

Issue Date: 31 January 2012

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

CASE NO.: 2012-TNE-00002

In the Matter of:

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

v.

**OMNI HOTELS MANAGEMENT CORP., d/b/a
OMNI MT. WASHINGTON RESORT**
Respondent.

Before: Jonathan C. Calianos, Administrative Law Judge

Appearances:

Christine A. Collins, Esquire, (U.S. Department of Labor, Office of the Solicitor)
Boston, Massachusetts, for Prosecuting Party

Elizabeth Bailey, Esquire, (Sheehan, Phinney, Bass + Green)
Manchester, New Hampshire, for Respondent

**DECISION AND ORDER APPROVING SETTLEMENT
AGREEMENT AND CONSENT FINDINGS AND CANCELLING HEARING**

This case arises from a request for hearing filed by the Respondent in the above captioned matter, which involves the enforcement of the H-2B provisions of the Immigration and Nationality Act, 8 U.S.C. §1101(a)(15)(H)(ii)(b), as amended (“the Act”), and the implementing

regulations set forth at 20 C.F.R. Part 655, Subpart A, 20 C.F.R. § 655.1 *et seq.* On October 26, 2011, the Administrator, Wage & Hour Division, United States Department of Labor (“Administrator”) issued a determination that the Respondent violated the Act by substantially failing to meet a condition which was attested to in the labor certification application. *See* 20 C.F.R. § 655.60(b). Specifically, the Respondent failed to pay the offered wage rate to twenty-one employees which rate is suppose to equal or exceeds the highest of the prevailing wage or the federal, state or local minimum wage. *See* 20 C.F.R. § 655.22(e).

The Administrator determined that the Respondent owed back wages totaling \$26,959.60 to twenty-one H-2B non-immigrant workers and assessed an additional civil monetary penalty in the amount of \$19,828.69. On November 14, 2011, the Respondent, pursuant to 20 C.F.R. § 655.71, timely filed a request for review of the Administrator’s determination of the penalty assessment only. A formal hearing is scheduled for January 31, 2012, in Manchester, New Hampshire. On January 30, 2012, the parties filed a document entitled: Settlement Agreement and Consent Findings (hereinafter “Agreement”). Upon review of the Agreement, I find that the terms are fair and reasonable and in substantial compliance with 29 C.F.R. § 18.9(b) and it is approved.

Pursuant to the Agreement the following order shall enter:

- (1) The Agreement is APPROVED and its terms are adopted and incorporated herein by reference;
- (2) The parties shall comply with each and every term contained in the Agreement;
- (3) Respondent agrees that it violated the Act and agrees to pay a civil monetary penalty of \$14,000 and said sum has been tendered to the Wage and Hour Division by certified bank check;
- (4) Respondent agrees to comply in all respects with the Act and applicable regulations in the future;

- (5) Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the terms of the Agreement is retained by the U.S. Department of Labor, Office of Administrative Law Judges (“OALJ”);
- (6) Enforcement Proceedings for violation of the Agreement may be initiated any time by filing a motion requesting an order of enforcement and sanctions with the OALJ;
- (7) The entire record upon which this Order was issued consists of the Administrator’s determination letter and attachments thereto, Respondent’s request for a hearing, and the Agreement;
- (8) The parties waive any further procedural steps before an administrative law judge and any right to challenge or contest the validity of the Agreement, this Order, and any other order issued in accordance with the Agreement;
- (9) This Order and the parties’ Agreement shall fully and finally resolve all outstanding issues between the parties that were raised or reasonably could have been raised in connection with the Administrator’s determination letter of October 26, 2011;
- (10) The Agreement and this Order shall have the same force and effect as an order made after a full hearing;
- (11) Each party shall bear its own costs, attorney’s fees and expenses incurred by such party in connection with any stage of this proceeding, including, but not limited to, attorney’s fees which may be available under the Equal Access to Justice Act, as amended;
- (12) Nothing in the Agreement or this Order is binding on any other governmental agency other than the United States Department of Labor;
- (13) The Agreement and this Order shall comprise my findings of fact and conclusions of law and shall constitute the full, final, and complete adjudication of this proceeding; and
- (14) The hearing scheduled for January 31, 2012 in Manchester, New Hampshire is CANCELLED

SO ORDERED.

A

JONATHAN C. CALIANOS
Administrative Law Judge

Boston, Massachusetts

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 calendar days of the date of issuance of the administrative law judge’s decision. *See* 20 C.F.R. § 655.76(a). The Board’s address is:

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

At the time you file the Petition with the Board, you must serve it on all parties to the case as well as the administrative law judge. 20 C.F.R. § 655.76(a).

No particular form is prescribed for the Petition, however, any such petition shall:

- (1) Be dated;
- (2) Be typewritten or legibly written;
- (3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;
- (4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;
- (5) Be signed by the party filing the petition or by an authorized representative of such party;
- (6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and
- (7) Attach copies of the administrative law judge's decision and order, and any other record documents which would assist the Board in determining whether review is warranted.

20 C.F.R. § 655.76(b). If the Board determines that it will review the ALJ's decision and order, it will issue a notice specifying (1) The issue or issues to be reviewed; (2) The form in which submissions shall be made by the parties (e.g., briefs); and (3) The time within which such submissions shall be made. When filing any document with the Board, the party must file an original and two copies of the document. 20 C.F.R. § 655.76(e).