



**FRIENDS OF FARMWORKERS, INC.**  
Legal Services for Farmworkers

924 Cherry Street, 4<sup>th</sup> floor  
Philadelphia, PA 19107-2411  
E-mail: [spaoletti@friendsfw.org](mailto:spaoletti@friendsfw.org)

Telephone: (215) 733-0878  
Sarah Paoletti Direct: Ext. 130  
Fax: (215) 733-0876

**FOR IMMEDIATE RELEASE - February 6, 2003**

**Civil Rights Complaint Filed with U.S. Department of Labor, Charging Pennsylvania and Berks County Agencies with Discrimination against Spanish-Speakers**

Former employees of Money’s Foods, U.S., who lost their jobs when the company closed down two years ago, have filed a complaint against the Pennsylvania Department of Labor and Industry, Berks County CareerLink and Workforce Investment Board, and the Berks County Commissioners. The complaint cites the agencies for their failure to provide these workers with the same services provided to English-speaking U.S. born residents of Berks County.

The filing of the complaint is the latest round in an intense two year struggle to gain access to job training and job placement services. At the time the workers were laid-off, CareerLink had no training programs available for persons who were not fluent in English, and very few for persons without a GED. It took CareerLink and the WIB four months just to create an English as a Second Language class, with the capacity to accommodate the more than 120 workers interested in training. It took more than a year and a half for CareerLink and WIB to provide just two training programs. One was for Commercial Drivers’ Licensing and one was for what the workers had thought would be building maintenance. But, according to Amparo Vasquez, one of the workers who participated in this training, “I wanted training to become an electrician. Instead, they taught me how to wash bathrooms.”

According to their attorney, Sarah Paoletti of Friends of Farmworkers: “Because these workers qualified for additional benefits and training allowances under NAFTA and the Trade Adjustment Act, they had two years to participate in vocational training and to pursue employment outside of the agricultural industry. Now, two years later, the majority have been forced to take jobs they could have gotten without any help from CareerLink or the WIB, the day they were first laid off. This was a tremendous opportunity for them and for the County, and it was squandered because of prejudice.”

The complaint alleges violations of Title VI of the Civil Rights Act and Sec. 188 of the Workforce Investment Act, which prohibit federally-funded programs from discriminating on the basis of national origin. The U.S. Department of Labor, which funds the majority of the programs administered through these agencies, has issued its own regulations, pursuant to an Executive Order, prohibiting discrimination against persons with limited English proficiency.

**FOR MORE INFORMATION, CONTACT SARAH PAOLETTI, (800) 729-1607, ext. 130.**

# # # # # # # # # # # # # # # # # #

Complaint Information Form

U.S. Department of Labor  
Civil Rights Center

**1. Complainant information:**

Workers Committee of Campbell Fresh  
c/o Friends of Farmworkers, Inc.  
Attn: Sarah H. Paoletti, Esq.  
924 Cherry Street, 4<sup>th</sup> Floor  
Philadelphia, PA 19107-2411  
Tel: (215) 733-0878, ext. 130

**2. Respondent Information:**

Berks County Workforce Investment Board  
Attn: Edward J. McCann, Chief Operating Officer  
501 Crescent Avenue  
Reading, PA 19605-3050  
(610) 988-1363

Berks County CareerLink  
Attn: Patricia Adamcyk, Chief Operating Officer  
501 Crescent Avenue  
Reading, PA 19605-3050

Berks County Commissioners  
Attn: Mark C. Scott and Timothy A. Reiver

Department of Labor and Industry  
Commonwealth of Pennsylvania  
Attn: John C. Vogel, Director, Bureau of Workforce Investment  
Attn: Merry-Grace Majors, Director, Office of Equal Opportunity  
12<sup>th</sup> Floor Labor and Industry Building  
7<sup>th</sup> and Forster Streets  
Harrisburg, PA 17120

**3. What is the most convenient time and place for us to contact you about this complaint?**

During regular business hours, 9 am - 6 pm, Monday through Friday, c/o Friends of Farmworkers, Inc.

**5. Have you ever attempted to resolve this complaint at the local level?**

Yes. Please see attached Complaint Specifications for a history of continuing and ongoing efforts to resolve these complaints.

**6. Explain as briefly and clearly as possible what happened and how you were**

**discriminated against. Indicate who was involved. Be sure to include how other persons were treated differently from you. Also attach any written material pertaining to your case.**

Please see attached Complaint Specifications, and Appendices.

**7. To the best of your knowledge, which of the following Department of Labor programs were involved?**

Workforce Investment Act (WIA)  
Unemployment Insurance  
Displaced Worker  
Other: NAFTA and Trade Act

**8. Basis of Complaint: Which of the following best describes why you believe you were discriminated against:**

National Origin: limited-English proficient, primarily Mexican nationals

**9. Do you think the discrimination against you involved:**

Seeking employment  
Not providing services or benefits

**If so, which of the following are involved:**

Transition  
Training  
Qualification/testing  
Grievance Procedure  
Access/Accommodation  
Application  
Enrollment  
Referral  
Exclusion  
Placement  
Benefits

**10. Why do you believe these events occurred?**

See attached Complaint Specifications.

**11. What other information do you think is relevant to our investigation?**

See attached Complaint Specifications.

**12. If this complaint is resolved to your satisfaction, what remedies do you seek?**

See attached Complaint Specifications.

**13. Please list below any persons (witnesses, fellow employees, supervisors, or others) that we may contact for additional information to support or clarify your complaint:**

Please see attached.

**14. Do you have an attorney?**

Friends of Farmworkers, Inc.

Attn: Sarah H. Paoletti, Esq.

924 Cherry Street, 4<sup>th</sup> Floor

Philadelphia, PA 19107-2411

Tel: (215) 733-0878, ext. 130

**15. Have you filed a case or complaint with any of the following?**

No.

## COMPLAINT SPECIFICATIONS

### OVERVIEW

This complaint is filed on behalf of the Workers Committee of Campbell Fresh and individuals formerly employed at Money's Foods U.S., Inc., (hereinafter, "Complainants"),<sup>1</sup> by and through their counsel Friends of Farmworkers, Inc., against Berks County CareerLink, Berks County Workforce Investment Board, and the Department of Labor and Industry for the Commonwealth of Pennsylvania, for their continuing and ongoing discrimination in the provision of benefits, job training and job placement services against limited-English proficient individuals primarily of Mexican national origin, in violation of Title VI of the Civil Rights Act of 1964, and Section 188 of the Workforce Investment Act.

According to the 2000 Census data, 356,753 persons in Pennsylvania speak Spanish at home (3.1% of the population), and of those, 140,502 speak English less than "very well." In Berks County, 28,387 of the residents (8.1% of the population) speak Spanish at home, and of those, 12,729 (3.6% of the population) speak English less than "very well."<sup>2</sup> Yet, despite these numbers, the Pennsylvania Department of Labor and Industry, Berks County CareerLink and Workforce Investment Board, and the Berks County Board of County Commissioners have failed and, in some cases have refused, to grant the Spanish-speaking population and other limited-English proficient populations access to the variety of services available to the English-speaking customers.

The Pennsylvania Department of Labor and Industry, the Berks County Workforce

---

<sup>1</sup>The Workers Committee of Campbells Fresh was recognized by the Pennsylvania Labor Relations Board as the exclusive bargaining representative of all employees engaged in the production of mushrooms, excluding managers, supervisors, clerical employees and employees covered by the National Labor Relations Act, at Money's Foods, U.S., Inc., formerly Vlastic Farms, Inc., and prior to that, Campbells Fresh. Since the filing of Money's Foods, U.S., Inc. for Chapter 11 Bankruptcy on November 11, 2000, the Workers Committee has continued to serve as representative of former non-managerial employees of the company, with Friends of Farmworkers, Inc. serving as counsel.

