

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 25 September 2013

Case No.: 2012-PED-00001

In the Matter of

**ADMINISTRATOR,
OFFICE OF FOREIGN LABOR CERTIFICATION,
EMPLOYMENT AND TRAINING ADMINISTRATION,
UNITED STATES DEPARTMENT OF LABOR**

Prosecuting Party

v.

PETER'S FINE GREEK FOOD, INC.

Respondent

Appearances: Molly K. Biklin, Esquire
Susan B. Jacobs, Esquire
Summer C. Smith, Esquire

For Administrator

Paul De Camp, Esquire
Robin C. Terry, Esquire
Allan S. Rubin, Esquire
JACKSON LEWIS, LLP

For Respondent

Before: **THERESA C. TIMLIN**
Administrative Law Judge

DECISION AND ORDER

This matter arises from a request for review of a Final Determination issued by the Administrator of the Office of Foreign Labor Certification ("OFLC") against Respondent Peter's Fine Greek Foods, advising Respondent that the Administrator had determined that Respondent should be debarred from participating in the H-2B temporary employment certification program. By letter dated April 11, 2012, Respondent requested a hearing in accordance with 20 C.F.R. § 655.31(e)(4)(2012).¹

On March 18, 2011, the Wage and Hour Division ("WHD") of the United States Department of Labor issued several violations under the Immigration and Nationality Act

¹ The Department of Labor has announced the continuing effectiveness of the 2008 H-2B rule. Temporary Non-agricultural Employment of H-2B Aliens in the United States, 77 Fed. Reg. 28,764, 28,765 (May 16, 2012). Therefore, all references in this order are to the 2008 regulations, which went into effect in 2009.

(“INA” or “the Act”) and its regulations. (AX 1.)² In November and December 2011, I held a hearing in the related WHD case, represented by case number 2011-TNE-0002. In that case, I considered whether Respondent misrepresented material facts on its 2010 *Application for Temporary Employment* (“TEC”), substantially failed to meet several conditions of its 2010 TEC and failed to cooperate in the WHD investigation. I have issued my Decision and Order in that case today, separately.

On December 30, 2011, the Administrator of the Office of Foreign Labor Certification issued a Notice of Intent to Debar to Respondent for two years. (AX 51.) In its notice, the Administrator found that Respondent substantially violated a material term or condition of its temporary labor certification. The Administrator informed Respondent that Respondent could submit evidence to rebuttal of the Notice of Intent to Debar within fourteen days. (AX 51 at 3.)

On March 16, 2012, the Administrator issued a Notice of Debarment to Respondent debaring Respondent for a period of two years. (AX 52.) In its notice, the Administrator acknowledged that Respondent requested that the Administrator hold the debarment decision in abeyance until the issuance of a determination in the WHD case. The Administrator denied the request stating that debarment is not dependent on the outcome of that proceeding and would require additional time expenditures. The Administrator noted that the Department of Labor (“Department”) had reviewed the rebuttal evidence provided by Respondent to challenge the Department’s findings. After its review, the Department determined that Respondent met still two bases for debarment:

- (1) The employer committed a pattern or practice of acts that are significantly injurious to the wages or benefits offered under the H-2B Program of a significant number of the employer’s U.S. or H-2B workers.
- (2) The employer significantly failed to cooperate with a Department investigation or with a Department official performing an investigation, inspection, or law enforcement function.

(AX 52.) Respondent requested a hearing on the Administrator’s determination.

On October 18, 2012, this office received a Motion in Limine from the Administrator, seeking the preclusion of several of Respondent’s exhibits. The Administrator argued that exhibits demonstrating Respondent’s post-2010 compliance with Temporary Employment Certifications were irrelevant to the debarment proceeding. I denied the Administrator’s motion by Order dated November 15, 2012, finding that the proposed exhibits were potentially relevant to the debarment adjudication.

I held the hearing in this matter in New York City on December 12, and December 13, 2012, at which time the parties had full opportunity to present evidence and argument.

² The following abbreviations will be used in this Decision: “AX” for Administrator’s Exhibits; “RX” for Respondent’s Exhibits; “JX” for Joint Exhibits; “Tr.” for the transcript of the December 12 and December 13, 2012 hearing; and “Tr. (WHD)” for the transcript of the hearing in case 2011-TNE-0002.

At the hearing, I admitted the entire record including all of the exhibits and transcript from WHD case number 2011-TNE-0002, as Joint Exhibit 1.

I admitted the following Administrator's exhibits: AX 51, 52, 53, 54, 55, 56.

I admitted the following Respondent's exhibits: RX 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 14, 15, 16, 17, 18 (pp. 244-45, 256-57), 19, 20, 21, 22 (pp. 331-402), 23, 24, 25, 27, 28, 29, 30, 31, 32(A), 32(B), 33.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Evidence

1. 2012 Hearing Testimony

a. *Peter Karageorgis*

Pantelis ("Peter") Karageorgis testified that, since 2010, he has changed the way he has run Peter's Fine Greek Foods. (Tr. 18.) He stated that he realized that his time records were an issue and before the 2011 season, he bought time cards and time clocks so that his employees could record their hours. (Id.) He acknowledged that he did not include set up or teardown time in his 2010 timesheets, but stated that they are recorded now. (Tr. 98.) Karageorgis stated that he installed the time clock in the stand and instructed his employees on how to use the time cards. (Tr. 19.) He told his workers to punch the time card before they begin any daily preparations. (Id.) He also told employees that they should punch in and out during long breaks, but not for cigarette or bathroom breaks. (Id.) Karageorgis stated that when the stands do not have electrical power, the employees record their own hours without the time clock. (Id.) Karageorgis testified that he never filled out a time card for a worker. (Tr. 20.)

Karageorgis also stated that he hired a payroll company, Paychex, to administer his payroll after the 2010 season. (Tr. 20.) He used Paychex during the 2011 and 2012 fair seasons. (Tr. 21.) Karageorgis testified that he collected time cards from his employees at the end of every week and relayed the information to the payroll company. (Tr. 18.) Then Paychex sent checks which Karageorgis would distribute to his employees. (Id.) He stated that he keeps the Paychex records in his house. (Tr. 21.) He testified that he paid his employees for every week that they worked in 2011 and 2012. (Tr. 22.)

