



In the Matter of:

**ADMINISTRATOR, WAGE AND
HOUR DIVISION, UNITED STATES
DEPARTMENT OF LABOR,**

ARB CASE NO. 98-034

ALJ CASE NO. 96-LCA-2

COMPLAINANT,

DATE: May 28, 1999

v.

NATIVE TECHNOLOGIES, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Mario Fernandez, Esq., William J. Stone, Esq., Steven J. Mandel, Esq.,
U. S. Department of Labor, Washington, D. C.

For the Respondent:

Pernell W. McGuire, Esq.
Aspey, Watkins & Diesel, P.L.L.C., Flagstaff, Arizona

**DECISION AND ORDER REVERSING IN PART AND
REMANDING FOR FURTHER PROCEEDINGS**

This case concerns the obligations of an employer to a nonimmigrant employee working in the United States under the H-1B visa program authorized by the Immigration and Nationality Act of 1952, as amended (“INA”). 8 U.S.C. §§1101, 1182, and 1184 (1994). The Administrator of the Wage and Hour Division (“Administrator”) alleged that Native Technologies, Inc. (“Native Technologies” or “Company”), misrepresented material facts in the H-1B Labor Condition Application (“LCA”) and willfully failed to pay the required wages to the Complainant, Iouri Mordovskoi (“Mordovskoi” or “Complainant”).

In his Decision and Order (“D. & O.”), the Administrative Law Judge (“ALJ”) granted partial summary judgment to the Administrator and ordered Native Technologies to pay money penalties and back wages for work performed by Mordovskoi in 1995. The ALJ also granted partial summary judgment to Native Technologies by determining that Mordovskoi was not employed by the Company in 1994 and thus was owed no wages for work performed during that period.^{1/}

Only the Administrator filed a review petition, and thus, the sole issue appealed to us is the ALJ’s ruling that Mordovskoi was not entitled to back wages for work performed in 1994. Based on our review of the record and the briefs presented by the parties, we reverse the ALJ’s grant of summary judgment to Native Technologies and remand the case for further proceedings consistent with this opinion.

I. BACKGROUND

A. Statutory and Regulatory Framework

The INA of 1952, as amended in 1990 and 1991,^{2/} defines various classes of aliens who are not considered “immigrants” under the U.S. immigration law and who may enter the United States for prescribed periods of time and for prescribed purposes under various types of visas. 8 U.S.C. §1101(a)(15). One class of nonimmigrant aliens, known as “H-1B” workers, is allowed entry to the United States on a temporary basis to work in “specialty occupations,” or as fashion models of distinguished merit and ability. 8 U.S.C. §1101(a)(15); 20 C.F.R. §655.700(c)(1) (1998).

The H-1B program is limited, with restrictions on the number of visas issued in any fiscal year and a maximum six year period of admission for the authorized H-1B visa holder. 8 U.S.C. §1184(g). An employer seeking to hire an alien in a speciality occupation on an H-1B visa must first obtain certification from the U.S. Department of Labor (“Department”) by filing an LCA; only after the employer receives the Department’s certification will the Immigration and Naturalization Service (“INS”) approve the visa petition. 8 U.S.C. §1101(a)(15)(H)(i)(b); *see* 20 C.F.R. Part 655, Subparts

^{1/} In granting partial summary judgment to the Administrator, the ALJ also held that Native Technologies: (1) failed to record properly the appropriate wages on the LCA, in violation of 20 C.F.R. §655.805(a)(1); (2) willfully failed to pay the recorded LCA wage rate, in violation of 20 C.F.R. §655.805(a)(2)(i); (3) impermissibly deducted living expenses from Mordovskoi’s pay, which expenses had previously been advanced by the Company; and (4) was responsible for the payment of monetary penalties for failing to accurately specify the rate of pay or for otherwise misrepresenting a material fact on the LCA, and for willfully failing to pay the required wage rate. D. & O. at 6. Because neither party petitioned for review on these points, the ALJ’s rulings constitute the agency’s final decision on these issues. 20 C.F.R. §§655.840, 655.845.

^{2/} Immigration Act of 1990, Pub. Law 101-649, 104 Stat. 4978; Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. Law 102-232, 105 Stat. 1733.

