

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NIDIA BARCIA, et al.,

Plaintiffs,

-against-

79 Civ. 5831 (RLC)

LOUIS SITKIN, et al.,

Defendants.

STIPULATION AND ORDER

MUNICIPAL LABOR COMMITTEE, et al.,

Plaintiffs,

-against-

79 Civ. 5899 (RLC)

LOUIS SITKIN, et al.,

Defendants.

WHEREAS, the parties entered into a Consent Decree, So Ordered by the Court on June 6, 1983 ("Consent Decree"); and

WHEREAS, paragraph 23 of the Consent Decree provides:

Where the ALJ (Appeal Board) has Spanish-language translator staff at the hearing location, there shall be assignment of translators at all ALJ and Appeal Board hearings where Spanish-speaking parties request translators, or where form LO 420 indicates that a translator is necessary or, in the absence of either of these, the ALJ or Appeal Board determine that translation assistance is necessary.

; and

WHEREAS, paragraph 26 of the Consent Decree provides, in relevant part:

In all ALJ or Appeal Board hearings where translators are used, they shall be required to translate the entire proceeding and all relevant parts of documents

introduced in evidence. Those relevant parts which are translated will be identified for the record.

; and

WHEREAS, in an Opinion and Order dated September 8, 1994, the Court directed that defendants could not use volunteers or telephone hookups for such Spanish-language translation, and the Court further directed that the defendants provide Spanish-language translation of a quality that is not less than the quality of translations provided in the Southern District of New York ("Court Standard"); and

WHEREAS, defendants have represented that the Court Standard is impossible to implement in some areas of the State given the small number of translators who meet the Court Standard in those areas and because of the budgetary restrictions placed upon the defendants; and

WHEREAS, the parties have agreed to the establishment of an independent standard for the qualification of the aforementioned Spanish-language translators; and

WHEREAS, the parties have agreed that interpreters certified by the Office of Court Administration of the New York State Unified Court System (hereinafter "OCA") would provide translation services of a quality sufficient to comply with the Consent Decree; and

WHEREAS, the parties have further agreed that it may be necessary in limited circumstances to conduct hearings by means of telephone hookups in order to assure full confrontation between the parties and a full opportunity for the parties to present relevant witnesses; and

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the undersigned counsel for the parties to this action as follows:

1. The defendant Appeal Board will obtain, monitor and utilize the services of individuals who have been certified by OCA as Spanish-language translators, pursuant to the provisions of the Appeal Board statement annexed hereto as Appendix "A".

2. The defendant Appeal Board will implement guidelines for the use of Spanish-language translators which are annexed hereto as Appendix "B". The Appeal Board may change these guidelines as it deems appropriate, without Court approval, but any changes shall be subject to the Notification and Consultation provisions of paragraph 53 of the Consent Decree.

3. The defendant Appeal Board shall use only Spanish-language translators certified by OCA at all ALJ and Appeal Board hearings.

4. The Appeal Board may obtain the services of OCA certified translators by whatever means it determines is appropriate to its management of its operations.

5. The parties, ALJs, and the Appeal Board shall not use the services of any volunteer Spanish-language translator.

6. The Appeal Board may use, in the limited instances set forth in the annexed guideline, telephone hookups at hearings where Spanish-language translation is occurring. The Board shall strive to assure the maximum confrontation between the parties and full opportunities for the parties to present their relevant cases.

7. The defendant Appeal Board shall periodically, but no less than twice yearly, report to lead counsel for plaintiffs, for so long as monitoring of current case work under the Consent Decree continues, on the Appeal Board's experiences in the use of telephone hookups in the conduct of ALJ and Appeal Board hearings where a Spanish-language translator is used. Such report shall include the case number, whether the case was appealed, the location,

the reason why the need to use a translator via telephone arose, how the problem was addressed, and whether steps have been taken to prevent a recurrence.

8. The defendant Appeal Board shall revise the ALJ and Appeal Board Notice of Hearing and related forms and documents to advise parties that Spanish-language translators will be provided at all hearing locations by the Appeal Board. The language selected for the Notices shall be subject to the Notification and Consultation provisions of paragraph 53 of the Consent Decree. The language selected shall supersede the notice provisions regarding translators contained in paragraphs 8, 10 and 11 of the Partial Consent Judgment and Stipulation in Pugh v. Ross (76 CIV. 3607 [MEF]) which is Appendix C of the Consent Decree.