<sup>2</sup>Although the Complainants represented herein are all Spanish-speaking individuals, and therefore this Complaint addresses the failure of the State and Berks County to provide services to that specific population, it is important to note that in many other areas of the state, there are large populations of non-Spanish speaking LEP individuals, who similarly (if not more grievously) face severe discrimination in their efforts to access services. According to the 2000 U.S. Census Data, Pennsylvania ranks 7<sup>th</sup> in the country in terms of the number of speakers of "other Indo-European Languages" with Limited-English Proficiency. The limited improvements made, however, address the needs only of the Spanish speaking LEP population, and largely ignores the needs of other language minorities in Pennsylvania,

Investment Board and the Berks County CareerLink have consistently failed to comply with their obligations to Complainants under Title VI<sup>3</sup> and Section 188 of the Workforce Investment Act,<sup>4</sup> further elaborated upon in the U.S. Department of Labor’s Guidance on the Prohibition Against National Origin Discrimination as it Affects Persons with Limited English Proficiency (“Guidance”) issued on January 17, 2001. Their ongoing failure to address and remedy the exclusion of LEP persons from their programs and activities, has resulted in harmful discrimination against LEP persons, discrimination which the Guidance specifically warns against, noting: “Because of language differences and the inability to speak or understand English, LEP persons are often excluded from programs and activities, experience delays or denials of services, or receive assistance and services based on inaccurate or incomplete information,” Fed. Reg. Vol. 66, No. 11, Jan. 17, 2001.

The nondiscrimination implementation regulations under Section 188 of WIA specifically address discrimination with regard to LEP persons:

(a) A significant number or proportion of the population eligible to be served, or likely to be directly affected, by a WIA Title I-financially assisted program or activity may need services or information in a language other than English in order to be effectively informed about, or able to participate in, the program or activity. Where such a significant number or proportion exists, a recipient must take the following actions:

(1) Consider:

- (i) The scope of the program or activity; and
- (ii) The size and concentration of the population that needs services or information in a language other than English; and

(2) Based on those considerations, take reasonable steps to provide services and information in appropriate languages. This information must include the initial and continuing notice required under Sec. 37.29 and 37.30, and all information that is communicated under Sec. 37.34.

---

<sup>3</sup>Section 601 of Title VI, 42 U.S.C. 2000d *et seq.* provides: “No person in the United States shall on the grounds 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.”

<sup>4</sup>Section 188 of the Workforce Investment Act of 1988, provides: “No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any such program because of race, color, national origin, sex, religion, disability, political affiliation or belief, citizenship, or age.”

(b) In circumstances other than those described in paragraph (a) of this section, a recipient should nonetheless make reasonable efforts to meet the particularized language needs of limited-English speaking individuals who seek services or information from the recipient.

29 CFR § 37.35.

There is no doubt that all of the named respondents, and even those schools on the eligible training provider list not named in this Complaint, are covered entities, and are obligated to comply with the non-discrimination provisions of Title VI and WIA, as elaborated upon by the Guidance:

All entities that receive federal financial assistance from the Department of Labor, either directly or indirectly, through a grant, contract or subcontract, are covered by this policy guidance. For purposes of section 188, covered entities include, but are not limited to: state-level agencies that administer, or are financed in whole or in part with, WIA Title I funds; State Employment Security Agencies; State and local Workforce Investment Boards; local Workforce Investment Areas (“LWIA”) grant recipients; One-Stop operators; services providers, including eligible training providers; On-the-Job Training (OJT) employers; Job Corps contractors and center operators; Job Corps national training contractors; outreach and admissions agencies, including Job Corps contractors that perform these functions; and other national program recipients.

66 Fed. Reg. No. 11, p. 4599 (Jan. 17, 2001).

All Respondents are recipients of federal funding. For the federal fiscal year 2000-2001, the Commonwealth received \$6.555 million under TAA, and \$5.98 million in NAFTA-TAA funds; under the Workforce Investment Act of 1998 (WIA) Title I Adult, Dislocated Worker, and Youth Programs, \$34.2 million were allocated for Adults and \$38.1 million were allocated to Dislocated Workers; and \$30.4 million were allocated under the Wagner-Peyser Act.

The history of the Workers Committee’s efforts to seek the same services and benefits provided to the non-LEP, non-Latino population in Berks County is long and involved. Until now, Complainants have refrained from filing a formal complaint because of ongoing good faith efforts to work with the CareerLink, members of the local area Workforce Investment Board, representatives of the Pennsylvania Department of Labor and Industry, as well as representatives of the U.S. Department of Labor’s Regional Office, to resolve the issues presented herein. In addition, by and through its counsel, the Workers Committee engaged the Office of Civil Rights, U.S. DOL, in discussions beginning in February 2001. Unfortunately, despite monthly, and sometimes weekly, meetings, conference calls, and written communications with all of the above, Berks County CareerLink and the Pennsylvania Department of Labor and Industry continue to deny limited-English proficient individuals access to their services, programs and activities, in ongoing and knowing violation of Title VI, WIA and the Guidance.

## **FACTUAL BACKGROUND**

On October 5, 2000, Money's Foods, U.S. Inc., a mushroom operation in Berks County, Pennsylvania, notified its approximately 330 employees that it was closing the plant, and layoffs would begin December 4, 2000. Shortly thereafter, Friends of Farmworkers contacted the Bureau of Workforce Investment, Dislocated Worker Unit, regarding the plant shut-down, and in a letter dated December 4, 2000, the Company officially notified Mr. John Vogel, as Director of Bureau of Workforce Investment, Department of Labor and Industry of the Commonwealth of Pennsylvania, of the shutdown and ensuing layoffs. On December 4, 2000, the first group of 125 workers were laid off, and on December 11, 2000, the second round of workers were laid off. All of workers in the harvesting departments were laid off by the end of December 2000. By the end of February 2001, the remaining workers in the packing department were unemployed.

Nearly 80% of this population is limited-English proficient, and the overwhelming majority are of Mexican national origin. From the outset the Workers Committee made all relevant parties aware of the English-language limitations, work history and educational background of the Money's workforce. The work history of this population was unique for mushroom workers, in that Money's Foods (which had previously operated as Campbell's Fresh, Inc. and then as Vlastic Farms, Inc.) was the highest paying mushroom operation in the county, and the majority of the workforce has worked for the company for many years and were earning on average from \$18,000 to \$25,000 per year (significantly more than any of their counterparts at other mushroom or food processing companies in the area).

On November 3, 2000, the Rapid Response team of the Dislocated Worker Unit, Bureau of Workforce Investment, convened its first meeting with the Workers Committee, Friends of Farmworkers, Rural Opportunities, Inc., Berks County CareerLink and the company. At that very first meeting and in nearly every interaction with workers from Money's Foods, U.S., Inc., for the past two years, Berks County CareerLink and many relevant Bureaus and entities under the Department of Labor and Industry have demonstrated their inability and unwillingness to make their programs accessible to persons of limited-English proficiency, as discussed in more detail below.

The Workers Committee, by and through its counsel, filed petitions for benefits under both NAFTA and the Trade Act on December 1, 2000. The Department of Labor issued its certification of eligibility to apply for worker adjustment assistance under the NAFTA-TAA on January 31, 2001, and subsequently under the Trade Act, on February 6, 2001, thus entitling Complainants to additional job training benefits and income assistance.

**FACTUAL ALLEGATIONS OF NATIONAL ORIGIN DISCRIMINATION AGAINST THE NAMED AGENCIES AS IT APPLIES TO LIMITED ENGLISH PROFICIENT INDIVIDUALS**

**I.**

**Claims against the Pennsylvania Department of Labor and Industry**

**A. Bureau of Unemployment Compensation**

At the time of the Money's plant shut down, Pennsylvania's unemployment compensation system had recently become an entirely telephonic system, and all local offices in Berks County, and in the majority of the counties across the state, were closed. Despite concerns having been raised regarding a telephonic system's accessibility to the Commonwealth's LEP populations, the Department of Labor and Industry instituted an English-only telephonic system, without addressing the discriminatory impact such a system has. As stated above, the Bureau of Unemployment Compensation has made some concerted efforts over the past two years to become more accessible to Spanish-speaking LEP claimants, and has made limited efforts in addressing the needs of non-Spanish speaking LEP claimants, but much more must be done to ensure that LEP claimants are not discriminated against. Even in Berks County, where claims are processed through the Allentown UC Service Center which now reportedly has three bilingual staff (an improvement from the single bilingual staff person they had, with whom claimants had difficulty communicating), services still fall far short of meeting the requirements under Title VI.