H and I.^{3/} The Department has published detailed guidelines for use by the employer in completing and filing LCAs. *Id.*

For example, the employer must indicate in the LCA the number of aliens to be hired, the occupational classification, the required wage rate,^{4/} the prevailing wage rate and the source of such wage data, the date of need and period of employment. *Id.* Furthermore, an I-129 petition for admission must be filed with the INS also indicating the dates that the nonimmigrant will be employed; the INS has the authority to decide whether an alien satisfies the criteria for admission to the United States on an H-1B visa. *See* 8 U.S.C. §1184(i)(1).

Although the statute prescribes a framework for enforcement proceedings and sanctions,^{5/} Congress imposed no restraints on the Secretary's authority to interpret and enforce the employer's LCA obligations, including the wage obligation. Thus, the Secretary has promulgated regulations which provide detailed guidance to the employer regarding the determination, payment, and documentation of the required wages. 20 C.F. R. §655.731. The remedies for violations of the statute or regulations include payment of back wages to H-1B workers who were underpaid, notification of the Attorney General for debarment of the employer from future employment of aliens, civil money penalties, and further administrative relief as the Administrator deems appropriate. 20 C.F. R. §655.810.

^{3/} The Department of Labor's H-1B regulations were originally published in identical format in two different places in the Code of Federal Regulations, Title 20 and Title 29. In 1996, the regulations at Title 29 were deleted, and the H-1B regulations are now published only at Part 655 of Title 20. 61 Fed. Reg. 51013, September 30, 1996.

^{4/} "Wage rate" means the remuneration (exclusive of fringe benefits) to be paid, stated in terms of amount per hour, day, month or year. 20 C.F.R. §655.715. The "required wage rate" means the rate of pay which is the higher of the "actual wage" or the "prevailing wage" for the occupation in which the alien is to be employed. *Id.* The "actual wage" is the wage paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question. *Id.* The "prevailing wage" for the occupational classification in the area of intended employment must be determined as of the time of filing the LCA. *Id.* The employer must base the prevailing wage on the best information available at the time, but is not required to use any specific methodology to determine it. Information from a state employment security agency ("SESA"), an independent authoritative source, or other legitimate sources may be used. 20 C.F.R. §655.731(a)(2).

^{5/} Congress directed the Secretary of Labor to "establish a process for the receipt, investigation and disposition of complaints," to complete an investigation within 30 days, to issue a determination as to whether a violation was committed, to provide a hearing opportunity to interested parties, and to issue a finding. 8 U.S.C. §1182(n)(2).

B. Procedural History

Mordovskoi entered the United States on August 27, 1994, on an H-1B visa to work for Native Technologies, his sponsoring employer. On May 21, 1995, he filed a complaint with the Wage and Hour Administrator alleging that Native Technologies had paid him at a wage rate less than had been promised and also had refused to pay him for all the work he had performed. Jarrett Declaration in Support of Administrator's Motion for Summary Judgment ("Jarrett Dec.") at 1. The Administrator's investigation of Mordovskoi's allegations began on May 26, 1995, and the determination that Native Technologies had violated its statutory and regulatory obligations was issued on January 24, 1996. *Id.*; D. & O. at 2.

On February 23, 1996, Native Technologies requested a hearing on the Administrator's findings. On March 21, 1996, the ALJ granted the hearing, but a week later continued it at the parties' request to permit settlement negotiations. Although settlement was not reached, the parties requested summary disposition on the basis that there were no issues of material fact in dispute. On March 12, 1997, the ALJ ordered the parties to file summary judgment motions.

On November 3, 1997, based on the briefs and accompanying declarations, the ALJ granted partial summary judgment for each party. The Administrator petitioned this Board for review, and on December 18, 1997, the Board filed a Notice of Intent to Review.

C. Facts

Native Technologies is a small space systems and software engineering organization headquartered in Flagstaff, Arizona. D. & O. at 2. Since October 1992, the Company has been involved in the research and development of technology related to international communications, including automated translation of e-mail communications between the United States and Russia. *Id.*; Affidavit of Thomas Ryan in support of Native Technologies' Motion for Summary Judgment ("Ryan Aff.") at 1-2.

In October 1993, the National Aeronautics Space Administration ("NASA") announced its intention to contract with Native Technologies on an upcoming U.S.-Russian Space Station program. D. & O. at 2-3. In anticipation of this work for NASA, the Company's Vice President and Chief Scientist, Thomas Ryan, Sr. ("Ryan"), decided to hire Mordovskoi, a Russian engineer, to serve as both a Technical Software Coordinator and liaison between the U.S. and Russian components of the Company's efforts.^{6/} *Id.*; Ryan Aff. at 1.

