

Issue Brief

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Breaking Faith with Workers: The Bush Labor Department's Improper Denials of Trade Adjustment Assistance

Introduction

In the past three-and-a-half years, the Bush administration has improperly denied income and training assistance under the Trade Adjustment Assistance (TAA) program to hundreds of workers who lost their jobs due to trade. As it presided over the loss of more than 2.5 million manufacturing jobs, the Bush administration repeatedly denied assistance in error, causing years-long delays before workers could get the help to which they were entitled. In addition to erroneous denials—which have earned biting rebukes from judges reviewing cases—the administration has seriously underfunded TAA and implemented its programs poorly. Workers are stranded every year as states run out of TAA training funds, yet President George W. Bush has sought no increase in TAA funding for the coming fiscal year. Meanwhile, TAA health care assistance is only reaching less than 6.0 percent of workers who are receiving TAA funding.

The TAA program, created by Congress to support workers who lose jobs due to increased imports and shifts in production overseas, enjoys broad

political support. Even those who downplay the role of trade in our current jobs crisis and push for more trade liberalization agree workers who lose their jobs due to trade deserve transitional assistance. Consensus around the expansion of TAA smoothed the passage of additional trade negotiating authority for President Bush in 2002—authority he already has used to negotiate several new trade agreements. But the other half of this quid pro quo arrangement, the part meant to aid workers, is being betrayed by the Bush Labor Department's repeated erroneous denials of assistance.

In the cases examined in this report, workers had to go to court—in some cases two or three times—to force the Department of Labor to certify them for the benefits to which they were entitled under the law. In some cases, the court had to send back, or remand, the certification decision several times before the Labor Department finally got it right. In many instances, faulty decisions resulted because the Labor Department simply failed to consider any evidence beyond that provided in cursory

inquiries to employers. Workers' submissions often were ignored.

The U.S. Court of International Trade, which reviews TAA certification decisions, has been scathing in its assessment of the Bush administration's implementation of the TAA program. One judge concluded the agency's failures in one particular case, whether the result of "overwork, incompetence, or indifference (or some combination of the three)," deprived workers of "the job training and other benefits to which they are entitled." Judges criticized the Labor Department's decisions in various other cases as "arbitrary," "unreasonable," "inadequate," "inconsistent with its own interpretation of its regulations," "without authority or explanation" and "directly contradicted by the legislative history's mandate."

The delay between layoff and final certification has lasted three years or more in some cases. By contrast, the TAA statute, recognizing the dire situations laid-off workers face, normally requires the Labor Department to make its initial certification decision within 40 days. Workers who had to take their cases to court to be certified received no TAA benefits during these needless and lengthy delays. In fact, some cases have taken so long to resolve that the two-year benefit period prescribed in the statute ran out before the workers were certified.

This pattern of neglect is particularly worrisome given the large number of workers who have lost their jobs due to trade during the Bush presidency. U.S. workers have lost more than 3 million manufacturing jobs since 1998; more than 2.5 million of these have been lost just since January 2001. The Economic Policy Institute estimates 59 percent—or 1.78 million—of the total manufacturing job loss since 1998 is due to trade. As imports of goods continue to outpace exports and our trade deficit balloons, more manufacturing jobs are lost.

During this time of need, underfunding and implementation oversights have plagued the TAA program, denying workers the full benefits to which they are entitled. For example:

■ Each year some states run out of TAA training funds before the year is up, stranding dislocated workers without timely access to training they need to find new jobs. These shortfalls continued in fiscal year 2004 and are occurring earlier in the year than ever before.

■ In February 2003, Health and Human Services Secretary Tommy Thompson told governors the new Health Care Tax Credit added to TAA by Congress could help more than 500,000 U.S. workers each year. Yet only 3,634 individuals accessed the new Health Care Tax Credit through TAA from November 2002 through January 2004, less than 1.5 percent of the 246,398 workers certified for TAA during the period and only 6.0 percent of workers who actually received TAA training and income support.

■ In 2002, a wage insurance program was added to TAA designed to encourage workers to get back to work sooner by supplementing their wages under certain circumstances. The Bush Labor Department has essentially failed to implement or publicize this program, with the result that only a few dozen people have received wage insurance under TAA.