Dated: New York, New York
February 12, 1997

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SO ORDERED:

RS
ROBERT L. CARTER
U.S.D.J.
February 18, 1997

UNEMPLOYMENT INSURANCE APPEAL BOARD

SPANISH TRANSLATORS AT HEARINGS

GENERAL PRINCIPLE:

The Unemployment Insurance Appeal Board has determined to use, subject to the approval of the Federal District Court, Spanish language translators who have been certified by the New York State Office of Court Administration (hereinafter referred to as OCA). These translators will provide English into Spanish and Spanish into English translations of the entire proceedings and of all relevant parts of any documents. Because only certified Spanish translators are to be used, the parties may not use friends or relatives to provide Spanish translation services. To the greatest extent possible, these translations will be verbatim and simultaneous. In certain situations and under certain circumstances as set forth below, the Appeal Board will use telephones during the conduct of hearings where Spanish translators are involved. Because the two individuals who have been performing Spanish translation work in the New York City office are both competent and an asset to operations, the Appeal Board intends to continue their services as translators until they become certified by OCA.

PROCESS:

In general, the Unemployment Insurance Appeal Board intends to contract with outside vendors across the state for the vendors to supply OCA certified translators, as needed, at the times and places at which Administrative Law Judges (hereinafter referred to as ALJ) or Appeal Board Members conduct hearings in which any party (or witness) requires or requests the use of a Spanish language translator. If it happens that there is no contract with an outside vendor in any area of the state, the Appeal Board will retain, on a contract voucher basis, Spanish language translators who have been certified by OCA. If no OCA certified Spanish translator can be identified in any area who is willing to perform translation services, this will constitute an emergency condition and the Appeal Board will use approved telephone translators, working in the New York City office, by the use of speaker telephones in the hearing rooms.

TIMETABLE:

Before a bid proposal can be distributed, it must be advertised in the State Contract Register which comes out about every other week. Because of submission deadline restrictions, three weeks are needed to allow for such preliminary publication. On or before December 1, 1996, the Appeal Board, through DOL's Purchase and Contract Unit, will advertise in the New York State Contract Register the Spanish translator "Request For Proposals" (hereinafter the RFP).

Following publication, it is necessary to allow at least a three week window for potential vendors to review the RFP and to submit their bids. To assure that there is sufficient time to get as many bids as possible for as many areas of the state as possible, the Appeal Board will have a window of several weeks before the bids are opened.

Target March 31, 1997

Bids are valid for 60 days from the opening. During this time, the Appeal Board will be determining the lowest responsible bidder for each service in each district. Part of the process is verification that the vendor will be supplying only OCA certified Spanish language translators and that the vendor has the capability to provide such services as the Appeal Board has projected will be needed.

Target May 30, 1997

There is then a period of several weeks or months during which the formal contracts are prepared and signed. The Appeal Board and DOL will take all reasonable steps to speed the steps of the process that are under the control of the Appeal Board and/or of DOL. However, some steps involve obtaining the approval of the contracts by certain New York State officials including the Attorney General and the State Comptroller. Because these areas are outside the control of either the Appeal Board or of DOL, the Appeal Board and DOL will do all that is reasonably possible to advise these outside offices of the importance of speed in the review and to supply those offices with any and all information which they may need to fulfill their statutory duties with regard to the approval of the contracts.

Target August 29, 1997

The target is that, on about September 15, 1997, the Appeal Board will begin to use the vendors as provided under state law and under funding conditions set by the Federal government. If it is possible to begin the use of successful vendors or of certified individuals before contracts are formally approved, the Appeal Board and DOL will take reasonable steps to implement the use of OCA certified translators as soon as possible.

CONTRACT PROVISIONS TO BE REQUIRED:

The state is divided into 10 districts. Bids are sought for each district. Vendors can bid in as many or as few of these districts as the vendor desires. Bids in different districts can be for different amounts.

Within each district, different potential services are requested. Some services are for full time translators to be available on a daily basis in New York City. Some services are for the work of a translator for a full day, on an occasional basis, at some hearing site. Some services are for the work of a translator for part of a day, on an occasional basis, at some hearing site. A vendor can bid to provide one or more of these services in one or more of each district, and the bid amounts can vary for the type of service within and between the districts.

The RFP will provide for how much notice the vendors will receive as to the time and place of the hearings where the service is required. The RFP will also consider offering a premium rate for the Spanish translator services if the minimum notice is not given to the vendor.

The RFP will use the language of the OCA manual in defining the ways in which OCA certification can be obtained. To the extent that OCA may have multiple types of tests or processes for individuals to obtain OCA certification, any and all of these methods will be acceptable in the bid process.