He testified that he conferred with lawyers about how to improve his business. (Tr. 18) Karageorgis stated that he worked with representatives to file his H-2B applications and requested that the representatives explain everything they put in the application to him. (Tr. 18.) Karageorgis worked with the Pierce Law Firm on PFGF's 2011 application and James Judkins of JKJ Workforce Agency Incorporated on the 2012 application. (Tr. 42, 44.) Karageorgis testified that he organized his business better in 2011 and 2012. (Tr. 94-95.) He stated that before 2010 he "didn't know there is such a prevailing wage" and that his lawyer did not explain the prevailing wage requirement to him. (Tr. 101-02.)

Karageorgis identified various employment, H-2B application, tax, employee hours and payroll records. (Tr. 22-38.) He testified that all of PFGF's 2011 and 2012 H-2B workers' names appear in Respondent's Exhibits 6 and 7. (Tr. 29-31.) He testified that although the Danbury fair appeared in the 2011 H-2B application, he did not operate a stand at that fair. (Tr. 39.) Karageorgis explained that he reviewed the 2011 application with his attorney including the prevailing wage requirement. (Tr. 56.) He signed the 2011 application before it was sent to the Department of Labor. (Tr. 40.) Karageorgis testified that he paid his employees \$8.26 during the 2011 season, which is the highest prevailing wage rate for the fairs operated by PFGF. (Tr. 41.) He stated that he paid his employees time and a half overtime for any hours over forty hours per week in 2011. (Tr. 42-43.) He testified that in 2012, he also paid his employees time and a half for overtime hours, based on the highest prevailing wage rate. (Tr. 45.)

Karageorgis testified that when a worker absconded in 2011, he alerted his representative, Judkins, and they reported the disappearance to the government. (Tr. 46-47.) He learned that when borrowing an H-2B employee from another H-2B employer, he needs to guarantee that he is not laying off American workers and that he cannot find other workers to do the needed work. (Tr. 48.) He stated that he exchanged such guarantees with his friend, Nick Strates. (Id.) He also testified that he paid for his employees to go home to Mexico in 2011, reflected by the receipt admitted as Respondent's Exhibit 30. (Tr. 49.) Karageorgis testified that he bought return plane tickets for all of his employees who stayed until the end of the season. (Tr. 91.)

Karageorgis testified that the job responsibilities performed by the H-2B employees have remained the same since he started his business. (Tr. 57.) He acknowledged that the 2012 Application for Prevailing Wage Determination form did not include cooking in the job duties section, although cooking remains a part of his employees' duties. (Tr. 64-65.) Karageorgis testified that he did not make the decision regarding how to word the job description in the 2012 prevailing wage application. (Tr. 114.) He stated that he informed Judkins about the job duties of his employees and that Judkins visited Respondent's stand. (Tr. 114-15, 119.)

Karageorgis acknowledged that he did not receive a prevailing wage determination for the Albany Tulip Festival, despite the fact that he operated at that fair. (Tr. 66.) He stated that he was not scheduled to operate at that fair at the time he submitted his application and that he did not later change his application to include that event. (Id.) Karageorgis testified that he often operates at the same fairs every year. (Tr. 67-72.) He agreed that employees often work more than forty hours per week and that in 2011 and 2012 he paid overtime to his employees. (Tr. 72.) He acknowledged that his advertisement in the New York State Job Bank stated no overtime expected. (Tr. 74.) However, the advertisement stated that overtime, if any, would be calculated and paid per applicable regulation. (Tr. 102.) He explained that he did not want to guarantee overtime, because fair operation is contingent on the weather. (Tr. 125-26.)

Karageorgis explained that he made cash payments to H-2B employees in 2011 and 2012. (Tr. 75.) He also made cash payments to J-1 student employees. (Tr. 87.) He stated that the cash payments to the H-2B employees were not for hours worked. (Tr. 75.) He explained that he would give his employees one hundred dollars upon their arrival to the United States because they did not have money at that time. (Id.) The other payments were to help his workers address

special circumstances, like a family emergency, and to pay for living expenses. (Tr. 75-86.) Karageorgis testified that he did not reward the employees for their hearing testimony. (Tr. 104.) He stated that he never promised gifts or bonuses to his employees. (Tr. 109-10.) He agreed that he is more generous to workers if he has a good season. (Tr. 110-11.)

Karageorgis stated that since the 2010 fair season, he has not been permitted to operate at the New York State Fair, which made up approximately fifty percent of his business. (Tr. 51.) He testified that his contract was renewed for the 2011 season. (*Id.*) However, after an unfavorable article was published in a Syracuse newspaper regarding his business, he received a call stating that he could not operate at the New York State Fair. (Tr. 51-52.) Karageorgis testified that the article stated that PFGF severely mistreated its workers. (Tr. 54.) Karageorgis admitted that he made mistakes with paperwork, but stated that he never mistreated his employees. (Tr. 52.) He relayed that he has had a lot of positive feedback from students who had worked with him and their families. (*Id.*) He testified that he always intended to “go by the law.” (Tr. 52-53.) He refuted the newspaper article’s accusations and noted that his employees volunteer to work with him. (Tr. 54.) He testified that missing the New York State Fair also hurt his employees financially. (Tr. 106.)

Karageorgis testified about the effects of a potential debarment on his business. He stated, “I get debarred, I’m destroyed. I already suffer enough. I’m not going to have any business to run. I can’t run the business.” (Tr. 54.) He clarified that he is unable to hire American workers to operate his business because they need full-time work, and thus, he depends on H-2B employees. (*Id.*) He stated that employees come back to work for him year after year and that his business depends on those workers. (Tr. 55.) Karageorgis acknowledged that he received approval for H-2B workers during one season, but was not issued any visas. (Tr. 96, 110.) He stated that the non-issuance of visas was a big loss for him and that if it had happened more than one year he would have gone out of business. (Tr. 96, 110.) During that year he only had one stand and had difficulty finding other workers. (Tr. 111.) He testified that he has been financially affected by lawyers’ fees and lack of revenue and that his reputation has suffered. (Tr. 109.)

b. Catherine Quinn-Kay

Catherine Quinn-Kay testified as a rebuttal witness on behalf of the Administrator. Quinn-Kay is the Assistant District Director for the Syracuse Area Office of the Wage and Hour Division. She testified that her office conducted an investigation of Respondent in 2010 and that according to her search of a national database on December 7, 2012, there have been no other investigations of Respondent. (Tr. 129-30.) Quinn-Kay explained that a lack of investigation does not mean that an employer is compliant; instead, it merely means that an employer has not been investigated. (Tr. 130.) She also stated that the lack of investigation could indicate a lack of worker complaints about Respondent. (Tr. 142.)