In December 1993, Native Technologies applied for an H-1B visa for Mordovskoi by filing an LCA with the Employment and Training Administration of the U.S. Department of Labor. D. & O. at 3. In March 1994, the Company also filed with the INS an I-129 petition stating that it

^{6/} No NASA contract was awarded to Native Technologies during the period relevant to this action. D. & O. at 9.

would employ Mordovskoi from January 1, 1994, to January 1, 1997, at a rate of \$1000 per week for a full-time position.^{7/} *Id.*; Jarrett Dec. at Ex. 4.

Mordovskoi and his family entered the United States on August 27, 1994, and on August 29, 1994, he began working on projects for Native Technologies at its Flagstaff offices. Mordovskoi Declaration in Support of Administrator's Motion for Summary Judgment ("Mordovskoi Dec.") at 2-3; D. & O. at 3. Although Native Technologies paid some of Mordovskoi's living expenses during 1994, no wages were paid to him for work performed in 1994. *Id.* Mordovskoi first received wages from the Company in March 1995 for work performed during the two week period beginning January 9, 1995. D. & O. at 3; Jarrett Dec. at Ex. 8. Both parties agree that in 1994 Mordovskoi performed work for Native Technologies for which he received no compensation. D. & O. at 3.

In late December 1994, Native Technologies secured a contract with the computer science department at New Mexico State University. *Id.* On January 27, 1995, Native Technologies entered into an employment agreement with Mordovskoi in connection with the New Mexico State University contract. *Id.* The agreement had a start date of January 30, 1995, had a three year minimum term, and included an outline of Mordovskoi's duties and responsibilities in the position of "Senior Programmer and US-Russian Software Development Coordinator." Mordovskoi Dec. at Ex. E; *Id.* Under the agreement, Mordovskoi was to be paid \$20 per hour. *Id.*

The working relationship between Mordovskoi and Native Technologies ended in the spring of 1995.^{8/} During the period beginning August 29, 1994, and ending in the spring of 1995, Native Technologies paid Mordovskoi a total of \$9800 in wages. In addition, Native Technologies paid \$1483.08 for Mordovskoi's rent and utilities, which sum was subsequently deducted from his wages. Jarrett Dec. at Ex. 8.

II. DISCUSSION

A. Standard of Review

A grant of summary judgment is reviewed *de novo*, that is, our review is governed by the same standard used by the trial court. *Han v. Mobil Oil Corporation*, 73 F.3d 872, 874-875 (9th Cir. 1995). Viewing the evidence in the light most favorable to the non-moving party, we must determine whether there are any genuine issues of material fact and whether the lower court correctly

^{7/} The information provided on the I-129 was consistent with that provided on the LCA. Like the I-129, the LCA stated that Mordovskoi was to work as a Senior Engineer, to be paid at an hourly rate of \$25/hr. (\$1000 per week), with an employment period from 1/1/94 to 1/1/97. Jarrett Dec. at Ex. 2.

^{8/} The parties disagree about the date the working relationship ended. In his May 21, 1995, complaint, Mordovskoi implies that he is still working for Native Technologies. Jarrett Dec. at Ex. 1. Counsel for Native Technologies represents that Mordovskoi did no work for the Company after April 22, 1995, and the Company's pay records indicate that Mordovskoi's last check was for the period ending April 16, 1995. Resp. Opening Br. at 5; Jarrett Dec. at Ex. 8.

applied the relevant law. *Mongeluzo v. Baxter Travenol Long Term Disability Benefit Plan*, 46 F.3d 938, 942 (9th Cir. 1995).

The standard for summary decision before a Labor Department administrative law judge is set forth at 29 C.F.R. §18.40(d) (1998). This section, which is modeled on Rule 56 of the Federal Rules of Civil Procedure, permits an ALJ to enter a summary decision for either party where “there is no genuine issue as to any material fact and . . . a party is entitled to summary decision.” *Id.*

B. 1994 Employment

The Administrator moved for a summary decision that Mordovskoi was owed wages for work performed for Native Technologies during the period August through December 1994. In support of its position that there was no genuine issue of material fact in dispute, the Administrator offered, *inter alia*, a stipulation by Native Technologies’ counsel that “[t]here is no dispute that [Mordovskoi] did work [for the Company] prior to January 1, 1995.” Declaration of Susanne Lewald in Support of Administrator’s Motion for Summary Judgment (“Lewald Dec.”) at ¶¶ 3-4 and Exs. B-D.