■ Despite persistent high long-term unemployment and continuing manufacturing job losses, President Bush sought \$300 million less in funding for TAA benefits in his 2005 budget than Congress enacted for 2004.

The improper TAA denials reviewed in this report are but a microcosm of larger problems in the TAA program. These cases involve only a small portion of the workers who have been denied TAA eligibility since Bush took office, but they provide a disturbing glimpse into the Bush Labor Department's all-too-frequent disregard for trade-affected workers. The multiple instances of incompetence, mismanagement, delay and flagrant disrespect for workers cataloged by these cases reflect deep-seated problems in the Labor Department's administration of the TAA program that are likely to have affected many more workers than those who had the resources and tenacity to fight their denials in court.

It is particularly troubling that the very agency charged with helping workers access essential assistance and support is the one that has failed so many workers in these cases. Secretary of Labor Elaine Chao has stated, “[a]t the Department of Labor, it is about making sure that no worker is left behind.” Unless the Labor Department fixes the major TAA implementation problems identified by the court in these cases, the agency will be directly contradicting this core principle and even more of America’s workers who lose their jobs due to trade may be left behind without the benefits to which they are entitled.

Improper TAA Denials: The Cases

In eight separate cases in the past three years, the U.S. Court of International Trade found the Bush Labor Department had improperly denied workers certification for trade adjustment assistance.¹ In seven of these cases, the court remanded the case to the Labor Department to reconsider its denial; in the other one, the court decided it would be futile to remand the decision to the agency and instead stepped in to certify workers for assistance itself. To issue a remand order, the court must find that the department’s denial of TAA eligibility was not in accordance with the law, or was “arbitrary or of such a nature that it could not be based on ‘substantial evidence.’”² In the cases this report reviews, the court repeatedly found the department committing many of the same errors in improperly denying assistance: failing to fully investigate petitions, including frequently refusing to collect any information at all from displaced workers; improperly relying on unverified or contradictory assertions from employers; failing to interpret the TAA statute accurately; and refusing to follow the court’s explicit instructions and its own agency precedents.

In three additional cases, the court did not explicitly find the Labor Department’s denial of assistance was erroneous because in each case the department decided to ask for another opportunity to review the petition rather than defend the denial on its merits before the court. In these cases, the court acceded to the Labor Department’s request and granted voluntary remand. Each of the remands resulted in certifications, suggesting the department only

bothered to correct the errors in its original denials when it was dragged into court by dislocated workers.

In a twelfth case, the Labor Department asked the court not to review the denial of TAA certification because the case was not filed within the statutory time limits. The court refused to dismiss the case, finding the workers exercised heroic diligence in pursuing their case and only missed the deadline because they were misled by the department’s own representatives. The court later rejected another motion to dismiss the case from the department on different grounds, and a decision on the merits is still pending.

The following table lists the delays between the initial layoff and final certification in each of the cases outlined above. On average, workers had to wait more than two years before receiving certification.

Case	Delay in TAA certification
Ameriphone	14 months
Anvil Knitwear	2 years and 6 months
Black & Decker Power Tools	1 year and 6 months
Chevron	3 years and 11 months
Murray Engineering <i>(still not certified)</i>	More than 16 months
Oxford Automotive	3 years and 4 months
Pittsburgh Logistics	1 year and 10 months
Quality Fabricating	2 years and 2 months
Rohm and Haas	3 years and 6 months
Spinnaker Coating	1 year and 10 months
Tyco Electronics	1 year and 11 months
United Container	2 years and 5 months

The Bush Labor Department’s disregard for the interests of trade-affected workers evident in these cases is particularly troubling given the high standard of care the court has established for the department when determining TAA eligibility:

Because of the ex parte nature of the [TAA] certification process, and the remedial purpose of the trade adjustment assistance program, the Secretary is obliged to conduct his investigation with the utmost regard for the interest of the petitioning workers.³

The many hurdles the Bush Labor Department has erected to workers' certification for TAA benefits is wholly inconsistent with the court's directive to accord workers' interests paramount consideration. And as the Bush Labor Department's failures have mounted, the court has become increasingly impatient with the frequent need to remand flawed decisions and force the agency to do right by workers and certify them for assistance. Many of the same criticisms run throughout the court decisions, regardless of the relevant judge's political affiliation. In a number of cases, judges have criticized the Labor Department harshly for its behavior and suggested the agency is failing in its primary duty to America's workers.