Quinn-Kay reviewed several documents created or filed by Respondent in 2011 and 2012 including payroll records, paystubs, time cards, cash receipts and taxes. (*Id.*) She noted that several employees worked more than forty hours per week during the majority of weeks in 2011. (Tr. 132-34.) Quinn-Kay referred to Respondent’s 2011 TEC stating that a basic work week is

thirty to forty hours with varied overtime. (Tr. 134.) She noted that employees were paid time and a half for overtime hours. (Tr. 133.) She remarked that the representation of hours in the TEC is inconsistent with the number of hours reflected in Respondent's payroll records. (Id.)

Quinn-Kay also reviewed 2012 paystubs and noted that employees' hours were roughly forty hours per week at the beginning of the fair season, but rose to as high as seventy-eight hours per week. (Tr. 135-36, 138.) Again, Quinn-Kay noted that employees were paid time and a half for overtime hours. (Tr. 137.) She reviewed Respondent's 2012 TEC in which Respondent listed basic hours as forty hours per week with no overtime. (Tr. 138.) Quinn-Kay opined that the hours worked by Respondent's employees were inconsistent with the TEC application's description of hours. (Id.) She testified that based on her review, half of the work weeks were in excess of forty hours. (Id.)

Quinn-Kay noted that Respondent also listed basic hours as forty hours per week with no overtime in its 2010 *Application for Temporary Employment Certification*. (Tr. 139.) She stated that she reviewed Respondent's 2011 and 2012 advertisements and noted that they did not list that substantial overtime was available or the overtime rate of pay. (Tr. 140.) According to Ms. Quinn-Kay, it is important to list overtime opportunities because a job with significant overtime could be more attractive to American workers. (Id.) She stated that the job would be more appealing to workers if they knew that they could earn \$12.00 for most of the season in 2011 and at least half of the season in 2012. (Id.) Further, Quinn-Kay testified that Respondent's H-2B employees received cash payments. (Tr. 141.) However, those cash payments were not listed in the advertisements. (Id.) She stated that employers are required to list everything that will be paid to H-2B workers, including overtime and bonuses, in their advertisements, so that American workers can have the same opportunities. (Id.) Quinn-Kay acknowledged on cross-examination that Respondent's 2011 advertisement in *Newsday* (AX 53-6) stated "O/T available," however; she interpreted the language as representing that overtime was available on an infrequent basis. (Tr. 143.)

Quinn-Kay agreed that if Respondent had advertised that employees could work between sixty and seventy hours per week and failed to provide employees opportunities to work between sixty and seventy hours per week, Respondent could be subject to a violation. (Tr. 143.) She also acknowledged that if Respondent specifically promised in advertisements that cash bonuses would be available and then failed to provide them, he might be subject to a violation. (Tr. 144.) She stated, however, that the cash bonus scenario was more ambiguous. (Id.) She testified that, based on the records provided by Respondent, Respondent was more compliant in 2011 and 2012 than 2010 with respect to payroll. (Tr. 148.) However, she noted that Respondent's records would only form a part of a full Department of Labor investigation. (Id.) Quinn-Kay also testified regarding the Fair Labor Standards Act, and the differences between the FLSA and the H-2B program. (Tr. 148-50.)

Quinn-Kay testified that she has experience making decisions regarding whether to recommend debarment. (Tr. 199.) She stated that an employer's reliance on an outside party would be considered in making such decision, but that the responsibility for compliance lies with the employer. (Tr. 200.) Quinn-Kay testified that she did not know whether the Department

gave any weight to Karageorgis' reliance on advice of counsel, in making its decision to pursue debarment. (Tr. 204.)

c. Jennifer McGraw

Jennifer McGraw, Regional Immigration Coordinator with the Wage and Hour Division of the United States Department of Labor, also testified as a rebuttal witness on behalf of the Administrator. She testified that she provides guidance to Department of Labor staff in conducting investigations involving H-1B and H-2B employees. (Tr. 160.) She formerly worked as a certifying officer with the Department of Labor's Employment and Training Administration ("ETA"). (Tr. 161.) She reviewed Respondent's 2010, 2011 and 2012 TEC, prevailing wage determination requests and additional application materials. (Tr. 162.) McGraw also reviewed the lists of H-2B employees hired by Karageorgis in 2011 and 2012 and Karageorgis' statements made during the course of litigation. (Tr. 162-63.) She did not interview any of the witnesses involved in the proceeding against Respondent, but did review employee interview statements. (Tr. 175.)

McGraw testified that the job title and duties listed in an employer's TEC are important in ETA's determination of the prevailing wage. (Tr. 164-65, 168.) She explained how ETA calculates the prevailing wage for employers who, like Respondent, operate in several locations. (Tr. 188-89.) McGraw reviewed the job title, job duties and offered wages listed on Respondent's 2010, 2011 and 2012 TECs. (Tr. 164-67.) She noted that the 2010 TEC stated that the primary job duty of the workers would be cooking, whereas the 2012 TEC's job duties section indicated that employees would operate a food concession stand, but did not indicate that cooking was the primary duty. (Tr. 168.) McGraw explained that the 2010 cook job duties resulted in a higher prevailing wage than the 2012 amusement/recreation attendant job duties. (Tr. 168.) She stated that the difference in the job duties between the 2010 and 2012 TECs "raised a flag [that]... either that the job duties had changed throughout the three year period or that the information on the TEC was not true and accurate." (Tr. 169.) She stated that if employees were performing the same tasks in 2010 and 2012, it would indicate to her that the information in the 2012 TEC was not true and accurate. (*Id.*) She also testified that employees performing functions not listed in the job duties portion of the TEC would potentially violate the H-2B regulations. (*Id.*) McGraw stated that based on her review of the employee interview statements, cooking was the primary job duty of Respondent's H-2B employees, but that they did perform the other tasks listed in Respondent's TECs. (Tr. 177.)

She testified that she is not familiar with the staffing at Respondent's stands. (Tr. 178-79.) When asked by Respondent's counsel how best to list a job which involves varied responsibilities on a TEC, McGraw replied that it was a better question for an ETA representative. (Tr. 180.) She testified that she did not have any information that any employees or job applicants were misled by "operate food concessions" language in Respondent's TEC. (Tr. 182.) She also testified that in her experience providing prevailing wage determinations, a cook would have a higher prevailing wage than an amusement attendant. (Tr. 189-90.)