Notwithstanding its admission that Mordovskoi “did work” in 1994, the Company argued that no wages were owed because it did not “employ” Mordovskoi in 1994.^{2/} As evidence on this point, the Company offered the statements of Ryan that Native Technologies had “no employees for which there [were] no contracts,” and the Company had not had any “employees during the past three years excepting [Mordovskoi] from January 1, 1995, to April 16, 1995.” D. & O. at 8. In opposition, the Administrator presented various Company documents in which Mordovskoi is represented to the public as an employee. D. & O. at 8.

Although recognizing that “genuine issues of material fact” were in dispute, the ALJ nevertheless decided the case under summary judgment. Specifically, the ALJ concluded that Mordovskoi was not Native Technologies’ “employee” because the Administrator had “failed to meet the appropriate burden of persuasion.” D. & O. at 8. Weighing the evidence and assessing the persuasiveness of the arguments is inappropriate in the context of a motion for summary judgment and is grounds for remand. See *OFCCP v. CSX Transportation, Inc.*, 88-OFC-24, Asst. Sec. Dec. and Ord. of Remand, October 13, 1994, slip op. at 7 (citations omitted); *T.W. Electrical Service, Inc. v. Pacific Electrical Contractors Assoc.*, 809 F.2d 626, 630-631 (9th Cir. 1987), citing *Matsushita Elec. Indus. Co. v. Zenith Corp.*, 475 U.S. 574, 586 (1986).

^{2/} As to compensating Mordovskoi for his 1994 work, Ryan declared variously that Mordovskoi agreed that he would “work for the company on other projects for no pay until the NASA project was funded,” that Mordovskoi understood that “he would receive a portion of the profits received on [the] projects” on which he worked, and that the Company “agreed to pay [Mordovskoi’s] living expenses . . . [and] to allow [Mordovskoi] to become a partial shareholder in the company in exchange for his efforts.” Ryan Dec. at ¶ 16, 17. No profits were realized on the projects on which Mordovskoi worked. *Id.* at ¶ 17.

In addition, the ALJ failed to address the legal questions at the heart of the case, namely, what constitutes an “employer” under the H-1B program, and what duty does such an “employer” have with regard to paying wages to its H-1B workers. In our view, proper resolution of these central legal issues produces a final conclusion different from the outcome reached by the ALJ.

As noted above, nonimmigrant alien H-1B workers such as Mordovskoi are admitted to the United States under highly regulated conditions. In analyzing what constitutes an H-1B “employer,” and the relationship of the H-1B worker to that “employer,” we look to the text of the statute and its implementing regulations.

The term “employer” is not a defined term under the INA itself. *See* 8 U.S.C. §1101. The statute’s omission of an explicit definition of the term “employer” is problematic because the word is susceptible to widely varying interpretations depending upon the specific context in which it is used. Although it is generally true that “[w]hen terms used in a statute are undefined, we give them their ordinary meaning[.]” *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 186 (1995), it also is true that the meaning of undefined terms in statutes must be determined within the overall context of a statute. *Universal Maritime Service Corp. v. Wright*, 155 F.3d 311, 319-20 (4th Cir. 1998). Moreover, administrative agencies have significant discretion to apply reasonable interpretations to undefined statutory terms. *Madison Gas & Elec. Co. v. United States Environmental Protection Agency*, 25 F.3d 526, 529 (7th Cir. 1994), *citing Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 845, 866 (1984).

Even though the term “employer” is not defined directly within the INA, the term does appear within the portion of the definition for “immigrant” that relates to the H-1B program:

- (15) The term “immigrant” means every alien except an alien who is within one of the following classes of nonimmigrant aliens —
 - (H) an alien (i) . . . (b) . . . who is coming temporarily to the United States to perform services . . . in a specialty occupation . . . or as a fashion model [of distinguished merit and ability] . . . and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the *intending employer* has filed with the Secretary [a Labor Condition Application].

8 U.S.C. §1101(a)(15)(H)(i)(b) (emphasis added). From the outset, it is clear that there can be no H-1B worker unless there is first an “intending employer” who has filed an LCA.