Friends of Farmworkers first wrote to the Chief Operating Officer of the Unemployment Compensation Service Center ("UCSC") on March 27, 2001, highlighting obstacles our clients face in trying to access the system, and suggesting ways in which the UCSC could act to facilitate access to LEP claimants. Community Legal Services, Inc., of Philadelphia, similarly wrote to the Chief Operating Officer, and on March 28, 2001, we had a conference call to discuss these issues. At that time, the UCSC had a pilot Spanish-language PAT line for intra-state claimants, and the UCSC agreed to make the Spanish-language PAT system available to all claimants. In the summer of 2001, the UCSC piloted a program in Lancaster County (which also received claims from Puerto Rico) on their Automated Call Distribution system (for making initial claims), providing an option in their automated menu to select Spanish. This option was not made available to persons outside of Lancaster County until February 2002. And one year following the implementation of what was supposed to be a bilingual system, the Automated Call Distribution system still fails to ensure access to the Spanish-speaking LEP Claimants; anecdotal experience reveals that the system often disconnects when a person opts for Spanish, or reverts to a busy signal, or in some cases, despite having opted for a Spanish-speaking claims taker, the system transfers the Claimant to a claims taker or operator who only speaks English. We remain hopeful that these are merely technical glitches that will be worked through and corrected overtime.

Unfortunately, little has been done to address the system's inability to provide adequate

services to other language minorities, such as Mandarin-Chinese and Cambodian, among many others. Although the Bureau has a contract with the Language Line, which is to assist all claimants of limited-English proficiency, this system requires a claimant to go through the many English-only prompts or know to stay on the line long enough until a live person answers the phone. Furthermore, we have heard much anecdotal evidence from other programs that even then, a claimant is far from guaranteed assistance in his or her own language. This appears to be largely a problem of staff-training, and may also be due to the monitoring of the UC employees, who are encouraged to keep the amount of time spent on any call down to a minimum (under six minutes per claimant).

The lack of in-person assistance remains extremely problematic for all LEP claimants, and is made all the more problematic by the fact that all documents (including applications for benefits, determinations of overpayment, determinations of ineligibility, appeal notices, etc.) are in English only. For the Money's workers, all informational and application materials and documents were provided in English only. We understand that efforts are underway to translate those documents into Spanish, and we applaud the Bureau for recognizing its obligation to do so, and hope that it will also examine other language minorities for whom it should be providing translated documents, and will devote the resources to doing so.

The failure to provide written translations of vital documents, such as the UCSC's informational materials, application for benefits, notice of hearing and notice of determination, has resulted in many cases of persons wrongfully being denied their rights to receive those benefits, in some cases, and in others the denial of their right to receipt of their benefits in a timely manner, and clearly violates the compliance standards established in the U.S. Department of Labor's Policy Guidance on the Prohibition of Against National Origin Discrimination As It Affects Persons with Limited English Proficiency.

CRC will consider a recipient to be in compliance with the Title VI and section 188 obligation to provide written materials in languages other than English if:

(A) The recipient provides translated written materials for each LEP language group that constitutes ten percent of 3,000, whichever is less, of the population of persons eligible to be served or likely to be directly or significantly affected by the recipient's program or activity;

(B) Regarding LEP language groups that constitute five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be directly or significantly affected by the recipient's program or activity, the recipient ensures that, at a minimum, vital documents are translated into the appropriate languages other than English of such LEP persons. Translation of other documents, if needed, can be provided orally; and,

(C) Notwithstanding paragraphs (A) and (B) above, a recipient with fewer than five percent or 1,000 persons in a language group eligible for to be served or likely to be directly or significantly affected by the recipient's program or activity, need not translate written materials but rather may provide written notice

in the primary language of the LEP language group of the right to receive competent oral interpretation of written materials.

In order to determine the population to be served, the Guidance further provides:

States operating programs, such as the Unemployment Insurance program, should assess both statewide language groups that are represented significantly and require all local offices to conduct surveys of local service populations.

In his Comments to the Department of Labor's Guidance, the Secretary of the Department of Labor and Industry conceded that in order to comply with the above provisions, the Commonwealth would have to translate all of its written documents into at least eight (8) different languages. Upon information and belief, to date no efforts have been undertaken to do any written translations outside of those limited translations undertaken in Spanish.

Furthermore, even where there the number of language minorities falls below the thresholds established in the "safe harbor" provisions, the US DOL Guidance provides clear instructions:

As this guidance notes, Title VI and section 188 provide that no person may be denied meaningful access to a recipient's services and benefits, on the basis of national origin. To comply with Title VI and section 188, a recipient must ensure that LEP persons have meaningful access to and can understand information contained in program/activity-related written documents. Thus, for language groups that do not fall within paragraphs (A) and (B) above, a recipient can ensure such access by, at a minimum, providing notice, in writing, in the LEP person's primary language, of the right to receive free language assistance, including the right to competent oral interpretation of written materials, free of cost.

The Bureau of Unemployment Compensation currently purports to comply with the above requirement through its policy to code Claimants as LEP in their computer system when Claimant is so identified, and to subsequently mail a cover notice to all subsequent mailings in eighteen languages<sup>5</sup> stating: "Important. This notice affects your rights or obligations and should be translated immediately." This notice clearly falls short of the requirements provided above, in that it fails to notify the Claimant of the right to receive free language assistance, including the right to competent oral interpretation of written materials, free of cost. Because the Bureau no longer provides any in-person access to UCSC representatives, it does not and cannot provide competent oral interpretation of written materials, as clearly required in accordance with the

---

<sup>5</sup>The languages are: Spanish, Chinese, Vietnamese, Russian, Italian, Hindi, Korean, Arabic, Laotian, Polish, Croatian, Greek, Portuguese, Japanese, French, Indonesian, Cambodian-Khmer and Swedish.

Guidance. Even if the Claimant were able to call the UCSC, and were connected to an interpreter through the Language Line, there is still no way for the interpreter to be able to translate the English-only document which the Claimant has received, as the interpreter clearly would not have copies of the document from which to translate.

Furthermore, despite assurances from the UCSC that once a Claimant identifies him/herself as LEP, that person is “flagged” or “coded” in the system as speaking a language other than English, and should then be sent the multi-lingual notice stating that the documents are important and should be translated, in practice it appears as though this coding bears no relevance in what actually happens in the processing of that individual’s claim.<sup>6</sup> Anecdotal evidence shows that this notice is rarely, if ever, sent to LEP individuals. Upon information and belief, not a single one of the former Money’s Workers received that notice, nor have any of Friends of Farmworkers’ other Spanish-speaking clients with claims pending in Berks and Chester Counties. This is true for LEP clients of Community Legal Services, Inc. in Philadelphia as well.<sup>7</sup>

## **B. Bureau of Workforce Investment**

The Department of Labor and Industry’s Bureau of Workforce Investment, and the relevant units therein, have proven to be both ill-equipped and unwilling to meet the needs of the LEP population in Pennsylvania, as demonstrated by what has happened, and what has not happened, with the Complainants in Berks County. The Bureau lacks adequate bilingual staff and has just recently completed translation into Spanish of just some of its materials. Of greater impact to Complainants, however, has been the Bureau’s inability to work with the local area to develop bilingual training programs.