1. Ameriphone

In June 2002, more than 20 workers who tested and repaired telephones at Ameriphone's facility in Garden Grove, Calif., lost their jobs when the work was shipped to Mexico.⁴ The Bush Labor Department denied the workers TAA, claiming they were not engaged in production. When the workers requested administrative reconsideration, the department reaffirmed its decision. After the second denial, the Ameriphone workers took their case to court. Rather than defend its denial before the court, the department asked the judge for one more opportunity to review the petition. The court granted the request, and the Labor Department certified the workers on voluntary remand in August 2003, more than a year after the workers were laid off.

The court affirmed the Labor Department's corrected determination in an October 2003 decision but had some harsh words for the department. The court was particularly concerned that the department did not bother to fully investigate the petition

until the workers dragged it to court. According to the court, the department had performed only a cursory investigation in its first review of the petition and "overlooked or simply ignored" critical information. Even though the employer's response to the simple form sent by the Labor Department "called for clarification," the agency made no effort to follow up with company officials. Instead, the court found, the department relied "on the unverified statements of company officials in the face of factual discrepancies in the record," and the department's administrative reconsideration was "little more than a rubber stamp" of its first denial. The court acknowledged the Labor Department may be facing a high volume of TAA petitions in the current economy but stated that the flood of requests for assistance was no excuse for the agency's failure to fulfill its legal obligations to workers. The court remarked that the agency's frequent requests for voluntary remands when TAA denials were appealed suggests the department "may be routinely failing" to administer the program adequately and simply waiting for court challenges before bothering to undertake complete investigations of TAA petitions. The judge cautioned:

It would be wholly inconsistent with Congress's intent if the trade adjustment assistance programs were to become little more than 'claims mills,' where all but the most well-documented and patently meritorious claims were denied at the agency level and thorough investigations were largely reserved for those few cases which were appealed to the courts.

2. Chevron

In October 1999, gaugers in Roosevelt, Utah, who tested oil before its distribution by Chevron Products Co. lost their jobs due to increased oil imports from Canada and Mexico.⁵ After the Clinton Labor Department mistakenly denied the workers' TAA application and reconsideration requests in 2000, the workers filed suit. Court proceedings occurred throughout 2001, including the filing of a brief by the Bush Labor Department defending the petition's denial. In 2002, the court

remanded the case to the department, with specific instructions on how to consider the petition. The Bush Labor Department again denied certification, the case was taken back to court and the court once again remanded the decision for further consideration. Finally, in September 2003, almost four years after the workers lost their jobs, the Bush Labor Department certified the workers for TAA benefits.

In granting this belated certification, the department concluded—only after the second remand from the court—that it erred in 2000 in mistakenly holding the workers were not eligible for benefits under a pre-existing certification of a related Chevron entity (CDPN). Yet in its first remand order, the court had explicitly directed the Bush Labor Department to conduct a more thorough investigation and consider “the organizational structure of [the employer] and related corporate entities.” Ignoring a “mandate” that “could hardly have been more pointed,” the department nevertheless failed to analyze the employer’s relationship to the other Chevron entity (CDPN). The department later admitted it was on notice the employer was related to CDPN, but claimed it did not “appreciate” the precise nature of the relationship, an assertion the judge said “simply strains credulity.” In fact, the workers argued in their 2001 brief that denial of their petition for benefits was inconsistent with the department’s treatment of the pre-existing certification of CDPN, and they attached a copy of the CDPN certification as an exhibit. Rather than undertaking an examination of the relationship in response to the workers’ arguments, the Bush Labor Department asked the court to strike the pre-existing certification from the record. And of course, the department failed to conduct an examination and correct the mistake after the first remand, prompting the court to opine the department had “simply ‘dropped the ball’” and “failed to ‘connect the dots.’”

The judge concluded that the agency’s failures in this case, whether the result of “overwork, incompetence, or indifference (or some combination of the three),” deprived workers of “the job training and other benefits to which they are entitled.” According to the court, “[w]orkers who are entitled

to trade adjustment assistance benefits but fail to receive them may lose months, or even years, of their lives” during the delays caused by the department’s denials, and the lack of assistance can take a “devastating personal toll” on them.

