In the Matter of:

R & F TRANSPORTATION COMPANY, INC.,

Respondent.

DECISION AND ORDER APPROVING CONSENT FINDINGS

This proceeding arises under the McNamara-O’Hara Service Contract Act of 1965, as amended, 41 U.S.C. Section 6701, et seq. (“SCA” or “the Act”), in an enforcement action filed by the Administrator, Wage and Hour Division, U.S. Department of Labor, (“Administrator”) against R&F Transportation Company, Inc.

On February 17, 2022, the parties filed Consent Findings (“Agreement”). Upon review of the Agreement and the nature of the case, the terms are found to be fair and reasonable and in substantial compliance with 20 C.F.R. § 18.71. The amount of the assessed penalty in the settlement is adequate and the settlement was not procured under duress or coercion. Therefore, the Agreement and proposed settlement are approved. The Agreement is hereby incorporated into this decision.

Based on the Agreement, this Tribunal finds:

1. The allegations resolved by these findings were initially identified during an investigation conducted by the Administrator regarding Respondent’s pay practices and compliance with the SCA and applicable regulations (the “Investigation”). The Investigation covered the period from May 9, 2016, to June 21, 2019 (the “Investigative Period”).

2. Respondent entered into the following contracts (the “Contracts”) with the United States Postal Service (“USPS”): 02733 (Routes A&B); 027L1; 028L4; 02829; 028L8 (Routes A, B & C).

3. Each of the Contracts was in an amount in excess of $2,500.00 and each was subject to the SCA.

4. Under the Contracts, Respondent provided mail hauling services for the USPS. These services were furnished to the Government of the United States, within the United States, through the use of service employees as identified by the SCA.
5. The Administrator commenced the Investigation to determine whether Respondent’s service employees were paid for all hours worked, and whether proper records were maintained related to service employees in compliance with 29 C.F.R. § 4, during the relevant period. The Investigation was limited to Respondent’s mail haul routes originating in Rhode Island.

6. As a result of the Investigation, the Administrator determined that during the Investigative Period, Respondent failed to pay service employees performing the Contracts with routes originating in Rhode Island the required wages and fringe benefits for all hours worked as required by the Contracts and the SCA, 41 U.S.C. § 6703, and did not keep the required records.

7. The parties have resolved the Administrator’s claim for back wages related to the Contracts for the Investigative Period, as well as the period from the end of the Investigation to date—from June 22, 2019, to the date of the execution of the Agreement (collectively the “Relevant Period”) only for the routes originating in Rhode Island.

In accordance with the terms of the Agreement, it is hereby ORDERED:

1. Respondent shall pay $350,000.00 in back wages and fringe benefits (the “back wages”) to the service employees identified in Schedule A of the Agreement. Payment of the back wages shall be made within 30 days of the entry of this Order.

2. Payment of the back wages shall occur in the following manner:

   a. Online by ACH transfer, credit card, debit card or digital wallet by going to https://pay.gov/public/form/start/77689032 or by going to http://www.pay.gov and searching for WHDBWNE.

   b. Respondent has the option to provide the Administrator the payment in the form of a certified check, bank check or money order made payable to “Wage and Hour Division-Labor.” Such a check or money order shall be mailed to: U.S. Department of Labor, Wage and Hour Division, Northeast Region, 1835 Market Street, Mailstop WHD/19, Philadelphia, PA 19103-2968; Attention: Linda Estacio. The check or money order shall have Case No. 1844512 written on the face of the check or money order.

   c. If Respondent pays any of the amounts of these Findings by check or money order, a copy of the check or money order shall be mailed to the U.S. Department of Labor, Wage and Hour Division, 135 High Street, Room 210, Hartford, Connecticut 06103-1111, Attention: District Director, or sent via email to epifano.donald@dol.gov.
3. Neither Respondent, nor anyone acting on its behalf, shall directly or indirectly solicit or accept the return or refusal of any sums withheld or paid under this Order. Any such amount shall be immediately paid to the Administrator for deposit, and Respondent shall have no further rights or obligations with respect to such returned monies.

4. The Administrator shall distribute the back wages to the persons listed in Schedule A of the Agreement, less the employees’ share of social security and federal withholding taxes, which will be made by the United States Department of Labor, with no deduction for the employees’ state withholding tax. Respondent shall remain responsible for all tax payments considered the “employer’s share,” including, but not limited to, FICA or state or federal unemployment compensation payments.

