

Judge Richey

Court Order

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

AUG 13 1974

JAMES E. DAVEY, Clerk

NAACP, WESTERN REGION, et al.,)
)
Plaintiffs,)
)
v.)
)
PETER J. BRENNAN, Secretary of)
Labor, United States Department)
of Labor, et al.,)
)
Defendants.)

Civil Action No. 2010-72

ORDER

Plaintiffs and Defendants having stipulated and agreed to the entry of the following Order in addition to, and in implementation of, this Court's Declaratory Judgment and Injunction Order of May 31, 1973;

It is, this 11th day of July, 1974, hereby ordered, adjudged and decreed as follows:

I. Provision of Service to Migrant and Seasonal Farmworkers

A. Defendants shall take all necessary and appropriate action -- including the conditioning of federal funding of state Employment Service ("ES") programs upon the inclusion of adequate standards and provisions in those programs and the administration of the programs in accordance therewith -- to ensure the delivery of all Department of Labor ("DOL") manpower services, benefits, and protections, including the full range of counseling, testing, training and job referral services authorized by law and required by DOL regulations ("Manpower Services") to migrant and seasonal

farmworkers on a non-discriminatory basis. Accordingly.

Defendants shall require each state and local ES office . .

Manpower Services to:

1. Provide migrant and seasonal farmworkers the full range of Manpower Services under terms and conditions qualitatively equivalent and quantitatively proportionate to those provided non-farmworkers.
2. Extend coverage of local Job Bank order information to rural areas and provide migrant and seasonal farmworkers with assistance to enable them to utilize such information on a non-discriminatory basis.
3. Take uniform, complete applications for each migrant and seasonal job applicant utilizing ES offices, including a meaningful history of the prior employment, training and educational background of the applicant and a statement of his desired training and/or employment, and utilize such applications in providing applicants with, and referring them to, available jobs and training opportunities directed to up-grading job

capabilities; provided an applicant may sign a written waiver on the application form after the ES official has explained the benefits attendant upon taking such applications.

4. Ensure that all crew leaders, employers and their agents utilizing day-haul locations operating under ES supervision or employing workers referred by ES comply with federal and state laws with respect to vehicle registration, wage, hours and working conditions, and where feasible and whenever requested take complete job applications for migrant and seasonal farmworkers utilizing such day-haul services.

5. Refer every violation of state or federal law of which it has knowledge to appropriate state or federal enforcement officials, including officials or other agencies of DOL and of federal agencies and departments other than DOL, and utilize to the maximum possible extent the full resources of the DOL monitor/advocate system in expediting such referrals.

6. Continue to develop affirmative action programs for the staffing of ES offices and to develop available ES staff in a manner facilitating the delivery of ES services tailored to the special needs of migrant and seasonal farmworkers, including: (1) the positioning of bilingual staff in offices serving a significant number of Spanish-speaking applicants; and (2) the hiring of staff members from the migrant and seasonal farmworker community and/or members of community-based migrant programs.

B. Defendants shall require each state agency to employ an adequate number of staff who shall be assigned to ES offices which serve a significant number of migrant and seasonal farm-

workers and who shall (a) contact migrant and seasonal farmworkers in areas of service of local ES offices to ascertain employment problems and to counsel on the availability and use of Manpower Services; (b) make available and distribute to migrant and seasonal farmworkers concise written information in Spanish and English explaining the range of Manpower Services available and the rights of workers under federal statutes and regulations; (c) make necessary referrals to ES offices; and (d) assist in filing and processing complaints.

C. Defendants shall conduct a feasibility review of ES experience with respect to the provision of Annual Worker Plans. The results of this review will determine whether an experimental project for the further development of such plans is advisable.