In December 2000, the Dislocated Worker Unit conducted its first informational sessions for the workers regarding available benefits and services. Despite having been notified that the population was almost entirely Spanish speaking, the Unit did not have bilingual staff to conduct the session, nor did it seek to independently provide interpreter services; instead, the Unit relied on representatives of Comité de Apoyo a los Trabajadores Agrícolas (“CATA,” or “The Farmworker Support Committee,” a farmworker membership organization that works closely with the Workers Committee) and staff of Rural Opportunities to interpret. In addition, almost all of the written materials provided by the Unit for distribution were available in English only.

---

<sup>6</sup>According to the UCSC, incompatible computer systems maintained by the Bureau are to blame, though it appears as though lack of staff training may also be responsible.

<sup>7</sup>In one case in Chester County, a client of Friends of Farmworkers came to his unemployment compensation hearing with an English-language postcard telling him to fill out and return the card to the UCSC if he needed an interpreter. Fortunately, Friends of Farmworkers had independently notified the Referee that he would need an interpreter, as he did not know what the postcard said until it was translated for him the morning of the hearing.

Subsequent to the U.S. Department of Labor's approval of the Workers Committee's petitions for benefits under NAFTA and the Trade Adjustment Act, the Bureau's Regional Representative for the Rapid Response Coordination Services conducted additional informational sessions regarding benefits provided under the Trade programs. Unfortunately, the Regional Representative spoke no Spanish, and gave a Power Point presentation in English. No efforts were made by the Unit to identify a bilingual staff person to conduct the sessions, nor to identify interpreters for the presentation, nor to translate the written materials. Instead, a staff member of Rural Opportunities was asked to interpret, despite her lack of interpreter training and her lack of familiarity with the Trade programs. In addition, the mailing sent to all the workers with information pertaining to their benefits and obligations under the Trade Act and NAFTA were mailed in English, despite the full knowledge of the Unit that the population to whom it was mailing was primarily Spanish-speaking only.<sup>8</sup> Since that time, the Bureau of Workforce Investment has done nothing to provide language support or any Spanish-language assistance to the Regional Representative, assigned purportedly to coordinate Rapid Response Services.

The failure of the Bureau to take reasonable measures to ensure access to the Spanish-speaking population has hindered the workers' ability to directly participate, greatly hampering the effectiveness of the Transition Team, and forcing Friends of Farmworkers, as the Workers Committee's counsel, into direct involvement through participation in all meetings (including sending out meeting notices and drafting agendas) and all follow-up. For the initial meeting of the Transition Team, Rapid Response relied upon Friends of Farmworkers to provide notice to the workers and to convene the workers for the meeting, as it had no capability to communicate with non-English speakers. At the first official meeting of the Transition Team, the Rapid Response Representative and the representatives from CareerLink suggested appointing the then Director of the Berks County office of Rural Opportunities, Inc. as the Impartial Chair of the Transition Team, solely because of his bilingual abilities.<sup>9</sup> Since that first meeting, the Rapid Response Unit of the Bureau has made no efforts to allow for the workers' direct participation in its services to the LEP population, but rather has consistently deferred that responsibility to others.

---

<sup>8</sup>Upon information and belief, the Trade Act pamphlet and the power point presentation have since been translated into Spanish.

<sup>9</sup>This appointment has raised serious conflict of interest issues, as Rural Opportunities was an organization actively trying to be recognized as the Title 167 Partner on the Berks County Workforce Investment Board, and continues to seek status as an approved training provider.

In addition, Friends of Farmworkers has since learned that a professional mediator is often appointed to chair the transition teams, and said chair is in charge of delegating and following up on tasks of individual team members, something the current chair did not do, due in part to his lack of time and his complete lack of training as to his chair responsibilities, further evidencing the second class treatment the Complainants have received throughout this process.

The distribution of Trade Act funds, and the need for Friends of Farmworkers' and the U.S. Department of Labor's constant involvement regarding the availability and distribution of funds further demonstrates the Bureau's lack of understanding and inability to deal with a limited-English proficient workforce. This was a tremendous problem in both the administration of the benefits, and in the identification of programs in which the Complainants could enroll in order to be eligible for the benefits. Although the Bureau's employee in the Berks County CareerLink in charge of processing the TRA Claims of individual claimants is bilingual, the lack of translated forms or informational materials resulted in the workers' demanding more direct attention of that Claims processor, time which she did not have. Unfortunately, individuals who could get an appointment with her, were left in the dark.<sup>10</sup> This resulted in a tremendous amount of time being expended by Friends of Farmworkers in assisting in the communication between the workers and the Trade program.

Again, more problematic than the administrative headaches posed by the lack of adequate services in Spanish, was the total lack of training programs into which the Complainants could enroll to even be eligible for the Trade Act benefits. The Regional Representative acknowledged in the first meetings that there would be no existing training programs for which English proficiency would not be a prerequisite.<sup>11</sup> But, at the time, the Bureau had not agreed and would not agree to allow Trade Act funds to be expended for ESL, nor was it willing to provide Trade act benefits to the individuals enrolled in ESL classes, arguing that the ESL classes were not "approved" training. It was not until Friends of Farmworkers sent a letter to the Trade Adjustment Act Coordinator, on April 2, 2001, providing direct citations to the federal regulations under the Trade Act of 1974 that specifically provide, "[t]raining designed to

---

<sup>10</sup>Unfortunately, the problem of making appointments and otherwise communicating with the bilingual Trade Act employee in the CareerLink office, was further complicated because of her unwillingness to have a bilingual message on her voice mail, taking the position that people knew to leave a message after the tone, regardless of whether they understood the greeting. There were further problems in January and February 2002 when individuals were not getting their Trade Act checks, and it was decided by CareerLink staff that the Case Manager, operating under the Supervision of the Employment Planning Team Manager, should not spend anymore of his time trying to communicate with the Allentown UCSC to follow-up on long delays in the processing of forms and distribution of TRA checks. The Employment Services Team Manager, an employee of the Bureau of Employer and Career Services (see below), to whom the bilingual staffer reported, indicated that calls from individuals who were experiencing long delays in getting their TRA checks should contact him directly. When it was called to his attention that the Claimants spoke Spanish, Friends of Farmworkers had to step-in as the intermediary, since he had no way to communicate with the individuals. Ultimately, Friends of Farmworkers found it more efficient to communicate directly with the Operations Call Manager in the UCSC.

<sup>11</sup>He also told Complainant's representative that they simply had to learn English, mentioning that Pennsylvania Dutch was spoken in his home while he was growing up, but he still learned English.

enhance the employability of individuals by upgrading basic skills, through the provision of courses such as remedial education or English-as-a-second-language, shall be considered as remedial education approvable ...,” that the Bureau ultimately agreed.

Having received approval for ESL classes under Trade, Complainants then had to work with the Regional Office of the U.S. Department of Labor before the Bureau would approve the use of Trade Act funds to pay for On-the-Job Training, despite the fact that it is purportedly the preferred method of training. Although the Bureau of Workforce Investment ultimately agreed to the use of Trade money to pay for OJT, more than one year after the initial lay-offs, the Bureau has yet to provide guidance to the CareerLink on how that is to happen, and Berks County CareerLink contends that without written instructions from the TAA Coordinator on how to obtain those funds, they cannot develop On-the-job training programs for this population.

Unfortunately, rather than seizing this opportunity to work with the local area, and to work with local agencies in areas with similar populations, to try to develop innovative training programs for the Complainants – individuals who had the strong interest, the willingness and the opportunity (because of unemployment and Trade Act benefits) to participate in training – the Bureau has taken no initiative. After meetings with Friends of Farmworkers, the Regional Office of the U.S. Department of Labor, and CareerLink, and apparent communication from the Civil Rights Center of the U.S. Department of Labor, the Bureau agreed to provide \$100,000 of Rapid Response money to Berks County CareerLink specifically for Complainants, with the intention that approximately one half of the money would go to those individuals enrolled in the two vocational training programs as income support while they finished their training programs scheduled to run beyond the exhaustion of their unemployment and TRA benefits.<sup>12</sup> Unfortunately, the Bureau provided no explicit or written instructions as to how the money be spent, and contrary to an earlier agreement that income support would be provided at the current level of unemployment benefits, CareerLink submitted request for funding stated payment of income support to individuals in training would be provided at the local rate of just \$12 per day. When it became clear that the money was not going to be used effectively for the Complainants, the Bureau deferred to the Regional Office of the U.S. Department of Labor, which similarly failed to take steps needed to ensure the money be spent to the benefit of Complainants.<sup>13</sup>

---

<sup>12</sup>Friends of Farmworkers long argued that Complainants should not be penalized because of the inaction on the part of the State and the County to provide any training services until well after the commencement of their benefits.