The contract will advise bidders that the Appeal Board reserves the right to periodically have outside monitors evaluate the quality of the translation services rendered by any translator who works on a regular basis. "Regular basis" shall be defined as working during all or part of at least 100 days in any calendar year. Each "regular" translator will be evaluated within the first six months of their service, and yearly thereafter, and more often if complaints are received. The evaluations will be done by sitting in on randomly selected hearings and determining if the translations are accurate, verbatim and as simultaneous as reasonably possible. The costs of such evaluations will be the responsibility of the state and not of the vendor. If evaluations are unfavorable, the contract will advise the bidders that the Appeal Board reserves the right to request that the vendor replace individual translators if they are not acceptable to the Appeal Board. With respect to non-regular translators, the Appeal Board will take reasonable steps to monitor and evaluate the quality of the translation services provided. These steps could include, but are not limited to: (1) reliance on OCA periodic evaluations if they are performed at least yearly, or (2) having evaluators sit in during hearings, or (3) doing evaluations based on tape recordings of proceedings where at least one tape is for the primary purpose of recording the translations that are taking place. The Appeal Board will provide to translators a brief orientation in the administrative hearing process and in the general details of the unemployment insurance system.

Standard state contracts contain provisions for the terminations of any contract where the vendor has established a record of non-compliance with the terms of the contract. The Appeal Board will periodically review performance, no less than once a year, to assess compliance.

TELEPHONE HEARINGS:

Because the parties to hearings are sometimes in different locations, it is not always possible to schedule hearings at a site convenient to all parties and witnesses. It then is necessary to use telephone connections so that there can be sufficient confrontation between the parties. Therefore, the Appeal Board must use telephones to conduct some hearings, including when some party or witness needs the services of a translator. Subject to the approval of the Federal District Court for the use of telephones in hearing situations where translators are involved, the Appeal Board will continue this long standing practice. In using this practice, it must be recognized that, depending on where the translator is located in relation to the party or witness needing the translator, only consecutive, verbatim translation can be used.

The Appeal Board is establishing the following general policy for the use of translators during telephone hearings. This general policy is established by the Appeal Board and may need to be revised from time to time depending on experience and changing circumstances. Revisions in this general policy will be subject to the notification and consultation provisions of Consent Judgment paragraphs 53, 54 and 55.

1. Several forms shall be reviewed and possibly revised, including but not limited to the Hearing Request form and the Notice of Hearing form, in an attempt to augment local DOL office efforts to identify parties and witnesses who may need Spanish translation

assistance. This will, hopefully, reduce the number of situations where it first becomes apparent during the hearing that a Spanish translator is necessary. The revision process will be subject to the notification and consultation provisions of Consent Judgment paragraphs 53 and 54.

2. If a party who needs Spanish translator services is in New York State, efforts will be made to schedule the hearing so that the ALJ or Board Member and the translator will be at a hearing site convenient to that party.
3. If a party who needs Spanish translator services is outside the state, efforts will be made to have the translator at the same hearing site as the ALJ or Board Member presiding.
4. If a witness needs Spanish translator services, and if this is known in advance of the calendaring of the hearing, and if that witness can conveniently appear at the same hearing site as the party for whom the person is to be a witness, efforts will be made to schedule the hearing so that the ALJ or the Board Member will be at a hearing site convenient to the witness. If a party also needs Spanish translator services and the convenient location for the party is different from that for the witness, the principle in #2 above takes precedence.
5. If (at the last minute or on no notice) a certified Spanish translator is not available at the hearing site or could not arrive at the site within a reasonable period of time, or if it develops during the hearing that a Spanish translator is needed, the ALJ or Board Member will state on the record why a translator is not available, the efforts made to obtain a translator if the need for one was known in advance, and will discuss with the parties whether any party would object to the use of a certified Spanish translator by telephone connection to a designated site (either the New York City hearing site or an office selected by the vendor). For this discussion, the presiding ALJ or the Board Member will utilize a translator by calling the number designated for such Spanish translation assistance. The discussion is to be held on the formal record of the hearing. After hearing the comments of the parties, the ALJ or Board Member will decide whether the hearing shall be conducted using the Spanish translator on the telephone. If the ALJ or the Board Member decides to not use the telephone connection, or if a New York City Spanish translator is not available, the case shall be adjourned and rescheduled on an expedited basis.
6. Because verbatim, simultaneous translation of the record and of all relevant parts of a documents is required to the best of the certified Spanish translator's ability, it is the affirmative responsibility of the ALJ or Board Member to assure that all relevant parts of any document are read on the record and are translated for any party needing Spanish translation assistance.
7. As with every hearing conducted by means of the telephone, the handling of documents can be a problem, especially when it is necessary to confront one or more

parties with the actual document. If the document is relatively short and its authenticity is not in question, the ALJ can read the entire document and have it translated. For longer documents or ones that involve complex language, it may be appropriate to FAX the document to the remote party/parties if that is reasonably possible. When this is not possible and in other instances, the Appeal Board recognizes that it may be necessary to adjourn the hearing to another date so that copies of the documents can be forwarded to the parties before the hearing resumes.

