

FACT SHEET

Complaint to Mexican Government Regarding Access to Labor Rights Lawyers for Temporary Workers in the U.S.

April 13, 2005

Who is bringing the complaint?

The complaint is brought by sixteen men brought from Mexico, Panama and Guatemala to the United States as temporary workers by American companies. Nine U.S. and Mexican organizations have joined their complaint: Centro de Investigacion Laboral y Asesoria Sindical, A.C.; Frente Autentico del Trabajo; National Union of Workers (UNT); Red Mexicana de Accion Frente al Libre Comercio; Sin Fronteras, I.A.P.; Idaho Migrant Council; National Immigration Law Center; Oregon Law Center; and Pineros y Campesinos del Noroeste.

Why did they file the complaint?

The sixteen workers suffered brutal physical injury, stolen wages, unsafe housing, and other dangerous employment conditions, and were denied access to the free legal aid they needed to seek redress. Their experiences are typical of the difficulties migrant workers face in enforcing their labor rights in the U.S.

Why were the sixteen workers unable to obtain legal assistance to enforce their labor rights in the United States?

In many parts of the United States, legal aid lawyers receiving some federal funding from the Legal Services Corporation (LSC) are the only no-cost lawyers available to help low income people in labor rights and other types of civil matters. This was the case in Idaho. The federal government bars legal aid lawyers receiving any LSC funding from representing many categories of immigrants, regardless of the source of funding. This ban includes workers, like the men who signed the complaint, who are legally in the country on H-2B guestwork visas.

It is rare for lawyers in private practice, who do not work for legal aid programs, to represent migrant workers in labor rights cases. Many lawyers in private practice lack the language skills to communicate with migrant workers, lack the necessary labor law expertise, are unable to travel to the remote areas where migrant workers are, or believe that the cases are unlikely to generate enough attorneys' fees to make litigating them worthwhile.

Why did the sixteen workers need legal assistance when the United States government enforces labor rights?

In order to enforce some labor rights, individuals must go to court. For example, it is only by going to court that migrant workers can only obtain damages or injunctive relief under the federal Migrant and Seasonal Agricultural Worker Protection Act. Litigants are significantly more likely to be successful in a court action when they are represented by counsel. This is particularly true for workers who do not speak English and are unfamiliar with the U.S. legal system

What are the workers and the organizations supporting them seeking?

The workers and organizations that signed the complaint are asking the Mexican government first to investigate their claims, and then to request that the United States government remedy their claims by better enforcing labor laws, and by permitting more categories of immigrants to obtain assistance from LSC-funded legal aid offices.

The complainants also want to ensure that any future temporary worker program the federal government launches will be designed to avoid the abuses that workers suffer under the current temporary worker programs. Such programs must include labor rights equal to those of U.S. citizens. They must also ensure that the workers have access to legal assistance to help enforce their labor rights.

What is the legal basis for the complaint?

The complaint is filed under the labor side agreement to the North American Free Trade Agreement (NAFTA), known as the North American Agreement on Labor Cooperation (NAALC). The United States, Mexico and Canada are the signatories to the NAALC.

The legal papers explain that the NAALC guarantees migrant workers who are in the U.S. legally the ability to enforce their labor rights, access to courts, and fair enforcement proceedings. As part of a reciprocal agreement with Mexico and Canada, the U.S. is supposed to provide migrant workers with the same workplace protections as native-born workers.

More specifically, the complaint charges that the United States has failed to comply with provisions of the NAALC requiring it to:

- 1) ensure that workers are able to enforce their labor rights. NAALC, Art. 4, § 2.a.
- 2) provide access to the administrative or judicial bodies with power to enforce those rights. NAALC, Art. 4, § 1.
- 3) ensure that the administrative or judicial proceedings to enforce those rights are fair, not unnecessarily complicated, and not unreasonably expensive. NAALC, Art. 5, § 1.

4) enforce its laws in connection with NAALC labor principles requiring:

- a) “[t]he establishment of minimum employment standards, such as minimum wages . . . for wage earners,” NAALC, Annex 1, Labor Principle 6,
- b) “[p]rescribing and implementing standards to minimize the causes of occupational injuries and illnesses,” *id.*, Labor Principle 9,
- c) “[t]he establishment of a system providing benefits and compensation to workers or their dependents in cases of occupational injuries, accidents or fatalities arising out of, linked with or occurring the course of employment,” *id.*, Labor Principle 10, and
- d) “[p]roviding migrant workers in [the United States’] territory with the same legal protection as [United States] nationals in respect of working conditions,” *id.*, Labor Principle 11.

Why was the complaint filed in Mexico?

The complaint was filed in Mexico City because the formal process set up by the side agreement, called the North American Agreement on Labor Cooperation (NAALC), requires those alleging violations to petition one of NAFTA’s signatory countries to take up their complaint.

What are the next steps?

The Mexican government will consider the matter this spring. The workers are hoping that the Fox Administration will hold hearings.

Who are the lawyers for the workers and organizations on the complaint?

D. Michael Dale, Executive Director of the Northwest Workers’ Justice Project; Maria Andrade, of the Andrade Law Office in Boise, Idaho; and Laura K. Abel, David S. Udell and Emily Chiang of the Brennan Center for Justice at New York University School of Law are representing the complainants.