<sup>13</sup>The issue of income support for persons enrolled in or interested in training brought all parties to a meeting at the Philadelphia Regional Office of the U.S. Department of Labor on May 31, 2002. It was readily apparent that this issue, of critical importance to the Complainants and to their successful completion of training, would not be resolved. Friends of Farmworkers raised the question of Complainants eligibility for Temporary Extended Unemployment Compensation which had just been announced. The Bureau of CareerLink left it incumbent upon Friends of Farmworkers, working with the Regional Monitor Advocate, to confirm Complainants’  
{continued}

### C. Bureau of Employer and Career Services

The Bureau of Employer and Career Services of the Pennsylvania Department of Labor and Industry (“BECS”), has similarly failed to ensure the provision of services the provide at the state level, and at the local level, as partners in the CareerLink, to the Spanish-speaking LEP population, in violation of Title VI of the Civil Rights Act and Sec. 188 of WIA.

At the state level, BECS relies heavily upon computerized job recruitment and placement programs, all of which are available online in English only. At the local level, BECS has no bilingual staff based out of the Berks County CareerLink, despite the large number of Spanish-speaking LEP customers in the County.<sup>14</sup> Furthermore, their initial efforts at job development demonstrated their clear intention to relegate Complainants to returning to low-wage and unsafe working conditions through employment in the mushroom, poultry and meat packing industries. Since that time, it appears as though little has been done to outreach to employers to identify employers who might be interested in developing bilingual OJTs, or who might otherwise have the capacity or desire to hire a Spanish-speaking employees.

## II.

### **Claims Against Berks County CareerLink, Berks County Workforce Investment Board, and Berks County Board of County Commissioners**

Throughout the two year process of working with Complainants, Berks County CareerLink and Workforce Investment Board have made minimal improvements in their provision of services to the large Spanish-speaking LEP population, but its ongoing refusal to provide meaningful vocational training and other substantive services to Complainants, and others similarly situated, demonstrate not only violations of the non-discrimination requirements under Title VI and WIA, but also an intent to discriminate against Complainants, raising

---

eligibility, and to provide benefit end-dates for all Complainants, before considering whether it would even extend the VESL program. After having been provided with such confirmation, the State failed to follow-up with the Berks County CareerLink or the WIB to ensure development of beneficial bilingual training programs and/or On-the-Job training opportunities. It can be presumed that some of the money was used for the additional month and one half of ESL that ultimately got started in mid-July, and some similarly may have been used for the second round of Janitorial Services training provided through Berks County Technical College (discussed below), but there was certainly money remaining not used for services for Complainants as intended.

<sup>14</sup>Instead, when this issue was raised at the state level, with the Director of BECS, they assigned a Philadelphia employee to drive to Reading to assist with Customer interviews.

individual respondents' liability under 42 U.S.C. Sec. 1983,<sup>15</sup> as well.

At the first meeting of the Transition Team, convened at CareerLink on December 14, 2000, the Complainants stated their desire to participate in the following programs: ESL classes, job training, job search skills and OJT programs: all but the ESL classes are services CareerLink readily provides its English-speaking customers. Since that time, CareerLink has denied Complainants' access to most of those services; those services that have been made available have been hard fought for, slow to come, and remain wholly inadequate. It took CareerLink four months just to contract with Reading Area Community College to provide ESL classes. It took one and one half years for CareerLink to identify training providers for just two training programs – programs which were wholly inadequate to meet the needs and interests of the Complainants, and one of which appears to no longer be offered. It took CareerLink nearly two years to register Complainants into job search skills classes, classes that were not even available in Spanish until a few months after Complainants first entered into the CareerLink system<sup>16</sup>. And, upon information and belief, CareerLink has yet to develop any On-the-Job Training programs for the LEP Complainants, despite the fact that this is purportedly the preferred method of training.<sup>17</sup>

Initial enrollment session for the Money's workers did not begin until the second half of February 2001, and took more than a month to complete, apparently due to the lack of a bilingual staff member on the Employment Planning Team, and the need, therefore, to "borrow" staff from other units.<sup>18</sup> Active case management did not begin in earnest until a temporary full-time

---

<sup>15</sup>42 U.S.C. Sec. 1983 provides, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . . , subjects, or causes to be subjected, any . . . person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

<sup>16</sup>Unfortunately, the job search training classes are not of tremendous assistance, as the CareerLink system relies heavily upon an English-only computerized system, run through the BECS, discussed above.

<sup>17</sup>This is due, at least purportedly in part, to a failure at the State level of the Dislocated Workers Unit, to first agree to and subsequently to provide guidance on using Trade Act and Rapid Response money to pay for On-the-Job Training, as discussed above.

<sup>18</sup>Although Mr. McCann repeatedly cites to the fact that CareerLink has twelve bilingual staff individuals working out of the CareerLink, none of those staff were associated with the Employment Planning Team, or had any apparent responsibility for enrollment of individuals in the CareerLink system. The reliance upon "borrowed" staff presented problems throughout the enrollment and case management process, due to a lack of a full understanding of the different

{continued}

bilingual case manager was hired in October 2001, and was not completed until the end of December 2001, a full year after the first 125 workers were laid-off.<sup>19</sup> And even then, the workers were no closer to vocational training or an employment plan than they were the first day they lost their jobs.

On March 3, 2001, Sarah Paoletti of Friends of Farmworkers, Regional Monitor Advocate for the U.S. Department of Labor Erik Lang, and representatives of Rural Opportunities, Inc. met with Mr. Ed McCann, Chief Operating Officer of the Workforce Investment Board, to discuss services to the laid off workers from Money Mushrooms. In his electronic mail correspondence to Rural Opportunities scheduling the meeting, Mr. McCann stated: "There are two critical factors to consider as we move forward to meet these Dislocated Workers' needs: our local Workforce Investment Board has the responsibility for putting together coordinated services in our Area; and, the CareerLink is the gateway to those services." Unfortunately, the local Workforce Investment Board failed to put together those coordinated services, and the gateway has remained effectively closed to the Complainants.

At that first meeting, and in all subsequent meetings, Mr. McCann has been resistant, and often times hostile to, the idea of developing and providing services to Complainants, a resistance which the Workforce Investment Board and CareerLink seem to share, or at least accept. Mr. McCann maintains his position that training programs for this population are "not very feasible" and would be of "limited efficacy," often noting that "these people" have been here for as long as ten years and should have learned English when they first got here; since they had not, the best thing for them to do was to take whatever job they could get. Since that initial meeting, Mr. McCann has not only been unwilling to work towards the development of trainings for the LEP population, he has actively sought to refrain others from outreaching into the community at large to devise creative solutions to meeting the bilingual training needs and desires of Berks County's residents.

While there was agreement among all parties involved that the Money's workers should enroll in ESL classes, it took CareerLink four months to contract with Reading Area Community College to provide those classes. It was not until April 2001, that the Berks County Workforce Investment Board approved an emergency procurement to fund an intensive vocational English-as-a-Second-Language program (hereinafter, "VESL"), solely for the former Money's workers, after conceding that the pre-existing training programs neither had the capacity to serve the Money's workers, nor maintained programs of enough intensity to qualify as full-time training

---

program operations, and lack of availability for follow-up, which problem became more acute when those particular staff members were instructed they could no longer provide services outside of their specific units.