The judge emphasized that the Chevron case was only the latest example of a much longer record of failures by the department:

In a word, this case stands as a monument to the flaws and dysfunctions in the Labor Department’s administration of the nation’s trade adjustment assistance laws—for, while it may be an extreme case, it is regrettably not an isolated one. The relatively high number of requests for voluntary remands in trade adjustment assistance cases appealed to this Court speaks volumes about the caliber of the Labor Department’s investigations in general, and the Government’s ability to defend them....Similarly telling is the growing line of precedent involving court-ordered certifications of workers, evidencing the bench’s mounting frustration with the Labor Department’s handling of these cases. Clearly, there is a message here. Only time will tell whether the Labor Department, and Congress, are listening.

The judge concluded, “Congress and the Labor Department break faith with American workers if trade adjustment assistance programs are not adequately funded and conscientiously administered.”

3. Murray Engineering

In January 2003, a laid-off worker who drafted designs and drawings for manufacturing industries at Murray Engineering Inc. in Flint, Mich., applied for TAA.⁶ The Department of Labor denied TAA certification in its first consideration of the petition and on administrative reconsideration, and the

worker took his case to court, where the department was granted a voluntary remand to reconsider the petition. On remand, the department again denied certification, and the case was taken back to court. In May 2004, the court ordered another remand with specific instructions, and the department's decision on remand is due in July.

In its May remand order, the court focused on the Labor Department's decision that the worker was not involved in the production of an article, as required by statute for TAA certification. The court criticized the department's conclusion that industrial designs and drawings were not articles, based on its interpretation of the harmonized tariff schedule. The court stated, "the flaws in Labor's interpretation...deprive that interpretation of the 'power to persuade,'" and the department's finding was thus "in error."

4. Oxford Automotive

In June 2000, 500 auto parts workers at the Oxford Automotive plant in Argos, Ind., learned their jobs were being sent to Ramos Arizpe, Mexico.⁷ The workers, members of UAW Local 2088, first were denied TAA certification by the Bush Labor Department in February 2001 and denied certification again on administrative reconsideration. The workers took their case to court, originally representing themselves without a lawyer. The Labor Department denied certification again in two separate voluntary remands from the court before the court ordered another remand in October 2003. On its fifth try, more than three years after the workers lost their jobs, the department finally certified the workers for TAA.

The Labor Department in its repeated denials of assistance claimed there was no shift in production, defying the statute and its own precedent in other production shift cases. The court found the department's determination was "not in accordance with the law," and "inconsistent with its own precedents." In addition, the agency relied on unverified and contradictory statements from the employer while refusing to consider evidence submitted by the workers. According to the court, the Labor Department failed "to even inquire into the articles Oxford produced in Mexico and

instead relied erroneously on unverified statements by Oxford" that the machines transferred to its Mexico facility were not in use. The department failed to verify other statements by the employer as well, even though they "seemed at odds" with the company's public Securities and Exchange Commission filings. When the denial first was remanded back to the Labor Department, the new investigation consisted of just one e-mail exchange with the employer. On remand again, the department refused to even consider evidence offered by the workers. The judge remarked, "it is unfair for Labor to consider submissions from one party while ignoring those from another," especially when considering a TAA petition, a situation in which the court has previously found the department is "obliged to conduct [its] investigation with the utmost regard for the interests of the petitioning workers."

5. Pittsburgh Logistics

In December 2001, employees doing warehousing, transport and distribution work for Pittsburgh Logistics, a contractor of the LTV steel company in Independence, Ohio, lost their jobs due to increased imports.⁸ The Department of Labor denied certification in its original determination, in a subsequent administrative reconsideration and again when the court granted the department's request for a voluntary remand. When the workers took their case back to court for the second time, they argued the department's pleas for yet another chance to reconsider the petition were a "delaying tactic." The judge presiding over the case, a Reagan appointee, agreed, and took the extraordinary step of ordering certification himself, saying further remand to the Bush Labor Department would be "futile."