McGraw also commented on the number of H-2B position requested by Respondent in 2011 and 2012 versus the amount of H-2B workers actually hired. (Tr. 170-72.) In 2011,

Respondent originally requested twenty H-2B employees, but sponsored nine. (Tr. 171.) McGraw testified that the difference “raises a flag as to whether or not the need that was stated on the TEC was true and accurate.” (*Id.*) She made similar statements regarding the amount of workers requested in 2012 versus the amount of workers hired by Respondent. (Tr. 173.) She stated that when employers request more workers than they need, there are concerns that workers might arrive and there would not be enough work for them to perform. (Tr. 173-74.) In addition, there are a limited number of visas available nationally; accordingly, it is important to ensure that employers have a legitimate need for the visas they request. (Tr. 174.)

McGraw testified that she does not know how many visa employees Respondent used in 2009 and 2010. (Tr. 184.) She stated that Respondent’s application would have been accurate, if Respondent believed that it would operate at a fair which would require it to employ twenty workers, at the time it filled out its 2011 and 2012 TECs. (Tr. 183-85.) If Respondent’s business needs remained the same between 2011 and 2012, then Respondent should have requested fewer workers in 2012. (Tr. 186.) She also testified that she did not have knowledge of Respondent’s attempts to obtain permission to operate at the 2012 New York State Fair. (Tr. 187.) McGraw stated that if an employer does not need the number of workers requested, the employer is supposed to inform U.S. Citizenship and Immigration Services to allow visas to be reallocated. (Tr. 192.) She did not know if Respondent had done so. (Tr. 192-93.)

2. Documentary Evidence

Notice of Intent to Debar (AX 51)

The Employment and Training Administration (“ETA”) issued a Notice of Intent to Debar to Respondent on December 30, 2011. ETA notified Respondent that it was seeking a two year debarment based on its findings that Respondent “committed a pattern or practice of acts that are significantly injurious to the wages or benefits offered under the H-2B Program of a significant number of [Respondent’s] U.S. or H-2B workers” and Respondent “significantly failed to cooperate with a DOL investigation or with a DOL official performing an investigation, inspection or law enforcement function.” Specifically, ETA alleged that Respondent failed to pay ten of its H-2B employees \$10.71 per hour, the prevailing and offered wage. ETA also alleged that Respondent failed to maintain and produce various records requested during the DOL investigation.

ETA informed Respondent that Respondent could submit evidence in rebuttal to the Notice of Intent to Debar within fourteen days of the date of the Notice. Upon receipt of Respondent’s answer, ETA would review the information and notify Respondent within fourteen days of its decision whether or not to uphold the proposed debarment. If Respondent did not respond, then the Notice of Intent to Debar would become the final decision of the Secretary.

Notice of Debarment (AX 52)

ETA issued a Notice of Debarment to Respondent on March 16, 2012. In its letter, ETA acknowledged receipt of rebuttal evidence from Respondent. ETA determined that the two bases for debarment listed in the Notice of Intent to Debar were established. ETA stated that

Respondent failed to pay nineteen H-2B employees and one U.S. worker the prevailing and offered wage of \$10.71 per hour. ETA considered Respondent's arguments and stated that they did not alter Respondent's failure to pay the offered wage during the DOL investigation period. Further, ETA maintained its determination that Respondent failed to cooperate with the DOL investigation.

Deposition of Peter Karageorgis (AX 53; RX 33)

Karageorgis testified at a deposition on November 16, 2012. His deposition testimony is largely consistent with his hearing testimony. At deposition, Karageorgis provided additional details regarding his employment practices in 2011 and 2012. He testified about specific fairs where PFGF operated in 2011 and 2012 including setup, teardown, the number of stands, dates of operation and transportation between fairs. Karageorgis also testified, to the best of his recollection, regarding tasks specific employees performed on various dates. He testified generally about the daily tasks undertaken by PFGF's employees. (RX 33 at 41.) He described the time cards used to record employee's time. (Id. at 14, 96.) He stated that he never filled out time cards for any of his employees. (Id. at 14.) He also testified that he never reviewed the employees' reported hours to verify that they calculated their hours properly. (Id. at 15.)

Karageorgis stated that he gave the H-2B employees one hundred dollars when they first arrived in the United States in 2011 and in previous years. (RX 33 at 25.) He stated that although he made cash payments to employees in 2011 and 2012, he never deducted the payments from their pay later on. (Id. at 63, 120.) Even if the receipt from the cash payment indicated payment for "wages," he never deducted the amount from the employees' pay. (Id. at 69-71.) Karageorgis stated that he also gave cash payments to American workers. (Id. at 64.) He testified that he never took money out of his workers' pay for accommodation expenses. (Id.) PFGF only brought over eight or nine employees in 2011 and 2012 despite requesting approximately twice as many on its TECs because he did not need any more workers and he did not have any extra events. (Id. at 29.) He stated that he determines how many workers he needs by the amount of fairs where PFGF is scheduled to operate. (Id.)

Karageorgis testified regarding PFGF's 2011 help wanted advertisement. (RX 33 at 83.) He stated that he did not advertise fifty hours even though employees work fifty hours per week, because he could not guarantee workers that they would work that many hours. (Id.) He testified that he did not advertise bonuses. (Id. at 84.) He also stated that he did not advertise gifts because he did not know if he could advertise gifts. (Id.) Karageorgis testified that he did not write the New York State Job Bank or newspaper advertisements himself. (Id. at 83-86.) He also discussed PFGF's 2012 prevailing wage application. (Id. at 112.) He stated that he told his representative, James Judkins, about what tasks PFGF's employees performed at the fairs, and that Judkins characterized PFGF's business on the application. (Id.) Karageorgis acknowledged that the application did not include cooking or driving, although employees performed both tasks. (Id. at 114.) He testified that he did not include driving because he was not looking for a driver. (Id. at 116.) Karageorgis did not know why zero was written in the overtime section of the application. (Id.)

In addition, Karageorgis compared the 2011 season to the 2010 season, noting similarities and differences such as a week of cleaning prior to the start of the 2011 fair season which did not occur in 2010. (RX 33 at 19.) He testified that he had approximately the same number of employees at the Meadowlands fair in 2010 and 2011. (Id. at 28.) He testified that PFGF employed some J-1 visa workers in 2011. (Id. at 30-32.) He stated that he filled out paperwork and called his lawyer about the J-1 visa program. (Id. at 31-32.) One of the J-1 employees was paid in cash because she had not applied for a Social Security card and the payroll company would not issue a check. (Id. at 56.) Karageorgis stated that PFGF did not employ J-1 employees during any other year. (Id. at 33.) PFGF also employed American workers in 2011 and 2012. (Id. at 33.) Karageorgis testified that employees performed the same work tasks in 2010, 2011 and 2012. (Id. at 42, 100.)