<sup>19</sup>Prior to that time, only approximately 22 individuals had gone through any case management process.

under the Trade Act.<sup>20</sup> Approximately 130 workers enrolled, and the program ran for 25 hours per week, in accordance with Trade Act Assistance eligibility requirements. Classes began late April 2001, though enrollment was not complete until the end of May 2001. It is important to note that by the time enrollment for the VESL classes began, the deadline for enrolling into a training program under the NAFTA benefits eligibility requirements had passed, and the students were forced to forego their rights to training under that program.<sup>21</sup>

Vocational training, however, remained of utmost importance to Complainants, and something they repeatedly asked for and sought in Transition Team meetings and in all other communications with CareerLink and the Workforce Investment Board.<sup>22</sup> Many of the former Money's employees had a sincere interest and commitment to participating in training that would allow them to find jobs outside of farmwork. Furthermore, employment within the mushroom or food processing industries pay at rates far lower those earned by the Money's workers, as indicated by their rates listed above.

Unfortunately, from the very first meeting held in March 2001, Mr. McCann, as Chief Operating Officer of the WIB, took the position that training providers would not provide bilingual training, and he would not ask them to do it. It was his contention that there is not a big enough market to drive business for bilingual training, and although he understood what the U.S. Dept. of Labor Guidance regarding services to LEP customers stated, and what the law requires, he did not care because he was not going to "drive the training providers out of business." At a later meeting, Pat Adamczyk did indicate that it was CareerLink's job to identify and develop on-the-job training opportunities, as well as other job training possibilities for this population, but subsequently recanted at a future meeting. Since that time, it has been the joint contention of Ms. Adamczyk and Mr. McCann that CareerLink's role is not as a developer, or even a provider of training programs, but merely as a pass through for funds to eligible training providers.

By December 2001, a full year after the initial layoffs, nothing had been done on the part

---

<sup>20</sup>At the time, the Berks County Literacy Council held ESL classes which were held for 2 hours a day, but were held in their offices outside of Reading, and geographically inaccessible to many of the Money's workers. Furthermore, neither the Literacy Council or Reading Area Community College, which also had ESL classes already in their calendar, had the capacity for the more than 100 individuals interested in participating in training.

<sup>21</sup>Furthermore, as noted above, it fell upon Friends of Farmworkers and the U.S. Department of Labor Regional Office to run interference to ensure that the VESL classes would be treated as an approved training under Trade to ensure that enrolled students were eligible for training benefits.

<sup>22</sup>The Bureau of Workforce Investment apparently also saw vocational training as critical, as it agreed to approve the provision of ESL classes under Trade Act, so long as those classes were ultimately linked to future vocational training.

of Ms. Adamczyk, as COO of CareerLink, or Mr. McCann, as COO of the WIB, to provide training to Complainants. Having received feedback from the case manager that the workers did not want training, and conflicting feedback from the Workers Committee that they were being told in their case management meetings that they were ineligible for training, that they should stay in the ESL classes as long as they could, and then take whatever job they could get, Friends of Farmworkers conducted a survey of all of the ESL students. In that survey, they asked the students to identify whether they were interested in job training, what jobs or careers for which they wanted training to be provided,<sup>23</sup> whether they wanted classroom training or on-the-job training, and, if they did not want training, why. The results demonstrated an overwhelming interest on the part of the students to participate in some form of vocational training, with the majority of students indicating an interest in one of the following areas: mechanic/mechanical assistant; carpentry/construction; commercial driver's licensing; building maintenance; office worker/secretarial; certified nursing assistant; and cosmetology. Those individuals who indicated on the survey that they did not want any training stated as the reason: "I need more English," and "I need more math," with one person stating "They don't offer what I want." Not a single person indicated that they had no interest, that they did not like to study, that they did not have time, that they did not think it was necessary, or that they did not feel capable of studying or learning. These results were shared with CareerLink and the WIB, through its COO.

Despite the students stated interests, however, CareerLink continued to actively discourage the Complainants from seeking training, as documented in the Report prepared in January 2002 by Orlando Lozada, the Bilingual Case Manager/Employment Planner hired to work with Complainants. The report stated:

At this point participants need to continue developing their language skills. Due to scores that are not high enough, most of the participants are not qualified to participate in any further training [beyond the VESL program]. The majority of customers most likely will not be ready during the next six months to be placed in traditional training.

As of today, I am recommending that those students who do not qualify for further training be referred for (OJT) On the Job Training as soon as they are ready for reemployment. Furthermore, for those students that are very close to reaching the desired scores but are not yet there, we will be exploring further options. In conjunction with Laurie Ketzenberg, VESL Coordinator for Reading Area Community College, we will be inquiring and meeting with area private and public schools that may be willing to develop programs that will benefit this population. This is not to indicate that CareerLink has interest in any involvement in the creation of any vocational training activities; rather the intent is to convey the status of this population regarding training interest, literacy

---

<sup>23</sup>A survey had earlier been conducted by the VESL program to identify individuals' career interests for the purpose of curriculum and internship development.

levels, aptitudinal results, and career interests. We recognize that the responsibility for the actual creation of training programs is outside the scope of CareerLink.

Contrary to Mr. Lozada's assertion, it is the responsibility of CareerLink, as the recipient of federal funding, and as the provider of that federal funding through contracts with the training providers, to ensure that its LEP customers are not denied services because of their lack of language skills; by extension, it is their responsibility to ensure that the training providers, as the ultimate recipients of the federal funding, are not discriminating against its customers on the basis of their limited-English proficiency.

However, rather than try to work collaboratively with the Transition Team, the VESL coordinator and instructors, Friends of Farmworkers and others in an effort to work with the private sector and training providers to ensure equal access to training as enjoyed by the non-LEP population, Mr. McCann actively sought to stop any initiatives taken. On March 21, 2002, he provided Mr. Freeman, Team Manager, with a letter to be shared with the Transition Team, in which he stated:

. . . [N]one of the various options for training which have been discussed have, as yet, been found to be "doable". I saw Sarah Paoletti's email from about a week ago, for example, which treated my tentative discussion with Homebuilders not only as though it was considered a good probability but also as if it were a viable template for other industry sectors. Neither was or is the case.<sup>24</sup>

. . . [E]ven for some of the other training options, e.g. CDL Training and Building Maintenance, we have nothing on the labor market potential and wage expectations which would apply to a group with still very limited English language capabilities.

Last, but certainly not least, we need to have absolutely clear lines of communication and accountability, which we don't have now. We have service providers and worker advocate groups talking to training institutions and even employers without clearance and coordination with my organization, which has the sole financial accountability and contracting authority. These people can talk to you [Mr. Freeman] or to me, but should refrain from other contacts. I have no authority to tell any advocacy group what they can do, but I can tell them how to

---

<sup>24</sup>Mr. McCann had indicated in our first meeting with John Vogel, held in response to Ms. Paoletti's meeting with the Civil Rights Center of the U.S. Department of Labor, that he had spoken with a member of the Homebuilder's Association, who indicated a willingness and ability to hire one or two individuals with adequate English-language skills through an OJT, whom he could then train and through whom he could ultimately hire others with more limited-English proficiency. Upon information and belief, nothing was ever done to follow up.

avoid confusing the situation.

As for service providers, to the extent they are contractors of our system, their role is to perform their contractual duties and nothing more. If they persist in overstepping their role, I will take that issue up with those at their employing organizations with whom we contract.

We will do what we can to look at other (training) services for individuals who meet the intent of WIA, ... to be in need of training services and how the skills and qualifications necessary to complete the selected program and to provide training services directly linked to actual employment opportunities in the local area.

The role of the Transition Team is not to supercede any of the Board's responsibilities. It is certainly not to make representations either to training providers or the workforce which have not been confirmed by my organization.

