

U.S. DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

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Washington, D.C. 20036

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In the Matter of :  
 : Case No. 84-WPA-4  
GARDENHOUR ORCHARDS, INC. :  
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ORDER OF DISMISSAL

This proceeding arises under the Wagner-Peyser Act of 1933, 29 U.S.C. §49, et seq., and the regulations governing the Job Service system at 20 C.F.R. Part 658, as well as the temporary alien labor certification procedures provided for by the Immigration and Nationality Act, 8 U.S.C. §1101, et seq., and the regulations promulgated thereunder at 20 C.F.R. Part 655.

On December 2, 1983 the Employer, Gardenhour Orchards, Inc., filed a request for administrative-judicial review of the notice of ineligibility to apply for temporary labor certification in 1984 and subsequent years. Said notice was issued by the Regional Administrator on November 14, 1983, and was based on the findings that: (1) the Employer failed to pay its workers in accordance with the adverse effect wage rate, under 20 C.F.R. §655.207(b), established for growers in the state of Maryland and effective September 2, 1983; and (2) the Employer failed to comply with the directives emanating from the September 8, 1983 Order of U.S. District Court Judge Charles R. Richey in the case of NAACP v. Donovan, C.A. Number 82-2315, of which the Employer was notified by telegrams from the Regional Administrator on September 13 and September 23, 1983. Thus, the notice of ineligibility is based on the Regional Administrator's finding of non-compliance with both the applicable regulation and the directives of the Federal Court Order of September 8, 1983, and is issued pursuant to the Regional Administrator's authority to deny temporary alien labor certification services to employers under the Job Service regulation at 20 C.F.R. §655.210 as well as the directives of Judge Richey's Order of September 8, 1983 which mandate denial of certification services to employers found to be in non-compliance with that Order.

As the sole issue on appeal appeared to be the validity of the regulations applied by the Regional Administrator, which is an issue beyond the jurisdiction of this Office, the Employer was directed by Order issued January 30, 1984 to

Show Cause why this appeal should not be dismissed. 20 C.F.R. §658.425(a)(4). No objections have been presented by the Employer.

Accordingly, as the Regional Administrator's determination has not been challenged on grounds properly reviewable by this Office, it is hereby ORDERED that this proceeding is DISMISSED for lack of subject matter jurisdiction.

  
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E. EARL THOMAS  
Deputy Chief Judge

Dated: **6 MAR 1984**  
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Washington, D.C.

EET/JB/fm

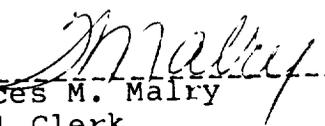
Service Sheet

Case Name: Gardenhour Orchards, Inc.

Case No. 84-WPA-4

Title of Document: Order of Dismissal

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