filed under a labor side agreement to the North American Free Trade Agreement that alleges the United States failed to protect the labor rights of workers brought to the country under H-2B visas, attorneys for the workers announced Dec. 12.

The 16 workers from Mexico, Guatemala, and Panama alleged they were denied appropriate wages, given unsafe housing, and misclassified as nonagricultural workers in order to deny them important labor protections, Laura K. Abel of the Brennan Center of Justice in New York told BNA Dec. 12. The request to DOL from the Mexican government was sent Oct. 17, she said, but the need to translate documents delayed the public announcement of the complaint. The complaint was filed under the North American Agreement on Labor Cooperation, which is a labor side agreement to NAFTA. The agreement allows participating countries to request investigations of labor violations of other countries, which then triggers potential negotiations over resolution. There is no panel or tribunal that hears complaints raised under the NAALC, Abel explained.

The NAFTA process is an elaborate and confusing process, said Abel, the Brennan Center's deputy director. The center is housed at New York University Law School. But we believe it is important to have the concerns of these workers acknowledged and these side agreement processes exist for that reason.

Concern Over Wages, Right to Counsel.

The original complaint was filed with the Mexican government in April 2005 and alleged that the workers--including Mexican nationals--suffered serious and frequent violations of their labor rights, and that the United States is failing to take appropriate steps to enforce its laws or remedy those violations (72 DLR A-11, 4/15/05). The complaint was brought by five U.S. organizations--the International Labor Rights Fund, the National Immigration Law Center, Idaho Migrant Council, Oregon Law Center, and Pi Eros y Campesinos del Noroeste--as well as six Mexican organizations--Frente Autentico del Trabajo; National Union of Workers; Red Mexicana de Acci n Frente al Libre Comercio; Sin Fronteras, I.A.P.; Centro de Derechos Humanos; and El Centro de Derechos Humanos de la Monta a Tlachinollan A.C.

The original complaint alleged the workers were brought to the United States to work in the Pacific Northwest and were promised wages of over \$6 an hour. When they arrived, the petition alleged the workers actually received a little more than \$2 an hour. They also alleged that they

were misclassified as nonagricultural workers in order to strip them of the right to counsel guaranteed to agricultural workers when there is a dispute.

Naalc Process.

In the official request to DOL, the Mexican government has forwarded 69 sets of questions regarding the extent to which the workers have access to legal assistance, and the extent to which H-2B workers are protected by state and federal laws. H-2B visa holders are seasonal guestworkers hired to perform nonagricultural occupations; agricultural migrant workers are given H-2A visas.

The workers in this complaint alleged they were hired by agricultural companies in Idaho, Colorado, Arkansas, Texas, Florida, Oregon, Tennessee, and Wyoming and ended up performing agricultural work--like slashing and burning vegetation, clearing trails and planting trees, working in warehouses, and working in the fields.

Under the provisions of NAFTA, once DOL responds to the Mexican government's questions, Mexico can decide whether to pursue additional mechanisms in NAALC to ensure U.S. compliance. Among the mechanisms available under NAALC are public hearings, convening experts to explain the issue, and consultations with the labor secretaries of the United States, Mexico, and Canada.

Although not all the workers are from Mexico, Abel told BNA that the workers brought their complaint in Mexico because NAFTA provides that aggrieved workers can complain to any of the signatory nations other than the one charged with violating the treaty. The treaty gives legal migrant workers the ability to enforce their labor rights, access courts, and have fair enforcement proceedings.

As part of a reciprocal agreement, all three countries are required to provide migrant workers with the same workplace protections as native-born workers.

A DOL spokesman told BNA Dec. 12 that it had no comment.

In addition to Abel, the workers are represented by Michael Dale of the Northwest Workers' Justice Project in Portland, Ore., Bill Beardall of the Equal Justice Center in Austin, Texas, and Maria Andrade of the Andrade Law Office of Boise, Idaho.