Respondent's Interrogatory Responses (AX 53-1)

AX 53-1 is Respondent's responses to Administrator's First Set of Interrogatories. In the interrogatory responses, Respondent listed PFGF's 2011 and 2012 fairs including fair schedules, all individuals sponsored by Respondent for H-2B visas in 2011 and 2012 and all of Respondent's employees in 2011 and 2012. Respondent stated that in 2011, PFGF's TEC was completed, reviewed or signed by Karageorgis, attorney Pierce and Jody Bachman of the Pierce Law Firm. Respondent stated that in 2012, PFGF's TEC was completed, reviewed or signed by Karageorgis and James Judkins of JKJ Workforce Agency, Inc. Respondent further stated that that he borrowed Artemio Hugo Pacheco Flores, an H-2B nonimmigrant employee, in 2012.

PFGF Tax Returns and Statements (RX 1; RX 3; RX 4)

The record contains PFGF's 2011 Quarterly Federal Tax Return for all quarters (Form 941), 2011 Employer's Annual Federal Unemployment Tax Return (Form 940), Employer's Quarterly Metropolitan Commuter Transportation Mobility Tax Return (MTA-305) for all quarters, and PFGF's 2011 New York State Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return (NYS-45) for all quarters. In addition, PFGF's 2011 W-2 and W-3 statements were included.

The record also contains PFGF's 2012 Quarterly Federal Tax Return for quarters 1 (January, February, March) and 2 (April, May, June) and PFGF's 2012 New York State Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return (NYS-45) for quarters 1 and 2.

2011 Employee Earnings Records (RX 5)

The Employee Earnings Record records payments to eighteen employees from March 29, 2011 through December 31, 2011. The listed employees are Delfino Cabrera Perez, Daniel Crisanto, Jonathan Dominguez, Nektaria Galaris, Saul Galicia, Richard Garrard, Pantelis Karageorgis, Mehmet Koyuturk, Cean Lennon, Joaquin Moran Velazquez, Armando Navarro, Ernesto Navarro, Leslie Nelson, Mustafa Ozer, Alvaro Restvepo, Umit Vanlioglu, Agustin Vazquez and Burak Yazar.

2012 Employee Earnings Records (RX 2)

The Employee Earnings Record records payments to ten employees from January 3, 2012 through June 30, 2012. The listed employees are Delfino Cabrera Perez, Nektaria Galaris, Saul Galicia, Pantelis Karageorgis, Jose Alfredo Mendoza Lopez, Joaquin Moran Velazquez, Armando Navarro, Ernesto Navarro, Agustin Vazquez and Pablo Vazquez Medina.

PFGF H-2B Employee Lists (RX 6; RX 7)

PFGF's 2011 employee list includes Delfino Cabrera Perez, Daniel Crisanto Ferrari, Jonathan Dominguez Espinoza, Saul Galicia Aguilar, Osvaldo Mora Equivel, Joaquin Moran Velazquez, Ernesto Navarro Lopez, Armando Navarro Luna and Agustin Vazquez Arreola. The list indicates that another individual, Gerardo Navarro Luna, was not issued a visa.

PFGF's 2012 employee list includes Delfino Cabrera Perez, Saul Galicia Aguilar, Jose Alfredo Mendoza Lopez, Joaquin Moran Velazquez, Ernesto Navarro Lopez, Armando Navarro Luna, Agustin Vazquez Arreola and Pablo Vazquez Madena.

Copies of Employee Visas (RX 8)

This exhibit contains copies of 2011 and 2012 visas, passports and Social Security work authorization cards for several employees.

2011 and 2012 Recruitment Documentation (AX 53-6; AX 53-7; RX 11; RX 12; RX 18)

PFGF placed help wanted advertisements in *Newsday* on February 20, 2011 and February 21, 2011. The record contains an affidavit of publication signed by Angela Larsen of Newsday, Inc. PFGF placed a job listing in the New York State Job Bank for employment beginning on May 20, 2011. In 2012, PFGF placed a help wanted advertisement in the *Poughkeepsie Journal*. PFGF placed another job listing in the New York State Job Bank in 2012 for employment beginning on April 30, 2012.

2011 ETA Filing and Supplemental Filing and ETA Final Determination (RX 14; RX 15; RX 16)

Respondent filed an *Application for Temporary Employment Certification* on March 18, 2011. Respondent's application package included Prevailing Wage Determination (Form 9141), *Application for Temporary Employment Certification* requesting twenty H-2B workers (Form 9142), Employer's Statement of Temporary Need, 2011 Fair Itinerary, Additional Recruitment Activities, Appendix B.1, Employer's Recruitment Summary Report and explanation of drug testing and background screening requirement. In response to ETA's Request for Information, Respondent filed a supplement to his application, listing the hire status of the employees enumerated in the Recruitment Summary Report.

Respondent's 2011 application requested certification for twenty "food service workers." The application listed the basic rate of pay as \$7.30 to \$8.26, with an overtime rate from \$10.95 to \$12.39. The basic number of hours per week was listed as thirty to forty with varied overtime.

ETA partially certified Respondent's application on April 4, 2011, reducing the number of temporary nonagricultural workers to seventeen, because Respondent successfully recruited and hired three U.S. workers.

2011 Department of Homeland Security Petition Documents and Approval (AX 54; RX 21)

Respondent filed a Petition for 17 Unnamed H-2B Workers with the Department of Homeland Security ("DHS") on April 7, 2011. This exhibit contains several completed forms including a Request for Premium Processing Service form (Form I-907), Notice of Entry of Appearance as Attorney or Accredited Representative (G-28), copies of checks payable to DHS, Petition for a Nonimmigrant Worker for seventeen unnamed workers (I-129), H Classification Supplement to Form I-129, 2011 Fair Itinerary and Wage Information, ETA Final Determination for Partial Certification dated April 4, 2011 for seventeen of the twenty requested temporary nonagricultural workers and Respondent's partially certified *Application for Temporary Employment Certification*.