The statutory scheme, requiring an H-1B “employer” for every H-1B nonimmigrant alien, is further reinforced by Section 212(n)(1) of the INA which, among its various provisions, details the duty of the “employer” with regard to paying wages to the H-1B worker. In relevant part, Section 212(n) provides that:

- (1) No alien may be admitted or provided status as an H-1B nonimmigrant in an occupational classification unless the *employer* has filed with the Secretary of Labor an application stating the following:

- (A) The *employer* —
- (i) is offering and will offer during the period of authorized *employment* to aliens admitted or provided status as a nonimmigrant [in an H-1B status] . . . wages that are at least --
 - (I) the actual wage level paid by the *employer* to all other individuals with similar experience and qualifications for the specific employment in question, or
 - (II) the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application, and
 - (ii) will provide working conditions for such a nonimmigrant that will not adversely affect the working conditions of workers similarly *employed*.

8 U.S.C. §1182(n)(1) (emphasis added).

This link between the H-1B worker and the worker’s H-1B “employer,” rooted in the statute itself, is maintained throughout the regulations implementing the INA. Under the regulations, the entity which files a Labor Condition Application with DOL and an I-129 petition with the INS for the purpose of obtaining a foreign worker is viewed as the H-1B *employer* of the temporary, nonimmigrant worker who has been admitted to the United States in response to the LCA and I-129 petition:

Under section 101(a)(15)(H) of the Act, an alien may be authorized to come to the United States temporarily to perform services or labor for, or to receive training from, an *employer*, if petitioned for by that *employer*.

8 C.F.R. §214.2(h)(1)(i) (emphasis added). Conversely, the foreign worker admitted under an H-1B visa classification is the *employee* of the entity filing the LCA and I-129 forms:

An H-1B classification applies to an alien who is coming temporarily to the United States . . . to perform services in a specialty occupation . . . for whom the Secretary of Labor has determined and certified to the Attorney General that the *prospective employer* has filed a labor condition application under section 212(n)(1) of the Act.

8 C.F.R. § 214.2(h)(1)(ii)(B)(emphasis added).

It is undisputed that Native Technologies, in an effort to obtain Mordovskoi’s services for a NASA contract, filed both an LCA and an I-129 petition.^{10/} As the *intended employer* (the term

^{10/} Ryan and Mordovskoi first met in 1992 and they were familiar with each other’s work before
(continued...)

used in the statute) or the *prospective employer* (the term used under the regulations), Native Technologies' filing of these documents was the necessary precondition for the INS's issuance of Mordovskoi's H-1B visa; in other words, if Native Technologies had not represented that it would employ Mordovskoi for the period stated on the LCA, Mordovskoi would not have been permitted to enter the country on the H-1B visa. Additionally, the statute requires the H-1B employer to declare in the LCA that it will pay, for the period of authorized employment, wages that are at least the required rate – *i.e.*, the higher of the actual or prevailing wage (*see* fn. 4, *supra*). 8 U.S.C. §1182(n)(1)(A). Pursuant to this statutory requirement, and as embodied in the implementing regulations, an H-1B employer is bound to pay for all work performed during the entire period of authorized employment. 20 C.F.R. §655.731.

When determining that Mordovskoi was not an employee of Native Technologies, the ALJ appears to have focused on whether Mordovskoi qualified as Native Technologies' employee under the common law employer-employee standard, even suggesting at one point that Mordovskoi may have performed work as an “associate” of Native Technologies without entering into an employment relationship. D. & O. at 8. This inquiry was misdirected. Native Technologies' status as Mordovskoi's H-1B “employer” under the Immigration and Nationality Act existed by operation of law, independent of the criteria ordinarily considered under common law or other Federal statutes when determining the existence an employer-employee relationship. Stated differently, even if, *arguendo*, we assume that Mordovskoi could have provided services to Native Technologies in a “non-employee” status, such as an independent contractor, Native Technologies, as the H-1B employer, was nevertheless obligated under the terms of the statute to make certain that Mordovskoi, the H-1B employee, was paid for work performed at the required wage rate listed in the LCA.^{11/}

^{10/}(...continued)

the LCA was filed in late 1993. Mordovskoi Dec. at 1-2; Marsh Dec. at Ex. 1.