5. If Respondent fails to pay any amount due within 15 days of any payment’s due date, the Authorization for Transfer and Disbursement of Contractor Funds, attached to the Agreement as Exhibit 1, may be executed for any amounts unpaid or remaining to be paid.

6. The Administrator shall not pursue debarment of Respondent under the SCA for any alleged violations concerning routes originating in Rhode Island during the Relevant Period.

7. Should a judge in the Department of Labor’s Office of Administrative Law Judges (“OALJ”) find in any future SCA case against Respondent, that Respondent has violated the SCA in a non-de minimis way, Respondent has waived its right to contest debarment for future non-de minimis SCA violations, and acknowledges that, if debarred, it, along with any firm, corporation, partnership, or association in which Respondent has a substantial interest, may not be awarded any contract or subcontract with the United States or District of Columbia for a three-year period.

8. Within 30 days of this Order, Respondent shall submit to the Administrator a document containing the last known address and social security number for each individual listed on Schedule A of the Agreement.

9. Any funds not distributed within three years from the date of this Order to any of the employees listed on Schedule A of the Agreement or to their personal representative because of an inability to locate them or because of their refusal to accept such funds, shall be deposited with the Treasurer of the United States as miscellaneous receipts.

10. Respondent shall not discharge nor take any retaliatory action against any of its service employees or former service employees, whether or not directly employed by Respondent, because the service employee or former service employee engages in any of the following activities:

   a. Discloses, or threatens to disclose, to Respondent or to a public agency, any activity, policy or practice of Respondent or another service employment with which Respondent has a business relationship, that the service employee
reasonably believes is in violation of the SCA or a rule or regulation promulgated pursuant to the SCA;

b. Provides information to, or testifies before, any public agency or entity conducting an investigation, hearing, or inquiry into any alleged violation of the SCA, or a rule or regulation promulgated pursuant to the SCA, by Respondent or another service employer with which Respondent has a business relationship; or

c. Objects to, or refuses to participate in, any activity, policy, or practice that the service employee reasonably believes is in violation of the SCA or a rule or regulation promulgated pursuant to the SCA.

11. Respondent shall continue to comply with all provisions of the SCA and the relevant regulations. Specifically:

a. Respondent shall ensure that each service employee employed in the performance of any contract covered by the SCA, whether directly by Respondent or through a subcontract to which Respondent is a party, is paid for all hours actually worked. Respondent shall not pay its employees a set amount determined by the route driven.

b. Respondent shall ensure that each service employee employed in the performance of any contract covered by the SCA, whether directly by Respondent or through a subcontract to which Respondent is a party, is paid at least the minimum monetary wages specified in any wage determination attached to the contract and/or specified in any applicable conformance.

c. Respondent shall ensure that each service employee employed in the performance of any contract covered by the SCA, whether directly by Respondent or through a subcontract to which Respondent is a party, is furnished fringe benefits (or payments in lieu of those benefits), including but not limited to vacation pay, holiday pay, and health and welfare benefits, specified in any wage determination attached to the contract, separate from and in addition to the minimum monetary wages specified in the wage determination attached to the contract.

d. Respondent shall keep accurate records of all hours worked by each service employee employed in the performance of any contract covered by the SCA, whether directly by Respondent or through a subcontract to which Respondent is a party.

12. This Order covers only the Relevant Period, only those routes originating in Rhode Island, and only those service employees listed in Schedule A of the Agreement. This Order shall not, in any way, affect, determine, or prejudice any and all rights of any service employee or the Administrator outside the Relevant Period for routes not originating in Rhode Island. Further, the parties agree that this Order does not affect the rights of any of Respondent’s service employees and workers who may be receiving or
are entitled to receive back wages outside the scope of the SCA and the regulations promulgated thereunder, and other applicable regulations, for any time period.

13. This Order constitutes full and final resolution of all claims that the Administrator has asserted in the Complaint in this case. These Consent Findings and Order shall have the same force and effect as an order made after full hearing. The entire record on which this Order is based consists solely of the Administrator’s Complaints and this Order.

14. The Administrator and Respondent have waived any right to challenge or contest the validity of this Order. The parties have also waived any further procedural steps before the Administrative Law Judge or the Administrative Review Board regarding the matters which are the subject of this Order.

15. The hearing scheduled for March 28, 2022, is hereby CANCELLED.

SO ORDERED.

JERRY R. DeMAIO
Administrative Law Judge

Boston, Massachusetts