PFGF's Correspondence with JKJ Workforce Agency (RX 17)

This exhibit contains correspondence between Respondent and JKJ Workforce Agency regarding the preparation of Respondent's 2012 H-2B filings. This exhibit includes a company profile for PFGF detailing the conditions of employment for prospective employees, a contract between Respondent and JKJ Workforce Agency dated February 9, 2012 and 2012 fair itinerary and prevailing wage information.

2012 ETA Filing and ETA Final Determination (RX 19; RX 20)

Respondent filed an *Application for Temporary Employment Certification* on March 1, 2012. Respondent's application package included Prevailing Wage Determination (Form 9141), *Application for Temporary Employment Certification* requesting nineteen H-2B workers (Form 9142), Number of Hours Per Week, Work Schedule, Post-Employment Drug and Background Checks, Basic Rate of Pay, Overtime Rate of Pay, Additional Wage Information, Employer's Recruitment Summary Report, Statement of Temporary Need and Prevailing Wage Determination (Form 9141).

In 2012, Respondent requested nineteen "amusement and recreation attendants." Respondent listed the basic hours per week at forty, with no overtime. The rate of pay was listed as \$7.91 to \$8.32 per hour. The overtime rate was listed as non-applicable. ETA certified Respondent's application on March 15, 2012.

2012 Department of Homeland Security Petition Documents and Approval (AX 55; AX 56; RX 22; RX 23)

Respondent filed a Petition for 19 Unnamed H-2B Workers with the Department of Homeland Security on March 22, 2012. The exhibit contains a Request for Premium Processing Service form (Form I-907), Petition for a Nonimmigrant Worker (I-129), H Classification Supplement to Form I-129, 2012 Fair Itinerary and Wage Information, ETA Final Determination

certifying Respondent's application, *Application for Temporary Employment Certification* (Form 9142) and other application materials. On April 3, 2012 the Department of Homeland Security approved Respondent's petition.

Employee Separation Letter (RX 24)

On June 15, 2011, James K. Judkins, representative for Respondent, notified ETA and DHS that an H-2B employee sponsored by Respondent absconded without notice, prior to the end date of employment outlined in the *Application for Temporary Employment Certification*.

2011 Fair Correspondence (RX 25)

This exhibit contains contracts and correspondence regarding the New Jersey State Fair at the Meadowlands, Orange County Fair, Ulster County Fair, Erie County Fair, Columbia County Fair, North Carolina Mountain State Fair and Dixie Classic Fair.

2011 and 2012 Employee Time cards (AX 53-2; AX 53-8; RX 27, RX 28)

2011 time cards list hours for Agustin Vazquez Arreola, Daniel Crisanto Ferrari, Delfino Cabrera Perez, Saul Galicia Aguilar, Joaquin Moran Velazquez, Armando Navarro Luna, Ernesto Navarro Lopez, Jonathan Dominguez, Alvaro Restvepo, Medya Bahar Yuksel, Richard Garrard, Burak Yarar, Umit Vanlioglu, Mustafa Ozer and Mehmet Koyuturk.

2012 time cards list hours for Jose Mendoza Lopez, Saul Galicia Aguilar, Joaquin Moran Velazquez, Armando Navarro Luna, Agustin Vazquez Arreola, Pablo Vazquez Medina, Ernesto Navarro Lopez, Delfino Cabrera Perez and Artemio Hugo Pacheco Flores.

Displacement Letters (RX 29)

The record contains a letter dated July 4, 2012 from Pantelis Karageorgis to Nick Strates stating that he needed Nick Strates' employee for temporary employment. He wrote that he had not laid off any American workers in the last 120 days and that no American workers will lose their jobs in the next 120 days. He also stated that he cannot find American workers.

Nick Strates wrote a letter to Karageorgis on July 9, 2012. He stated that his employee can only work for Karageorgis' company if Karageorgis can guarantee that no American worker had been laid off in the previous 120 days and that no American worker will be laid off in the next 120 days.

Travel Service Receipt (RX 30)

A receipt from Crown Peters Travel Service of Astoria Inc. dated November 9, 2011 records six one way tickets from JFK to Mexico. The receipt is made out to Peter's Fine Greek Foods.

Cash Receipts (AX 53-3; RX 31)

Cash receipts list payments in 2011 and 2012 made by Peter's Fine Greek Foods to several individuals.

2011 and 2012 Paychex Payroll Records (RX 32-A; RX 32-B)

Paychex payroll documents record earnings for Delfino Cabrera Perez, Daniel Crisanto, Jonathan Dominguez, Saul Galicia, Richard Garrard, Mehmet Koyuturk, Cean Lennon, Antonio Andres Maiers Ramos, Jose Alfredo Mendoza Lopez, Joaquin Moran Velazquez, Armando Navarro, Ernesto Navarro, Leslie Nelson, Mustafa Ozer, Artemio Pacheco Flores, Alvaro Restvepo, Willie Roberson, Umit Vanlioglu, Agustin Vazquez, Pablo Vazquez Medina and Burak Yarak.

B. Legal Analysis

The H-2B regulations list "disqualification from approval of petitions" or debarment as a potential remedy for violations of the H-2B program. 20 C.F.R. § 655.65(h) (2012). If the WHD Administrator finds a substantial failure to meet any conditions of the application or DHS Form I-129 or a willful misrepresentation of a material fact in the application or DHS Form I-129, the Administrator may recommend that ETA debar an employer for a period of one to three years. § 655.65(h). The regulatory definition of a substantial violation of a material term or condition of the temporary labor certification includes:

- (1) A pattern or practice of acts of commission or omission on the part of the employer or the employer's agent that:
 - (i) Are significantly injurious to the wages or benefits offered under the H-2B program or working conditions of a significant number of the employer's U.S. or H-2B workers;
- (3) A significant failure to cooperate with a DOL investigation or with a DOL official performing an investigation, inspection, or law enforcement function under this subpart.

§ 655.31(d)(subsections omitted). The regulations also state that an employer cannot be debarred for more than three years. § 655.31(c).

Debarment Criteria

Substantial Violation of a Material Term or Condition

The Administrator noted that two substantial violations underlie its decision to debar Respondent. First, the Administrator contends that Respondent committed a pattern and practice of acts that are significantly injurious to the wages and benefits of a significant number of Respondent's H-2B and U.S. workers. (AX 52 at 2.) Second, the Administrator avers that Respondent significantly failed to cooperate in the Department investigation by failing to maintain and produce records requested by WHD. (AX 52 at 4.)