D. Defendants shall review all interstate job orders prior to approval for transmission and shall require all state and federal offices processing such interstate job orders to comply with the following requirements:

1. All job orders reviewed as described above must at a minimum include:

a. Language on the face of each job order that clearly indicates that the order constitutes a firm offer on the part of the employer placing the order.

b. No reference, expressed or implied, to worker preference with respect to race, national origin, sex, age or any other criteria the use of which is proscribed by Title VII of the Civil Rights Act of 1964.

c. A statement fully disclosing each material term and condition of employment offered including the area of employment, the crop, the nature of the work, the period

and hours of employment, the anticipated starting date of employment and the number of days or weeks thereafter for which work is available, the wage rate expressed in hourly wage rate equivalents, any deductions to be taken from wages and non-monetary benefits, if any, to be provided. Each order shall contain information sufficient on its face to establish compliance with applicable state and federal minimum wage, child labor, social security, health and safety, and farm labor contractor registration laws.

d. For purposes of this subparagraph the starting date of employment and the number of days or weeks thereafter for which work is guaranteed, if any. For each guaranteed week of work, the job order must state the exclusive manner by which the guarantee is abated if the offered employment becomes unavailable due to unforeseeable weather conditions or other acts of God.

e. A statement with respect to bonus or work incentive payments or reimbursement for transportation and other expenses which will be paid by the employer in addition to the basic wage rate, including the time period within which such payments will be made; provided that no such payments and reimbursements shall be contingent upon the employee continuing employment beyond the period of employment specified in the job order or in the case of any employee with children of school age beyond the beginning of the school year.

f. An employer's signed verification acknowledged before a duly authorized ES official that all information appearing on the job order has been examined and is an accurate and substantiated offer of employment based upon crop acreage, yield, harvest date, normal weather conditions, plan conditions, past employment patterns, and other relevant factors.

a. Conduct documented random field checks, in accordance with legal authority, to determine whether wages, working and housing conditions are as specified in job orders and that actual conditions and terms of employment do not violate state and federal law;

b. Communicate promptly to supply states or regions any unusual or unanticipated weather or other conditions or events which might affect the employment of workers employed through the use of interstate clearance orders.

c. Make available to each migrant and seasonal farmworker upon request a copy of the job order which the worker is filling with a full explanation of its terms and conditions.

E. Defendants shall require each state ES agency to review and process all intrastate job orders in accordance with the procedures and requirements set forth in Section I-D of this Order.

II. Information System

A. Defendants shall modify and refine existing data-gathering systems complying to EEOC standards, including subcategorization accurately reflecting staffing patterns, type and quantity of services delivered, so that such systems will yield information for each State:

1. With respect to migrants (and as compared to nonmigrants) as follows:

- a. The number registering for service;
- b. The number referred to jobs;
- c. The number placed in jobs;
- d. The number enrolled in training;
- e. The number receiving counseling;

f. The number receiving job development;
g. The number receiving testing;
h. The number referred to supportive services;
i. The number registered for service who receive none of the services specified in subparagraphs (b) through (h);

j. The number of placements according to wage rate;

k. The number of placements according to duration;

l. The number placed according to broad occupational categories as identified through the ESARS special sample;

m. Sub-categorization of above on the basis of sex, Spanish surname, and American Indian as identified through the ESARS special sample;

2. With respect to seasonal farmworkers, data on the number of such workers placed in seasonal agricultural jobs and the number of such placements shall be available with respect to fiscal year 1975 and thereafter. Data as specified in Paragraph A of this Section shall be available with respect to such workers in fiscal year 1976 and thereafter.

B. Upon the request of plaintiffs' counsel, defendants shall make available the statistical information for specified local offices with respect to the information categories specified in Paragraph A of this Section.

C. All such information, and statistical reports derived from such information, prepared by state and local ES offices or by DOL shall be made readily available for inspection and review by Plaintiffs and by representatives of all bona fide migrant and legal services organizations.

III. Monitoring

Within 60 days of the date of this Order, Defendants shall implement a federal/state monitoring system which shall review the provision of Manpower Services, benefits and protections to migrant and seasonal farmworkers, the functioning of state complaint systems and the compliance of state ES offices with all applicable laws, regulations and directives. This monitoring system shall include the following features:

A. Designation for each state of an official responsible for monitoring compliance in such state on a continuing basis.

B. On-site reviews on a regular basis by Regional DOL offices, at least 25% of which shall be reviews of those ES offices which provide Manpower Services primarily to rural residents and migrant and seasonal farmworkers.