Unfortunately, the Board has not fulfilled its responsibilities vis a vis the Spanish-speaking LEP community, in general, and the Complainants specifically. In an effort, however, to respect Mr. McCann's request that all communication go through his office, the Transition Team asked relevant CareerLink staff to contact training providers in Berks County and surrounding counties, as well as organizations with a proven track record of successfully providing training programs to LEP communities, in an effort to see what could be done in Berks County to ensure the Moneys' workers access into training programs.<sup>25</sup> In response, Mr. McCann sent a letter to the pre-approved training providers in Berks County only, highlighting only the obstacles presented in providing training to this population, and offering no incentive to the providers to seek to develop training programs for Berks County's large LEP Spanish-speaking population. The letter, not sent until March 22, 2002, began:

A small but significant part of the customer base served by the Berks County CareerLink system is made up of individuals with less-than-functional English language skills. Most, but not all, of this population has Spanish as a primary language. Complicating the issue somewhat, a segment of this group also has low literacy skills in their primary language.

The letter went on to ask those programs already on the State's eligible provider list whether they had the capacity to provide training to this population or to readily develop a successful training program. The response, not-surprisingly, was minimal. The Workforce Investment Board is not absolved of its obligations under Title VI and Sec. 188 of WIA, however, simply

---

<sup>25</sup>Friends of Farmworkers provided names and contact information for organizations in Philadelphia and Allentown, as well as California, with experience in providing training programs to populations similar to Complainants.

because no training provider stepped forward to meet the challenge posed.

As a result of the active resistance on the part of the CareerLink and the WIB, after one and one-half years, the only trainings provided to Complainants were CDL and Janitorial Services.<sup>26</sup> Although the CDL program appears to have been successful, it addressed the training needs of less than one-fifth of those individuals who had initially enrolled in CareerLink and the ESL classes. The Janitorial Services program, which had initially been billed as a Building Maintenance training program, further exemplified the apparent desire of CareerLink and the WIB to relegate Complainants to lower wage and more menial employment. The individuals who enrolled the training had sought training in basic carpentry, welding, basic electrician skills and mechanics, and instead were learning basic janitorial jobs. As one worker stated: “I wanted training to be an electrician. Instead, they taught me how to wash bathrooms.” Furthermore, as one of the female employees asked: “What about us?” The trainings provided, CDL and “Building Maintenance” were trainings for employment traditionally occupied primarily by men. Among the trainings sought by Complainants was one in the Culinary Arts.<sup>27</sup> As that training developed, however, it became Food Preparation, which would lead to employment as bussing tables, washing dishes, and slicing and dicing jobs in the kitchen – employment the Complainants could get without wasting two months in training.

Recognizing that reemployment was the ultimate goal, and that placement in employment may be the best opportunity for training (and improvement of English-skills), was likely the best option for Complainants, especially due to the near-ending of their benefits, Complainants not enrolled in the two training programs, instead sought OJT opportunities through CareerLink. But this, too, proved to be inaccessible to them. More than one year after the Money’s workforce was enrolled in CareerLink, CareerLink still had not even identified the person within CareerLink who would be responsible for contacting employers to discuss such possibilities, as revealed in a conference call held February 6, 2002. Because Trade funded programs are run through the State, and WIA funded programs are run through CareerLink, confusion over who bore responsibility for developing and writing OJTs appears to have contributed to the total inaction, despite countless discussions on this topic at the local and regional level.

---

<sup>26</sup>At the first Transition Team meeting in December 2000, Employment Planning Team Manager Robert Freeman indicated there were two possibilities for job training in Spanish – Hazardous Waste Disposal Handling and Commercial Driver’s Licensing (CDL). Although there was little interest among the workers in the first training, and although Complainants’ counsel objected at the time to the fact that hazardous waste removal was the only opportunity provided outside of CDL, when no other training was forthcoming, the students asked to learn more about the training and the job opportunities it would provide. CareerLink, however, failed to organize that meeting, and therefore even that training was not available.

<sup>27</sup>Several of the Workers interested in this training, already had experience as cooks, and some even had owned their own restaurants.

After having contracted with RACC to provide ESL, CareerLink and the WIB have taken no further steps to provide any vocational training, either through classroom training or On the Job Training, for Complainants, and rather than spending time trying to creatively devise solutions to the bilingual training needs, have spent their time presenting excuses as to why training for this population was not feasible, such as low education levels and lack of a GED. In order to understand whether these obstacles are real, or were devised as an excuse to not provide training, it is important to note that assessments of the Complainants did not begin until late summer of 2001. More than six months after the first workers had been laid off, CareerLink still did not have a Spanish language assessment tool, though the Vocational ESL coordinator did extensive research on the different tools, and provided that information to the Employment Planning Team manager as well as the Chief Operating Officer of CareerLink. A full eight months after Complainants' enrollment, in August of 2001, initial assessments purportedly were completed though not scored; those assessments, however, were woefully inadequate, as they only completed the non-verbal parts of the English-only tests, as they had no bilingual or Spanish language assessment tools in place.

With regard to the GED requirement of many included in many of the training programs, Friends of Farmworkers and Complainants sought the provision of Spanish-language GED classes, as Reading Area Community College at the time administered a Spanish-language GED exam. Rural Opportunities, Inc. had indicated in August 2001 that they were going to have in their computer labs a bilingual GED program, which would be made available to all the former Money's employees enrolled in their program. Unfortunately, this never materialized, and CareerLink never pursued another bilingual or Spanish-language GED program.<sup>28</sup>

Although the role of the Berks County Commissioners is more attenuated, comments made by individual County Commissioners clearly demonstrate their political will, and lack of support for services for Complainants. This became most clear initially when Mr. Lozada, the bilingual case manager hired by CareerLink specifically to work with the Money's workers, accepted another job prior to the termination of his contract, and he sought to stay on part-time on an interim basis. The County Salary Board to provide the funding to pay his salary on a part-time basis, but Mark Scott, Salary Board member and County Commissioner, voted against it, telling the Reading Eagle: "They are not American citizens. So why are we doing this? I can't believe we educate Mexican nationals when we're having trouble doing it for our own people. It's a protest. You've got to do something. It's unbelievable." Reading Eagle, June 1, 2002.<sup>29</sup>

---

<sup>28</sup>A handful of students who self-identified (some with the encouragement of their VESL instructors) studied for the GED in a group tutorial, and several of them ultimately passed the exam. They would not have been able to do so, however, had the VESL instructors not provided the materials needed and the location where they could study.

<sup>29</sup>The County Commissioners' attitude towards their Spanish-speaking constituents has been further revealed in their recent fight against printing bilingual ballots, as ordered by the U.S. Department of Justice under the Voting Rights Act. Mr. Scott stated: "I believe we have to

{continued}

While Mr. McCann, as Chief Operating Officer of the Workforce Investment Board, acknowledged a legal obligation to provide help regardless of citizenship, he noted that while many of the workers are “hardworking, . . . What they did not do is learn the basic language, despite their industriousness.... There is very little opportunity for them to do anything else.” Reading Eagle, June 1, 2002.

As Complainants have repeatedly stated, it is the responsibility of Mr. McCann, as Chief Operating Officer of the WIB, and the WIB members, as it is the responsibility of Ms. Adamczyk, as Chief Operating Officer of CareerLink, to ensure that the same opportunities to participate in the programs provided through CareerLink as are provided to English speakers, are available to the Spanish-speaking LEP population. The lack of opportunity nothing more than the result of discrimination in implementation of WIA and other federally-funded programs, in direct violation of Title VI of the Civil Rights Act and Section 188 of the Workforce Investment Board.

As feared, the lack of training opportunities has resulted in a lack of job opportunities for complainants. Many have been forced to return to jobs in the mushroom and food processing industries, in demanding jobs at much lower rates of pay. Others are in jobs cleaning bathrooms, washing floors, or in factories. After two years, Complainants find themselves getting jobs they could have gotten when they were first laid-off. CareerLink and the WIB squandered their opportunity, and now the Complainants are forced to pay the price.

#### **ATTEMPTS TO RESOLVE THIS COMPLAINT AT THE LOCAL LEVEL**

In addition to the ongoing attempts discussed above, through regular meetings, conference calls and correspondence with all of the relevant decision-makers,<sup>30</sup> Friends of Farmworkers twice sought the assistance of the Director of the Office of Equal Opportunity at the Department of Labor, and also sought the assistance of the Civil Rights Center of the U.S. Department of Labor.