In Respondent's 2010 temporary labor certification, Respondent offered to pay its H-2B employees \$10.71 per hour. (AX 2 at 5.) The record contains several contracts signed by Respondent's H-2B employees listing the terms of their 2010 employment with Respondent. (AX 32.) The contracts list employee wages as \$10.71 per hour. (*Id.*) Karageorgis testified at deposition that he did not pay PFGF's employees \$10.71 per hour prior to September 2010. (AX 50 at 95.) Karageorgis' testimony is consistent with Wage and Hour Investigator Ruth Beltran's testimony that Karageorgis informed her that he paid his employees between \$7.25 and \$9.00 per hour. (Tr. 106 (WHD).)

He also testified that although he recorded employees' hours during the fair season, he did not use those hours to calculate the employees' pay. (*Id.* at 95-97.) The timesheet records ultimately provided to WHD by Karageorgis did not record time for setup, teardown, daily preparation, or daily cleanup and or even hours for all of his employees. (Tr. 1367-68, 1380-81, 1384-86, 1389-90, 1401, 1409-14, 1422-23, 1436-38, 1441, 1448-50, 1453-54, 1474-75 (WHD); RX 27 (WHD).) The testimony and evidence presented at the WHD hearing established that Respondent's practice was to make lump sum cash payments to its employees which were not directly correlated with the hours the employees worked. (Tr. 231 (WHD); RX 27 (WHD).)

Not surprisingly, Karageorgis' unsystematic method of paying employees did not permit him to compensate employees at the required \$10.71 per hour rate. In the Wage and Hour claim, I found that Respondent owed back wages to eight employees. In total, I found that Respondent underpaid his employees in 2010 in the amount of \$99,422.32. However, after a settlement with the Department of Justice, Respondent paid employees \$85,000 in back wages. (Tr. 1705 (WHD); AX 47.) Thus, the amount presently owed totals \$14,422.32. Throughout the 2010 season, Respondent failed to compensate his employees for all of their labor and paid them at a rate less than the rate offered to them in their employment contracts and required by Respondent's temporary labor certification. Respondent failed to meet both the employees' expectations of being compensated for their work at \$10.71 per hour and his contractual obligation under the TEC. In the related WHD matter, I found that PFGF's payment practices were a willful failure to pay the promised wage and assessed the highest possible civil money penalty. Nothing presented in the instant case has caused me to change my view.³ Thus, I find that Respondent's violation was not minor, and instead find that Respondent's pattern and practice of poor recordkeeping and haphazard payment of his H-2B employees in 2010 was significantly injurious to the wages of those employees. Respondent committed a substantial violation of its temporary employment certification.

The Administrator also maintains that Respondent significantly failed to cooperate in the DOL investigation of PFGF. I have considered all of the evidence surrounding Respondent's cooperation with the WHD investigation. In the WHD decision, I found that Respondent failed

³ Respondent argues that the violation should not be characterized as willful because Karageorgis relied on advice of counsel (Attorney Scheult) and thus thought he was in compliance with the regulations. As I found in the WHD case, the fact that Respondent hired an attorney to do the paperwork did not excuse him from complying with the agreements in his H-2B petition. See also *Administrator v. Kutty*, ARB No. 03-022, slip op. at 16 (ARB May 31, 2005), *aff'd*, *Kutty v. U.S. Dep't of Labor*, 2011 WL 3664476 (E.D. Tenn. Aug. 19, 2011), appeal filed, No. 11-6120 (6th Cir. 2011).

to cooperate with the investigation based on Respondent's delay and failure to provide employee payment and work hour records to WHD. However, I also found that the failure to provide records was, in part, due to the fact that some of the records did not exist. I further found that in certain significant ways, Respondent did cooperate with the investigation. In order to constitute a substantial violation, a failure to cooperate must be significant. I decline to find that Respondent's failure to cooperate was significant.

WHD investigators testified that Karageorgis was cooperative and allowed them to interview him and his employees during fair hours. Investigator Beltran testified that Karageorgis responded to all of her questions during her interview at the New York State Fair. (Tr. 104-08 (WHD).) Investigator David An testified that Karageorgis was cooperative, provided all requested information to him, and did not interfere with his interviews of PFGF's employees. (Tr. 454-55 (WHD).) In addition, Karageorgis complied with Investigator An's request that he return to the trailers where the employees were housed to pay his employees on the night An was conducting his interviews. Further, although Respondent did not fully comply with the Department's records requests, it did not completely disregard them either. Attorney Seheult sent two faxes to WHD on September 9, 2010 containing some of the requested documentation.

In addition, Respondent's attorneys in the criminal matter, Chad Edgar and Dawn Cardi, emailed Investigators Beltran and An on September 14, 2010 acknowledging the Department of Labor's request for documents and stating that they would get back to the Department about the request. (AX 38.) When asked about his understanding of his obligation to turn over papers to the Department of Labor, Respondent testified that he gave all of the papers to his lawyers Edgar and Cardi and that he thought that the case had resolved after the Department of Justice settlement. While Karageorgis' stated confusion regarding his obligation to turn over documents to the Department does not absolve Respondent of its responsibility in the investigation, I do find that it weighs on the significance of Respondent's failure to cooperate. Moreover, the primary reason that Karageorgis failed to turn over pay and work hour records is that he had failed to keep them in the first place. He could not turn over documents that did not exist. Thus, I find that, although Respondent failed to cooperate in the Department of Labor investigation, its failure was not significant.

Timing of Notice of Intent to Debar

I find that the Notice of Intent to Debar was issued within the required regulatory timeframe. § 655.31(b). The violations alleged by the Department took place during the course of the 2010 fair season and during the Wage and Hour investigation which began in September 2010. Further, the Notice of Intent to Debar Respondent on December 30, 2011, within two years of the violations.

Debarment Decision

According to the Department, an employer that meets the conditions of debarment must be debarred. (Administrator's Brief at 26.) I disagree with the Department's interpretation. The regulations state:

Where the WHD Administrator finds a substantial failure to meet any of the conditions of the application or in a DHS Form I-129, or a willful misrepresentation of a material fact in an application or in a DHS Form I-129, as those terms are defined in §655.31, the Administrator OFLC **may** recommend that ETA debar the employer for a period of no less than one year, and no more than 3 years.