PERIODIC REPORTS

The Appeal Board will prepare periodic reports for submission to lead counsel for plaintiffs, no less than twice a year, on the Appeal Board's experience with the use of Spanish-language translators when telephones have been used. The reports shall include the case number, whether the ALJ case was appealed, the location, the reason why the need for the use of a translator via telephone arose, how the problem was addressed and whether steps have been taken to prevent a recurrence of the problem. This reporting requirement shall expire whenever plaintiff's time for monitoring current cases expires.



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UNEMPLOYMENT INSURANCE APPEAL BOARD

PROCEDURE MANUAL

SPANISH TRANSLATORS AT HEARINGS

GENERAL PRINCIPLE:

The Unemployment Insurance Appeal Board is obligated to provide translation assistance to various classes of people. For Spanish speaking individuals, whether they be a party to the proceedings or merely a witness for a party, the Appeal Board is required to provide a certified Spanish translator. These translators will provide English into Spanish and Spanish into English translations of the entire proceedings for Spanish speaking parties and of all relevant parts of any documents. For Spanish speaking witnesses, the translator will provide translation of the questions and responses while that witness is testifying and will translate the relevant parts of any documents related to that witness's testimony. Only Office of Court Administration (OCA) certified Spanish translators are to be used. The parties may not use friends or relatives to provide Spanish translation services. To the greatest extent possible, these translations will be verbatim and simultaneous. In certain situations and under certain circumstances as set forth below, the Appeal Board will use telephones during the conduct of hearings where Spanish translators are involved.

PROCESS:

The Unemployment Insurance Appeal Board intends to obtain the services of certified Spanish language translators to be present at hearing sites across the state, as needed, at the times and places at which Administrative Law Judges (hereinafter referred to as ALJ) or Appeal Board Members conduct hearings in which any party (or witness) requires or requests the use of a Spanish language translator. Under certain circumstances where no certified Spanish translator can appear at a hearing site, the Appeal Board has reserved the right to use approved translators to provide translation services by telephone (see TELEPHONE HEARINGS section below).

ALJ AND BOARD MEMBER HEARING PROCEDURES

GENERAL

- a. Call the case and escort parties, representatives and witnesses into hearing room.
- b. As soon as the record begins, swear in the translator with an oath or affirmation somewhat as follows:

Do you swear/affirm that you will accurately translate English into Spanish and Spanish into English to the best of your ability, so help you God?.

- c. After completing the introductory remarks about the people present, the rights of the parties, the issues involved and procedures that will be followed, tell all present that

they should speak clearly and distinctly, at a slow pace, and with only one person speaking at a time so that the translator has adequate opportunity to provide the complete translation.

- d. Conduct the hearings as in another case.
- e. Verbatim, simultaneous translation of the record and of all relevant parts of any documents is required. It is the affirmative responsibility of the ALJ or Board Member to assure that all relevant parts of any document are read on the record and are translated for any party needing Spanish translation assistance.
- f. During the course of the hearing, monitor the conduct of the translator:
 1. translations are to be verbatim and simultaneous,
 2. observe whether everything is being translated as parties and witnesses testify,
 3. when Spanish speaking person testifies, listen to see if questions and answers seem to be about the same length in each language; if not, clarify on the record the reason for the differences, and
 4. if the responses from the Spanish speaking witness do not seem responsive, or if they seem confused or inconsistent, question the witness to determine if this situation is due to a lack of understanding, problems with the translation, or other reasons; then take appropriate action including but not limited to advising the translator of the requirements of that function.

TELEPHONE HEARINGS

Because the parties to hearings are sometimes in different locations, it is not always possible to schedule hearings at a site convenient to all parties and witnesses. Then it is necessary to use telephone connections so that there can be sufficient confrontation between the parties. In using a telephone connection for the conduct of a hearing in which a Spanish translator is participating, it must be recognized that, depending on where the translator is located in relation to the party or witness needing the translator, only consecutive, verbatim translation can be used.