In its denials, the department improperly concluded Pittsburgh Logistics's employees were not involved in production and failed to correctly analyze the corporate relationship between the company and LTV. Direct employees of LTV already had been certified for TAA, but the department refused to certify the Pittsburgh Logistics employees, even though they worked on-site at LTV for an employer under contract with LTV, aiding in the final stages of production for LTV steel. In making its decisions, the department refused to consider

evidence put forward by the workers, preferring to rely solely on employer information. The workers offered to meet with the Labor Department while the department was reconsidering its decision on remand, but the department declined. The judge in the case, citing the agency's refusal to consider the workers' evidence, concluded, "Labor's investigation cannot be said to have been conducted with the utmost regard for affected workers."

The judge offered a scathing review of the agency's performance, finding its analysis to be "unreasonable," "inadequate" and "inconsistent with its own interpretation of its regulations." The court remarked that one particular argument of the department was "not only disingenuous" but "defies common sense." Another Labor Department argument "completely misses the obvious," and the department's interpretation of the law "conflicts with the remedial purpose of the statute and economic reality." Suggesting the malfunction may extend beyond incompetence to an intentional attempt to deny workers relief, the judge noted the department's reasoning "has a tendency to make Labor's negative determination appear predetermined."

6. Quality Fabricating

Workers producing sheet metal component parts for cable television amplifiers at Quality Fabricating in North Huntingdon, Pa., were laid off in 2001 when the employer's customer shifted production to Mexico.⁹ A worker who filed the TAA petition checked the Labor Department website daily, contacted her representatives in Congress and called state and federal department representatives repeatedly to find out if the petition had been accepted. Department representatives told her to keep checking the website, even though official notices of denial are first posted in the *Federal Register*, not on the website. The worker, following these erroneous instructions, did not find out she was denied certification until two months after the denial was published in the *Federal Register*. She immediately appealed the decision to the U.S. Court of International Trade but had missed the 60-day deadline for such filings because of the bad advice she was given by Labor Department representatives.

Instead of acknowledging and apologizing for its misleading instructions or defending its denial on the merits, the Bush Labor Department argued the case should be thrown out because the worker missed the filing deadline. The judge blasted the department for its audacity, asking:

If the DOL and its governmental representatives cannot reasonably be expected to know their own rules and procedures, who can? If a working person, untrained in the law and administrative procedures, cannot rely on an affirmative statement by the government of the United States, upon whom can they rely?

In response to the motion to dismiss, the judge said, "The DOL should blush to have raised this argument against the working people whose interests it supposedly represents." The judge denied the agency's motion to dismiss and allowed the case to proceed.

Six months after the court's decision, in September 2003, the department published notice in the *Federal Register* that the workers had been granted secondarily affected worker group status, which would allow the workers to access TAA benefits—including, in theory, up to 104 weeks of income support—under a previous TAA certification of workers at a related firm that purchased inputs from Quality Fabricating. By the time the notice was published, the 104 weeks from layoff already had expired, making the workers ineligible to receive their benefits. When the workers continued to pursue their claim, arguing the original denial of TAA benefits was erroneous and that they had not received proper notification of the secondarily affected worker certification, the Labor Department again sought a motion to dismiss, this time claiming that there was no justiciable issue because the workers had finally been certified. The department also asserted the secondarily affected worker notice was not too late to enable the workers to access their benefits, since it was backdated to May 2002

and purportedly faxed to state authorities at that time (although the department could produce no convincing evidence of this). The court again denied the agency's motion to dismiss, finding that the workers could be entitled to relief based on their claims, and a decision on the merits in the case is still pending.¹⁰ The court also criticized the adequacy of the agency's arguments supporting a motion to dismiss, saying the department had "not provided competent evidence that no justiciable issue remains in this case; this argument can not even be considered by the court."

As recently as this month, the court once again rebuffed the Bush Labor Department, refusing to grant the department's motion to further amend briefs it had previously amended. The department sought permission to make further amendments *after* it had already filed the rejected motions to dismiss (described above) and had missed several briefing deadlines. The court was unwilling to countenance this latest round of foot dragging, however. In denying the motions, the judge cited "the confusion and delay the Defendant's [Bush Labor Department's] erroneous filings or failure to file have caused in this matter," finding the delay "inexcusable." The additional time required to adjudicate the new motions, according to the judge, would "materially prejudice" the workers, "further delaying and complicating their receipt of benefits." And, although not required to decide whether the department's proposed amendment would be futile if granted, the judge nevertheless took pains to note that the legal position advanced in the department's proposed amendment "would contradict" the court's finding in a previous TAA case, a finding already reaffirmed in this case.¹¹

