



Issue Date: 11 June 2012

CASE NO.: 2012-LCA-00041

In the Matter of:

**ADMINISTRATOR, WAGE AND HOUR DIVISION
U. S. DEPARTMENT OF LABOR, Atlanta, Georgia
Prosecuting Party,**

v.

**SEMAFOR TECHNOLOGIES, LL.C.,
Respondent,**

and

**MAHESH V. BORDAWEKAR,
Party-In-Interest.**

**FINAL ORDER OF DISMISSAL FOR
LACK OF JURISDICTION**

This matter arises under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1101 and § 1182 (the Act), and the implementing regulations at 20 C.F.R. Part 655, Subparts H and I. The Administrator's Determination in this matter, issued on May 18, 2012, held that Respondent failed to pay required wages to 73 H-1B nonimmigrant workers and ordered payment of back wages in the amount of \$741,288.02, unless Respondent appealed the determination within 15 calendar days (*See* Reference # 1581706). Respondent was not assessed a civil monetary penalty. The Administrator's Determination, mailed to Respondent and the employee Parties-in-Interest, included instructions on the procedure for filing a request for hearing.¹ To date, neither Respondent nor any party-in-interest has objected to the Administrator's Determination or formally requested a hearing.

However, on May 29, 2012, the Office of Administrative Law Judges (OALJ) received a facsimile from Mr. Bordawekar. Mr. Bordawekar is a former employee of Semafor Technologies and a party-in-interest in this case. Acknowledging receipt of the Administrator's Determination, Mr. Bordawekar sought copies of the enclosures that he alleges were not

¹ The Assistant District Director's May 18, 2012 letter to Mr. Bordawekar cites to Reference # 1551706.

included in the mailing.² In his letter, Mr. Bordawekar specifically wrote he was not requesting a hearing but was seeking the documents to determine the amount owed him by Respondent. As no party has yet requested a hearing, and the time for doing so having expired, the initial question before me is whether this tribunal has jurisdiction to take any action related to this case.

Labor condition applications are governed by the Act and its implementing regulations and jurisdiction is vested in OALJ to review determinations by an Administrator pursuant to 20 C.F.R. § 655.820. Section 820 provides that any interested party desiring a review of a determination issued under §§ 655.805 and 655.815 shall make a request for such an administrative hearing in writing to the Chief Administrative Law Judge.³ No such request has been made and I agree with the analysis set forth in *Hitek Learning Systems, Inc. v. South Carolina Employment Security Commission and USDOL*, 2001-JPT-2 (ALJ Jan. 25, 2002) in concluding that the Act and its implementing regulations do not confer jurisdiction on OALJ where neither the employer nor the complainant, or any interested party, has requested a hearing. Likewise, I find nothing in the Act or its implementing regulations conferring jurisdiction on OALJ that would support an order to the Administrator to release documents to a party-in-interest when there has been no request for hearing in the case.

Consequently, as neither Mr. Bordawekar nor Respondent has satisfied the procedural requirements of the regulations by requesting a hearing, I find this tribunal lacks subject-matter jurisdiction⁴ to hear the action and, as a result, it must be dismissed.⁵

ORDER

IT IS HEREBY ORDERED that the above-captioned matter is DISMISSED, without prejudice, for lack of jurisdiction.

A

STEPHEN R. HENLEY
Administrative Law Judge

Date Signed: June 11, 2012
Washington, DC

² The enclosures requested by Mr. Bordawekar include: a list of LCAs; the Summary of Unpaid Wages, Form WH-56; the Installment Back Wage Disbursement and Pay Evidence Instruction; and the Back Wage Installment Agreement. I note the copy of the Administrator's Determination received by OALJ did not include these same enclosures.

³ Individuals may request a hearing under two circumstances. First, the complainant, or any other interested party, may request a hearing where the Administrator determines, after investigation, that there is no basis for finding that an employer has committed violations of the Act. Second, the employer, or any other interested party, may request a hearing where the Administrator determines, after investigation, that the employer has committed violations of the Act. 20 C.F.R § 655.820(b).

⁴ See *City of New York v. Clinton*, 985 F. Supp. 168, 173 (D.D.C. 1998) (quoting *Raines v. Byrd*, 521 U.S. 811, 818 (1997)), *aff'd*, 524 U.S. 127 (1998).

⁵ Mr. Bordawekar might consider directing his request for documents to the District Director, Wage and Hour Division, U.S. Department of Labor, 124 Barnard Street, Room B-210, Savannah, GA 31401.

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review (“Petition”) that is received by the Administrative Review Board (“Board”) within thirty (30) calendar days of the date of issuance of the administrative law judge’s decision. *See* 20 C.F.R. § 655.845(a). The Board’s address is: Administrative Review Board, U.S. Department of Labor, Room S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

At the time you file the Petition with the Board, you must serve it on all parties as well as the administrative law judge. *See* 20 C.F.R. § 655.845(a).

If no Petition is timely filed, then the administrative law judge’s decision becomes the final order of the Secretary of Labor. Even if a Petition is timely filed, the administrative law judge’s decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 655.840(a).