^{11/} The regulations establishing standards for H-1B petitions suggest the possibility that some H-1B workers could work in the United States under an arrangement other than a traditional employer-employee relationship. 8 C.F.R. §214.2(h)(2)(i)(F). In addition to visa petitions that are submitted directly by intended employers, the INA implementing regulations also allow *agents* to submit H-1B petitions “in cases involving workers who traditionally are self-employed or use agents to arrange short term employment in their behalf with numerous employers.” *Id.* This arrangement is not found in the statute, but has developed administratively to accommodate the needs of H-1B employers and workers in specialized situations. *See* “Petitions for H-1a, H-1b, O and P Temporary Workers Filed by Agents and Contractors,” Memorandum of Jacquelyn Bednarz, DOJ Office of Adjudications, 70 Interpreter Releases 1129, 1148-50 (August 30, 1993).

Even when the petitioner is an agent (rather than a direct employer), however, the same regulations mandate that “an *agent* performing the function of an employer *must guarantee the wage offered* and the other terms and conditions of employment by contractual agreement with the beneficiary(ies) [*i.e.*, visa recipients].” 8 C.F.R. §214.2(h)(2)(i)(F)(2) (emphasis added). Thus, whether the petitioner is an employer or an agent, the regulations insure that the entity that submits the application to import the nonimmigrant alien (*i.e.*, the H-1B employer) is obligated to fulfill the
(continued...)

As Mordovskoi's H-1B employer from the time he entered the United States on the visa, Native Technologies is to pay Mordovskoi the required wage rate for all work he performed for the Company during the period August through December 1994. *Id.* Accordingly, at the hearing on remand, the ALJ will take evidence sufficient to permit a determination of the number of hours worked by Mordovskoi for the Company during this period and of the wages owed Mordovskoi.

C. 1995 Wages

The ALJ's grant of summary judgment to the Administrator included a finding that Native Technologies was liable for the difference between the wages paid at \$20 per hour and the correct rate of \$25.74 per hour (the "prevailing rate") for the period of 14 weeks "beginning January 9, 1995 and terminating April 16, 1995, computed at 40 hours per workweek." D. & O. at 10.

We agree that Mordovskoi should be paid for the work he performed at the \$25.74 per hour rate. We reverse, however, the ALJ's finding regarding the number of weeks Mordovskoi worked in 1995 because, on this issue, material facts are in dispute. The record evidence as to the number of weeks Mordovskoi worked for Native Technologies in 1995 ranges from a high of 21 weeks to a low of six weeks,^{12/} and none of these totals agrees with the 14 week period for which the ALJ ordered payment. On remand, the ALJ will make a fact-based finding as to the total number of hours and weeks Mordovskoi worked for Native Technologies in 1995.

CONCLUSION

The ALJ's grant of summary judgment to Native Technologies regarding its employment of Mordovskoi is reversed and the case is remanded for further proceedings consistent with this opinion.

ORDER

Accordingly, it is **ORDERED** that the case is remanded to the Administrative Law Judge for findings on the following:

^{11/}(...continued)
wage payment requirements of the LCA.

^{12/} In his complaint, Mordovskoi stated that in 1995 he worked 21 weeks, from January 1 through May 28, 1995. Jarrett Dec. at Ex. 1. The Administrator maintained that Mordovskoi worked 20 weeks, from January 1 through May 21, 1995. Administrator's Motion for Summary Judgment at 18. Native Technologies' counsel indicated that Mordovskoi worked from December 27, 1994, through April 22, 1995, or 16 weeks in 1995. Native Technologies' Opening Brief at 5. But Ryan informed the investigators that Mordovskoi was hired on January 1 and terminated on April 16, 1995, *i.e.*, 15 weeks. Jarrett Dec. at Exs. 10-1, 1-4. Finally, Native Technologies paid Mordovskoi for 12 ¼ weeks of work in 1995, even though the time cards memorializing his work cover only six weeks of work. Jarrett Dec. at Ex. 8.

- 1) The total number of hours and weeks Mordovskoi performed services for Native Technologies during the period August through December 1994, and the total wages owed to Mordovskoi for that work; and

- 2) The number of hours and weeks Mordovskoi performed services for Native Technologies in 1995, and the total wages owed to Mordovskoi for that work.

SO ORDERED.

PAUL GREENBERG

Chair

E. COOPER BROWN

Member

CYNTHIA L. ATTWOOD

Member