7. Rohm and Haas

From September to December 1999, more than 90 members of the International Union of Operating Engineers employed to produce ion exchange resins at a Rohm and Haas plant in Philadelphia were laid off due to increased imports.¹² When the Clinton Labor Department originally denied certification in 2000, the workers took the case to court. In March 2001, the Bush Labor Department asked for and received a voluntary remand. The labor department thereafter again denied certification on

remand in June 2001. The workers took the case back to court. The judge harshly criticized the remand decision made by the Bush Labor Department, citing numerous errors in law and a failure to follow court precedent. The court ordered another reconsideration in January 2003, and the agency finally certified the workers in April of that year, more than three years after they lost their jobs.

In its denial on the first remand, the Bush Labor Department incorrectly assumed imports could only be found to have affected the workers' employment if the goods were imported directly by their employer. In addition, the Bush Labor Department erroneously assumed increased imports had to precede the workers' dismissal for them to be eligible for TAA and that workers laid off in anticipation of increased imports could not be eligible under the statute. The court found both of these assumptions were incorrect as a matter of law. The second assumption already had been rejected by the court in two previous cases, and the agency "has not proffered any reasoned explanation of why the principle enunciated" in these two previous cases should not apply in the Rohm case.

In addition, the department failed to seek clarification on crucial issues from the employer during remand. According to the court, "Labor had an obligation to seek elucidation of such [employer] statements, particularly in light of Rohm and Haas's reluctance to be forthcoming." Instead, the department relied on the employers' unverified assertions to again deny relief to the workers—a flawed approach, the court said, because the employer was not an "enthusiastic participant" and "Labor should hesitate to take its assertions... at face value."

8. Spinnaker Coating

At the Spinnaker Coating facility in Westbrook, Maine, 91 workers making pressure-sensitive papers were laid off in 2001 due to increased imports.¹³ The Bush Department of Labor denied TAA certification in its original decision and again on administrative reconsideration. The workers took the case to court, where the judge ordered the department to evaluate the petition again, citing various

mistakes in the original decisions. The Labor Department certified the workers in March 2003.

In its original decision, the department concluded that imports could not have contributed importantly to the workers' job loss, as the TAA statute requires, arguing that the quantity of competing imports was too low to cause dislocation. But the record only showed that the price of competing imports was low, leaving open the possibility that a substantial quantity of very low-priced competing imports did enter the market and did, in fact, contribute importantly to the workers' unemployment. Yet the department refused to acknowledge import price as a possible factor in the layoffs of the Spinnaker workers. The court criticized this refusal, noting import price is not a factor "which can rationally be ignored." The court found the department's decision to exclude price impacts was "without authority or explanation," "directly contradicted by the legislative history's mandate" and not "reasonable." Furthermore, the department's conclusion that none of Spinnaker's customers substituted purchases of imports for their purchases from Spinnaker was "directly contradicted" by the note one customer sent to the Labor Department along with its response to the agency's survey. Labor "failed to explain the inconsistency" of its decision to exclude evidence of this customer's imports from its original investigation.

9. Tyco Electronics

Workers making fiber optic cable connectors for Tyco Electronics in Glen Rock, Pa., were laid off in July 2001 when their jobs were shipped to Mexico.¹⁴ The Department of Labor denied the workers certification in its initial decision and again on administrative reconsideration. The workers took the case to court, originally without legal representation. The department requested and was granted voluntary remand. The department delivered its new decision three months late, failed to follow the court's instructions in its deliberations and again denied certification. The department mistakenly focused its investigation exclusively on import impacts without considering production shifts, which can (and did, in this case) provide a separate basis for TAA certification.

In May 2003, the court ordered yet another remand, after which the department, on its fourth try, finally got the decision right and certified the workers—nearly two years after they were laid off.

The court cited evidence that "Labor merely relie[d] on the initial investigation" in its first remand decision, after it had already "in essence conceded that the initial investigation was inadequate" by asking the court for a voluntary remand and after the court had ordered the department to "collect further evidence, including evidence from the plaintiffs [the workers]" in its remand investigation. In its initial investigation, the Labor Department relied on nothing more than a form letter data request filled out by the company, and the subsequent remand investigation consisted of two unverified customer surveys. The department failed to conduct an independent analysis of relevant imports in the sector, relying instead on untested employer and customer information, which the court found "insufficient to support Labor's conclusion." The department also did not attempt to gather any information from the workers and refused "to even examine" data voluntarily submitted by the workers, after the court specifically instructed the agency to collect just such information. The department conceded its failure to consider evidence submitted by the workers during its remand investigation was in "direct violation" of the court's order.