C. Annual on-site reviews of a sampling of ES offices which provide Manpower Services primarily to rural residents and migrant and seasonal farmworkers, by federal staff following procedures and reporting practices similar to those described in the Equal Employment Opportunity Manual and utilized by the Investigation and Compliance Staff in the 1972 Special Review Staff Report. The Investigation and Compliance Staff shall have joint responsibility for the first annual on-site review pur-

suant to this Paragraph and, if the Special Review Committee so recommends, for the second annual on-site review,

D. Plaintiffs and all bona fide migrant and legal services organizations shall be permitted to inspect and review all monitoring reports regularly filed with the DOL by state officials pursuant to paragraph A or prepared by the DOL pursuant to paragraphs B and C of this Section.

IV. Complaint Resolution

Within 60 days of the date of this Order Defendants shall implement and publicize a federally-supervised complaint resolution system, and shall require state compliance and coordination with such system, which shall include the following features:

A. Each state and local ES office shall provide migrant and seasonal farmworkers in its service area full information in a language understandable to them on the availability and operation of the complaint mechanism, and shall:

(1) Receive complaint information, record necessary data and keep records of all complaints filed and action taken thereon, and file with the Regional DOL office by state a quarterly report of all complaint intake and referral information by local office and a record of action taken to resolve each complaint, attaching copies of all unresolved complaints;

(2) Whenever possible resolve each complaint within five (5) working days from the time the complaint is filed by taking all appropriate action, including without limitation providing requested Manpower Services, referring the complainant to

equivalent alternative employment, and making appropriate law enforcement referrals such as a referral to a wage-hour compliance officer for the purpose of obtaining back-pay or wages due;

(3) Follow up each unresolved complaint. If a complaint has not been resolved or enforcement action has not been initiated within twenty (20) working days, the local office shall report the status of the complaint to the state monitor/advocate and shall provide the complainant with a letter, a copy of which shall be sent to the DOL Regional office, explaining the reasons for its failure to resolve the complaint and advising the complainant that his complaint has been referred to the Regional DOL office and the monitor/advocate for appropriate action.

B. All unresolved complaints referred to the Regional DOL office shall be reviewed by the federal monitor/advocate designee who shall:

(1) Whenever possible resolve the complaint by appropriate action, including referral to the appropriate federal enforcement agency for the initiation of action against state offices operating unlawfully or against employers, crewleaders or others violating federal law; or

(c) Provide the complainant with a letter explaining the reasons for its failure to resolve the complaint to the satisfaction of the complainant.

C. Defendants shall coordinate the federal/state complaint and monitoring systems with national DOL monitoring and data-

gathering systems and with DOI review of State self-appraisal reports to ensure that information concerning the frequency of complaints, adequacy of service and the failure of the states to resolve meritorious complaints in a manner satisfactory to the complainant results in necessary enforcement actions and/or decertification proceedings against states as provided in Section V of this Order.

V. Assurance of State Compliance with Federal Law

Defendants shall take all necessary action to achieve and maintain continuing compliance of all state offices with the requirements of law and to enforce fully the rights of migrant and seasonal farmworkers. Whenever Defendants determine, on the basis of (a) information submitted to Defendants by a state or gathered by Defendants through their own information-gathering system, (b) Defendants' review of complaints filed, or (c) the monitoring of state compliance pursuant to Section III of this Order, that any state may not be in compliance with the provisions of its approved plan of service in any significant respect or with Departmental regulations and directives, Defendants shall promptly investigate the matter. If Defendants determine after investigation that such state is in fact in noncompliance, Defendants shall specify to the state the action deemed necessary to correct such noncompliance, and shall provide a period not to exceed 30 days for the state to achieve compliance. If, at the conclusion of such period, the state's noncompliance has not been corrected, Defendants shall promptly initiate decertification proceedings under the Wagner-Peyser Act. In appropriate cases, where noncompliance is deemed not so substantial as to require

decertification proceedings, Defendants may impose other financial restraints, such as short-term funding of the ES Agency or transfer federal personnel, pursuant to the provisions of the Intergovernmental Personnel Act (P. L. 91-648, January 5, 1971, 84 Stat. 1909), to assist such ES agency in achieving full compliance with the law, or other appropriate action, provided that unless such actions achieve substantial compliance with the requirements of law within sixty (60) days, Defendants shall promptly initiate decertification proceedings under the Wagner-Peyser Act.