20 C.F.R. §655.65(h) (Emphasis added). In support of its argument that debarment is mandatory, the Administrator then looks to §655.31, which begins:

(a) The Administrator, OFLC may not issue future labor certifications under this subpart to an employer and any successor in interest to the debarred employer, subject to the time limits set forth in paragraph (c) of this section, if:

(1) The Administrator, OFLC finds that the employer substantially violated a material term or condition of its temporary labor certification with respect to the employment of domestic or nonimmigrant workers; **and**

(2) The Administrator, OFLC issues a Notice of Intent to Debar no later than 2 years after the occurrence of the violation.

20 C.F.R. §655.31(a)(Emphasis added). However, in §655.65(h) the word “may” makes clear that debarment is an option where there has been a significant failure to comply with the TEC. Section (a) of §655.31 merely instructs the Administrator as to what it must do (not issue further labor certifications) where there has been both a finding of a substantial violation **and** the issuance of a Notice of Intent to Debar.

Further, once an employer has requested a hearing before the Office of Administrative Law Judges, the administrative law judge may “affirm, reverse, or modify the Administrator, OFLC’s determination.” 20 C.F.R. §655.31(e)(5)(ii). While, after full consideration of the facts of the case before me, I **may** choose to affirm the Administrator’s chosen remedy, debarment is not mandatory.

As discussed above, I find that, in failing to pay the wages as contracted for in the TEC, Respondent committed a substantial violation of a material term or condition of its temporary labor certification. I must now determine whether debarment is an appropriate remedy given the facts and circumstances of this case.

In the preamble to the 2008 H-2B regulations, the Department stated that “[d]ebarment from the program is a necessary and reasonable mechanism to enforce H-2B labor certification requirements and ensure compliance with the program’s statutory requirements.” Labor Certification Process and Enforcement for H-2B Workers, 73 Fed. Reg. 78020, 78043 (Dec. 19, 2008). The Department further stated that “[u]se of debarment as a mechanism to encourage compliance has been endorsed in the INA for a number of foreign labor certification and attestation programs.” 73 Fed. Reg. 78043.

Respondent argues that debarment is inappropriate here because Respondent has come into compliance with the H-2B regulations, thus debarment will serve no remedial purpose.⁴ After review of all of the hearing testimony as well as the evidence offered by both parties in this case and the WHD case, I am persuaded that Respondent has made a good faith effort towards substantial compliance with the H-2B regulations. Post-investigation, Respondent hired new representatives to assist with its 2011 and 2012 *Application for Temporary Employment Certification*. (Tr. 18.) Karageorgis evidenced a desire to understand the H-2B regulations, asking his representatives to explain the various conditions included in his TECs to him. (*Id.*) Respondent improved its recordkeeping through the use of timecards and a payroll company. (Tr. 20-21.) In addition, it is relevant that this is Respondent's first H-2B violation. After being confronted with its H-2B violations, Respondent has changed its employment practices and significantly increased its compliance with the H-2B regulations. Assistant District Director Quinn-Kay acknowledged Respondent's improved compliance. (Tr. 148.)

However, the Administrator's witnesses testified that some of Respondent's 2011 and 2012 documents raised concerns and I share some of those concerns. I am troubled by the fact that Respondent changed the job description in the 2011 and 2012 TEC, resulting in a lower prevailing wage, when the job itself did not change (the revised job description eliminated cooking food as a primary duty). I am troubled by the failure to acknowledge the recurrent opportunities for earning overtime wages in the advertisements published to recruit US workers. Nevertheless, on the whole, it is clear that Respondent has taken significant steps towards coming into compliance with the regulations.

Respondent also argues that debarment is not appropriate here because it is excessive punishment which would have devastating consequences to Respondent's H-2B employees, who have returned year after year to work for Respondent. (Respondent's Brief at 17.) Respondent misunderstands the purpose of the regulations. The purpose of the H-2B regulations is not to provide employment for noncitizens, but to protect American citizen laborers: "the purpose of the INA [is] that U.S. workers rather than aliens be employed whenever possible. . . . Where temporary alien workers are admitted, the terms and conditions of their employment must not result in a lowering of the terms and conditions of domestic workers similarly employed." 20 C.F.R. § 655.0 (citations omitted). Thus, I cannot base my decision on whether debarment is appropriate on the consequences for the H-2B employees.⁵

⁴ Prior to the hearing, I denied the Administrator's Motion in Limine objecting to the admission of evidence of future compliance, finding that nothing in the current regulations prohibits me from considering future compliance when determining whether debarment is warranted. 20 C.F.R. § 655.31; See also Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agricultural or Registered Nursing in the United States (H-2B Workers), 73 Fed. Reg. 78,020, 78,043-4 (Dec. 19, 2008). Furthermore, the regulations define "a willful failure" as "a knowing failure or a reckless disregard." 20 C.F.R. 655.65(e) (citing McLaughlin v. Richland Shoe Co., 486 U.S. 128 (1988)). See Order Denying Motion in Limine issued November 15, 2012.

⁵ In fact, the concerns raised by the Administrator about Respondent's current practices (failure to state that overtime is often available, revising the job description to take advantage of a lower prevailing wage) are the types of practices most likely to have adverse consequences on U.S. citizen workers, as they are practices that could discourage citizen workers from applying for and accepting positions on Respondent's workforce.

Respondent's violation was substantial and had a serious effect on its workers. However, considering Respondent's greatly improved compliance with the H-2B regulations and Respondent's status as a first time violator, alongside the compliance goals of the H-2B debarment regulations, I find that a one year debarment is appropriate. A longer period of debarment would not serve the underlying purpose of debarment, as Respondent has already come into substantial compliance with the regulations.

ORDER

Employer Peter's Fine Greek Foods shall be debarred from participation in the H-2B program for a period of one year.

THERESA C. TIMLIN
Administrative Law Judge

Cherry Hill, New Jersey

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") within 30 calendar days of this decision with the Administrative Review Board ("ARB"). The Board's address is:

Administrative Review Board
U.S. Department of Labor
Room S-5220
200 Constitution Ave, NW
Washington, D.C. 20210

Copies of the petition must be served on all parties and on the ALJ. If the ARB declines to accept the petition or if the ARB does not issue a notice accepting a petition within 30 days after the receipt of a timely filing of the petition, the decision of the ALJ shall be deemed the final agency action. If a petition for review is accepted, the decision of the ALJ shall be stayed unless and until the ARB issues an order affirming the decision. Where the ARB has determined to review this decision and order, the ARB will notify each party of the issue(s) raised, the form in which submissions must be made (e.g., briefs or oral argument), and the time within which such presentation must be submitted.