Because of the lengthy delay in certification caused by the department's errors and subsequent court proceedings, by the time the Tyco workers finally were certified for assistance their basic trade readjustment allowances (TRA) no longer were available. By statute, TRA is available to TAA-certified workers for 104 weeks after their date of separation from employment, and those 104 weeks had run out while the workers were forced to take their case to court. In this case, the department agreed to begin the 104-week benefits period at the date of certification rather than the date of layoff due to the "undue and extreme delay" in issuing a proper TAA certification.¹⁵ However, the department explicitly limited the application of the extended benefits period to this case and said the

Tyco agreement could not set a precedent for any future cases. Given the frequency with which workers have had to take the Labor Department to court and endure years of delay before receiving proper TAA certification, the department's refusal to embrace a general rule guaranteeing even delayed access to the benefits for deserving workers is wholly at odds with the law's purpose and demonstrates the limits of the department's commitment to trade-affected workers.

10. Additional Cases

The U.S. Court of International Trade has granted the Bush Labor Department's requests for voluntary remand on TAA denials in three other cases.¹⁶ These cases involve hundreds of workers in a variety of sectors in Maryland, North Carolina and Tennessee. Although there is no public record from the court pointing out specific problems with the original denials, the department certified all the workers on voluntary remand, reversing its earlier decisions in each of the cases. These certifications on remand echo the pattern outlined in other cases: The department prefers to request voluntary remand rather than defend its denial in court, only to certify workers months or even years after the initial certification should have been granted.

Conclusion

Over the past three-and-a-half years, the Bush Labor Department wrongfully has denied assistance to hundreds of trade-affected workers in initial TAA certification decisions, administrative reconsiderations, voluntary judicial remands and even on remands accompanied by specific instructions from the court. Judges of all political stripes have expressed dismay, incredulity and exasperation

with the department's failure to uphold the law and follow court orders. The court has remarked that such behavior is especially egregious given the large number of workers facing joblessness in this economy and the irreparable harm laid-off workers suffer while they await proper decisions. Judges appear particularly alarmed the Labor Department—whose core constituency is supposed to be America's workers—continues to make the same mistakes, including the same legal mistakes, over and over again, seemingly impervious to the court's repeated criticisms and reprimands.

This outpouring of judicial disapproval cannot fall on deaf ears. President Bush must ensure his Labor Department institutes immediate and aggressive measures to bring its operations into compliance with the law. Bush administration officials responsible for administering TAA and processing TAA claims must fully understand the statute and its jurisprudence and must conduct impartial and comprehensive investigations that consider all relevant evidence from employers, workers, unions and independent sources. Administrative reconsideration procedures must be more than just a rubber stamp and actually provide an independent reassessment of the initial denial, based on substantial evidence. Effective and timely administration of the law requires resources, and President Bush and Congress should do their parts to ensure the necessary additional funding is available.

For the sake of workers and families who shoulder the ultimate burden of trade—the loss of jobs and livelihoods—the current course must not continue. As one judge noted, to do nothing and to allow these persistent and systematic failures to continue would “break faith with American workers.”

Endnotes

For each of the cases reviewed in this report, a single case cite in each of endnotes 4 through 15 includes page number references for all of the quotes included in the discussion of the case, cited in order of their appearance in the report.

¹ In two cases reviewed here, the workers initially represented themselves before the court without lawyers (*pro se*). *Pro se* litigation is especially onerous in circumstances such as these TAA cases, in which the bottomless reserves of a federal agency can be brought to bear in defending the claims of one or more unemployed workers proceeding with neither the aid of counsel nor a wealth of financial support. Symptomatic of the difficulties of proceeding in the face of such obstacles, at least two other *pro se* challenges to TAA denials were dismissed in the past three years before any consideration on the merits because the workers representing themselves were not able to exercise due diligence in pursuing their cases. See *Former Employees of Intex v. U.S. Department of Labor*, No. 01-00617, 2002 Ct. Int'l Trade LEXIS 121 (Ct. Int'l Trade Oct. 16, 2002) and *Former Employees of Levi Strauss v. The United States*, No. 00-11-00522, 2002 Ct. Int'l Trade LEXIS 90 (Ct. Int'l Trade Aug. 21, 2002).