VI. Special Review Committee

Within 60 days of the date of this Order Defendants shall establish, at the direction of the Under Secretary, a Special Review Committee which shall be charged with reviewing compliance by Defendants with the terms of the Court's Order, and shall have the following features and functions:

A. The Committee shall be composed of (a) three (3) voting representatives of migrant and seasonal farmworkers groups to be selected by Plaintiffs; (b) three (3) voting representatives selected by Defendants, one of whom shall be from the Office of the Secretary or the Under Secretary; (c) a seventh voting member chosen by the foregoing six representatives, who shall serve as Chairperson of the Committee.

B. The Committee shall meet at least once quarterly for a period of two years from the date of its establishment.

C. The Committee shall have responsibility for reviewing Defendants' implementation of and compliance with the Court's Orders, and shall file with the Court a semi-annual report on Defendants' compliance with this Order. Any voting representative

of the Committee may express separate views in a supplemental minority submission accompanying any such report provided, however, that the Secretary may also submit separate views to the Court. The Committee may also make interim recommendations to DOL for changes or improvements in the delivery of Manpower Services to migrant and seasonal farmworkers.

D. With the exception of disclosure pursuant to paragraph C of this Section VI, during the review period the Committee members, the parties to the action, their officers, agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of judgment shall not make disclosure of any information developed for any report or recommendation and not otherwise publicly disclosable.

E. Defendants shall cooperate fully with the Committee and make all DOL information and documents relating to the provision of Manpower Services to migrant and seasonal farmworkers available to the Committee. Defendants shall make available to the Committee appropriate facilities, support services, and staff support as is reasonably necessary to adequately carry out the Committee's functions. Upon request of any three members of the Committee, Defendants shall make available appropriate officials or employees of DOL and its agencies who shall consult with the Committee or a member thereof and report on actions taken to comply with the Court's Orders.

F. Members of the Committee who are not employees of the Federal Government shall be paid compensation at a rate of up to the per diem equivalent of the rate for GS-18 when engaged in the work of the Committee, excluding travel time, and shall be allowed travel expenses and per diem in lieu of subsistence as

authorized by law (§ U.S.C. 5703) for persons in the Government service employed intermittently and receiving compensation on a per diem, when actually employed, basis, as determined by the Chairperson.

VII. Miscellaneous

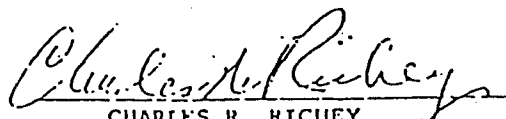
A. Within 60 days of the date of this Order, Defendants shall file with the Court a report describing the steps they have taken to comply with this Order, including a description of the monitoring system established pursuant to Section II of this Order and the complaint resolution system established pursuant to Section IV of this Order.

B. Defendants shall transmit copies of this Order to each DOL regional office and to each state and local ES office.

C. The Court shall retain jurisdiction over this case pending further Order of the Court, provided, however, that any issues or disputes between the parties relating to matters addressed by this judgment shall first be presented to designated counsel for the parties; thereafter counsel for the party claiming that the Order has been violated may report to the Court any matters remaining unresolved after 30 days.

D. Nothing in this Order shall affect in any way the continued application or validity of departmental regulations and policies that are consistent with the terms of this Order. Nor shall anything in this Order preclude the adoption of new regulations and policies, or changes in regulations and policies, consistent with the terms of this Order.

Dated this 9th day of August, 1974.


CHARLES R. RICHEY
UNITED STATES DISTRICT JUDGE

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