Calendaring Unit duties

- a. If a party who needs Spanish translator services is in New York State, schedule the hearing so that the ALJ or Board Member and the translator will be at a hearing site convenient to that party.
- b. If a party who needs Spanish translator services is outside the state, schedule the hearing so that the translator is at the same hearing site as the ALJ or Board Member presiding.
- c. If a witness needs Spanish translator services, and if that witness can conveniently appear at the same hearing site as the party for whom the person is to be a witness, schedule the hearing so that the ALJ or the Board Member will be at a hearing site convenient to the witness. If a party also needs Spanish translator services and the

convenient location for the party is different from that for any witness, the principle in #1 above takes precedence.

Presiding ALJ or Board Member duties

- a. At the start of the hearing if no translator was scheduled, determine if any party or witness will need Spanish translation assistance.
- b. If a scheduled translator fails to appear or if it develops during the hearing that a Spanish translator is needed, contact support staff to determine if a certified Spanish translator could arrive at the site within a reasonable period of time.
- c. If the above does not resolve the situation, state on the record the effort made to obtain a translator; then discuss with the parties whether any party would object to the use of a certified Spanish translator by telephone connection. For this discussion, the presiding official is to call the designated telephone number for such Spanish translation assistance. The discussion is to be held on the formal record of the hearing. After hearing the comments of the parties, the ALJ or Board Member will decide whether the hearing shall be conducted using the Spanish translator on the telephone.
- d. If the ALJ or the Board Member decides not to use the telephone connection, or if a New York City Spanish translator is not available, the case shall be adjourned and rescheduled on an expedited basis.
- e. As with every hearing conducted by means of the telephone, the handling of documents can be a problem, especially when it is necessary to confront one or more parties with the actual document.
 1. If the document is relatively short and its authenticity is not in question, the ALJ or Board Member can read the entire document and have it translated.
 2. For longer documents or ones that involve complex language, it may be appropriate to FAX the document to the remote party/parties if that is reasonably possible. When this is not possible and in other instances (such as challenges to authenticity), it may be necessary to adjourn the hearing to another date so that copies of the documents can be forwarded to the parties before the hearing resumes.
- f. Prepare report form (sample attached as last page) on all cases involving the use of a Spanish-language translator and a telephone hook up including information regarding problems encountered during a hearing involving Spanish language translators.

Appeal Board responsibility

During the monitoring period, the Appeal Board will periodically review the reports described above for any problems and will propose any necessary modifications.

DECISION REMINDER

MLC Paragraph 27 provides:

Where claimant asserts that benefits were denied or terminated because of inability to understand the local office personnel, procedures, forms or notices because of language difficulties, or that the claimant was not understood by the local office personnel, or where it becomes apparent that this occurred, this *may* be valid grounds for reversal and *must* be considered by the ALJs and the Appeal Board for appropriate action. Where the ALJ or Appeal Board determines that although claimant may have had some language difficulty, benefits were properly denied so that an overruling of the determination is not warranted, *the decision shall set forth the specific reason(s) for that conclusion.* (emphasis added)



UNEMPLOYMENT INSURANCE APPEAL BOARD
ADMINISTRATIVE LAW JUDGE SECTION

TELEPHONE & SPANISH-LANGUAGE TRANSLATOR REPORT

This report is to be completed on each ALJ case in which a telephone hookup is used for all or part of the hearing and in which a Spanish-language translator is involved.

ALJ PORTION

A.L.J. CASE # _____

HEARING LOCATION _____

WAS TRANSLATOR SCHEDULED TO APPEAR (circle one) YES NO

CIRCLE THE OPTION LISTED TO SHOW LOCATION OF ALJ, TRANSLATOR AND PERSON(S) NEEDING ASSISTANCE

All at same place *ALJ with person* *ALJ with translator* *Translator and person at same place*

DID TRANSLATOR APPEAR (circle one) YES NO

IF NOT, THE REASON IS *unknown* OR _____

WAS CALL MADE TO GET LAST MINUTE REPLACEMENT (circle one) YES NO

IF NOT, BRIEFLY EXPLAIN WHY _____

WAS CALL PLACED TO ARRANGE FOR TRANSLATOR ON PHONE YES NO

WAS PROBLEM CORRECTED OR WAS CASE ADJOURNED CORRECTED ADJOURNED

EXPLAIN _____

ADMINISTRATIVE SUPPORT PORTION

WAS CASE APPEALED NO YES Give AB# _____

EXPLAIN STEPS TO PREVENT RECURRENCE OF PROBLEM _____