² *United Glass and Ceramic Workers of North America v. Marshall*, 584 F.2d 398, 405 (D.C. Cir. 1978).

³ *Local 167, International Molders & Allied Workers' Union v. Marshall*, 643 F.2d 26, 31 (1st Cir. 1981).

⁴ *Former Employees of Ameriphone Inc. v. The United States*, 288 F. Supp. 2d 1353, 1358, 1358, 1359 n.8, 1358, 1359, 1359 n.9 (Ct. Int'l Trade 2003).

⁵ *Former Employees of Chevron Prods. Co. v. U.S. Secretary of Labor*, 298 F. Supp. 2d 1338, 1348, 1346, 1347, 1350, 1349, 1349, 1348, 1350 (Ct. Int'l Trade 2003).

⁶ *Former Employees of Murray Engineering, Inc. v. Chao*, No. 03-00219, 2004 Ct. Int'l Trade LEXIS 45, at *10, *25 (Ct. Int'l Trade May 4, 2004).

⁷ *Former Employees of Oxford Auto. UAW Local 2088 v. U.S. Department of Labor*, No. 01-00453, 2003 Ct. Int'l Trade LEXIS 128, at *12, *20, *16, *16 n.14, *23, *23 (Ct. Int'l Trade Oct. 2, 2003).

⁸ *Former Employees of Pittsburgh Logistics Systems Inc. v. U.S. Secretary of Labor*, No. 02-00387, 2003 Ct. Int'l Trade LEXIS 111, at *12, *17, *40, *26, *23, *23, *25, *33, *36, *27 (Ct. Int'l Trade Aug. 28, 2003).

⁹ *Former Employees of Quality Fabricating Inc. v. U.S. Secretary of Labor*, 259 F. Supp. 2d 1282, 1287, 1288 (Ct. Int'l Trade 2003).

¹⁰ *Former Employees of Quality Fabricating Inc. v. U.S. Secretary of Labor*, No. 02-00522, 2004 Ct. Int'l Trade LEXIS 48, at *41 (Ct. Int'l Trade May 11, 2004).

¹¹ *Former Employees of Quality Fabricating Inc. v. U.S. Secretary of Labor*, No. 02-00522, 2004 Ct., Int'l Trade LEXIS 81, at *16, *18, *22, *24 (Ct. Int'l Trade July 12, 2004).

¹² *Former Employees of Rohm & Haas Co. v. Chao*, 246 F. Supp. 2d 1339, 1351, 1348, 1349 (Ct. Int'l Trade 2003).

¹³ *Former Employees of Spinnaker Coating Me. [is this an abbreviation for Maine? Please spell out this word] Inc. v. Chao*, 246 F. Supp. 2d 1352, 1362, 1362, 1362, 1359, 1361 (Ct. Int'l Trade 2003).

¹⁴ *Former Employees of Tyco Electronics v. U.S. Department of Labor*, 264 F. Supp. 2d 1322, 1332, 1332, 1325, 1331, 1332, 1330 (Ct. Int'l Trade 2003).

¹⁵ *Former Employees of Tyco Electronics v. U.S. Department of Labor*, No. 02-00152, 2004 Ct. Int'l Trade LEXIS 33, at *10 (Ct. Int'l Trade Apr. 14, 2004).

¹⁶ Cases discussed in this paragraph are *Former Employees of United Container Machinery Inc. v. The United States*, No. 03-00346, 2003 Ct. Int'l Trade LEXIS 132 (Ct. Int'l Trade Oct. 14, 2003); *Sandra Christopher & Former Employees of Arvil Knitwear v. Chao*, No. 02-00153, 2003 Ct. Int'l Trade LEXIS 56 (Ct. Int'l Trade May 16, 2003); and *Former Employees of Black & Decker Power Tools v. Chao*, No. 02-00338, 2002 Ct. Int'l Trade LEXIS 103 (Ct. Int'l Trade Aug. 30, 2002).