On February 22, 2001, Friends of Farmworkers sent electronic mail correspondence to

---

stand up and fight for what we believe in. Maybe Berks County has to be the Bunker Hill of bilingualism.” County Commissioner Timothy A. Reiver stated: “We need to move beyond that. Berks County is an English-speaking county. People are not going to access better-paying jobs and better opportunities here if they don’t learn to speak English.”

<sup>30</sup>A review of agendas and minutes from the Transition Team meetings, and meetings with CareerLink staff, WIB members and others, reveal a pattern of CareerLink raising obstacles, counsel for Complainants working to identify solutions to those obstacles, followed by CareerLink raising additional, or the same, obstacles, with little to nothing ever actually being done to ensure the provision of services to Complainants.

Stella Spells, then Director of the Office of Equal Opportunity, raising concerns vis a vis the accessibility of services provided by and through the Department of Labor and Industry to the LEP populations. In that letter, Friends of Farmworkers highlighted the lack of job training programs available to persons not fully-proficient in English, or to persons without a GED. Friends of Farmworkers acknowledged that ESL classes were going to be created specifically for complainants, but stated: “we do not feel this adequately addresses our concerns about the accessibility of services to an LEP population, and the Title VI implications.” The letter further addressed problems with the UCSCs, and then concluded with a request to discuss “ways in which the state can address the needs of the LEP population, and satisfy its obligations under Title VI.” We received no response.

Nearly one year later, on January 3, 2002, Friends of Farmworkers wrote to Merry-Grace Majors, who had replaced Stella Spells as Director of the Office of Equal Opportunity, together with John Vogel, Director of the Bureau of Workforce Investment, to raise ongoing concerns and to seek assistance in ensuring compliance with the non-discrimination requirements under Title VI of the Civil Rights Act, specifically as they pertain to LEP individuals. The letter was written in response to Mr. McCann’s stated position that CareerLink had no funds to pay for any training beyond the VESL classes, as they had purportedly exhausted their WIA funding with ESL classes, and could not justify spending any additional money on Claimants. Friends of Farmworkers raised the availability of significant amounts of funding under the Trade Act, which at that time remained untouched, and the desire of Claimants’ to be able to benefit from vocational training or OJT opportunities, which should have been available to them, but from which they were precluded from participating because of their lack of English-proficiency, and stated:

We believe that existing training programs can be modified so as to be accessible to this group of workers. . . . Although we have had initial discussions with some current trainers who have expressed a willingness to modify existing programs, the CareerLink is resistant to working with the training providers to develop the programs unless there is a commitment on the part of Trade to pay for such programs and modifications. . . .

Our clients have been seeking training opportunities for more than a year. If no programs exist to serve them because of their limited-English proficiency, the State is not only allowed, but obligated to provide funding for the creation of new training programs. WIA funds can be made available to pay for “off-the-list” training where no appropriate training exists. The same approach should be applied to Trade funding.

. . . . The receipt of ... federal funds obligates the Commonwealth to provide equal access to limited-English proficient customers under Title VI of the Civil Rights Act of 1964, and the further explicit mandate of the Department of Labor’s Guidance for provision of services to LEP individuals, issued pursuant to Executive Order 13166. This obligation extends to the local CareerLinks and

Workforce Investment Boards, as well as to the training providers they subcontract.

Like her predecessor, Ms. Majors failed to respond. Mr. Artro Heath, in the Office of Equal Opportunity, did contact Friends of Farmworkers, following communication from the Civil Rights Center of the U.S. Department of Labor, and on February 14, 2002, Friends of Farmworkers sent him a summary of the situation in Berks County, discussing some of the problems with the UCSCs as well, and a copy of the letter to Ms. Majors, cited above. Despite an offer by Friends of Farmworkers to discuss the situation further, no further communication ensued.

At the national level, Friends of Farmworkers attended a meeting with Rebecca Smith, attorney for the National Employment Law Project, convened by the Civil Rights Center of the U.S. Department of Labor on February 26, 2002. Following that meeting, Friends of Farmworkers provided the Civil Rights Center with a summary of the students vocational interests, and updated information on training. In future correspondence, Friends of Farmworkers clearly indicated that adequate remedial actions had yet to be taken, and much more needed to be done on the part of Berks County CareerLink and Workforce Investment Board, and on the part of the Pennsylvania Department of Labor and Industry.

Complainants have also worked extensively with the Philadelphia Regional Office of the U.S. Department of Labor to seek resolution of all of the problems discussed above. These efforts culminated in two meetings, the first held in the Berks County CareerLink on April 8, 2002, and the second in the Department of Labor's Philadelphia office with Tom Dowd, then-Regional Administrator, on May 31, 2002. In attendance at both meetings were Ed McCann, John Vogel, Norman Baillie and Katherine Donahue. The April meeting also included additional staff from the CareerLink, from the Bureau of Workforce Investment, as well as from the U.S. Department of Labor. Unfortunately, neither of those meetings resulted in significant developments in job training or job development for the Complainants.

#### **OTHER INFORMATION RELEVANT TO THE US DOL INVESTIGATION**

In Pennsylvania's Methods of Administration, submitted to the Civil Rights Center of the Department of Labor, the Commonwealth has stated that Civil Rights Information will be made available in English and Spanish. In addition, the Plan states:

To further ensure that persons of limited English proficiency will have access to programs and activities equal to those who are proficient in English, each CareerLink that has been determined to have a significant Spanish speaking population has a bilingual employee. In addition, CareerLinks have agreements with community based organizations, schools, and local colleges, where an interpreter will translate other languages for applicants, claimants, registrants, etc.

As with the UCSCs, however, practice is far different from the policy, and programs and services remain largely inaccessible to Pennsylvania's different LEP communities.

## **REMEDIES SOUGHT**

### **From the Department of Labor and Industry**

#### **Unemployment Compensation System**

The Bureau of Unemployment Compensation must look to providing an staff person, based out of the CareerLink, if they will not reopen in-person UCSCs, to assist Claimants. Failing that, the Bureau must, at a minimum, provide written translations of vital documents, and must provide competent language interpreters, if not in person, by telephone, for the LEP claimants. Furthermore, the Bureau must ensure that the systems are in place, and that the staff is trained, so that in practice LEP claimants have meaningful access to the system.

#### **Bureau of Workforce Investment**

The Bureau must increase its bilingual staff to assist with the Rapid Response teams.

The Bureau must work with the Berks County CareerLink and WIB, and the CareerLinks and WIBs other counties to seek to develop viable training opportunities for Complainants, and other similarly situated LEP communities, and shall ensure that the funding designated for Complainants be used for Complainants, and that it be available to them so that they may participate in future training programs.

The Bureau must translate all vital documents it uses in the provision of its services into Spanish.

#### **Bureau of Employer and Career Services**

The Bureau must translate into Spanish the computer-designed programs, or must guarantee that bilingual staff be available to assist its customers in accessing its job recruitment and placement services.

The Bureau must hire bilingual staff to work out the Berks County CareerLink.

The Bureau needs to work closely with the Berks County CareerLink staff to develop On-the-Job training opportunities for Complainants in employment areas in which they have repeatedly expressed interest.

**From the Berks County CareerLink and Workforce Investment Board**

The CareerLink and WIB must ensure that all of the services it provides to its English-speaking U.S. born population, it is similarly providing to Complainants. It must work with local training providers, schools and local agencies to develop bilingual training programs that meet the training needs and interests of the Complainants.

Where necessary, the CareerLink needs to waive its \$12/day training allowance cap on WIA subsistence funding to provide a liveable allowance for Complainants who ultimately are able to enroll in training.

CareerLink and the WIB must work with the BECS staff, with private industries and other agencies, to develop viable and beneficial OJT opportunities for Complainants.

CareerLink must ensure that bilingual staff are readily available to assist its large number of Spanish-speaking LEP eligible customers.