

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

Issue Date: 27 February 2014

CASE NO.: 2014-TNE-00002

In the Matter of:

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

v.

NEWLAND NURSERY & LANDSCAPING, INC.,
Respondent.

Before: Colleen A. Geraghty, Administrative Law Judge

Appearances:

Dustin M. Saldarriaga, Esq., Office of the Solicitor, United States Department of Labor, Boston, Massachusetts, for the Prosecuting Party

Megan E. Randlett, Esq. & Timothy C. Woodcock, Esq., Eaton Peabody, Bangor, Maine, for the Respondent

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

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 September 25, 2013, the Administrator, Wage & Hour Division, United States Department of Labor (“Administrator”) issued a Determination Letter finding that the Respondent violated the Act and requiring the Respondent to pay back wages in the amount of \$1,185.00 to two H-2B non-immigrant workers and civil penalties in the amount of \$29,685.00. On October 17, 2013, the Respondent, pursuant to 20 C.F.R. § 655.71, timely filed a request for review of the Administrator’s determination in its entirety.

A formal hearing before the undersigned administrative law judge was scheduled for January 23, 2014, in Augusta, Maine. On January 16, 2014, the parties notified my office that they had reached a settlement, and on January 17, 2014, I issued an Order canceling the hearing and setting a deadline for the submission of the parties' settlement agreement. On February 25, 2014, the parties filed a Settlement Agreement and Consent Findings ("Consent Findings"). Upon review of the Consent Findings, 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 Consent Findings the following order shall enter:

- (1) The Consent Findings are APPROVED and the terms are adopted and incorporated herein by reference;
- (2) The parties shall comply with each and every term contained in the Consent Findings;
- (3) Without admitting or denying liability, Respondent agrees to pay an amount representing and equivalent to H-2B back wages as alleged by the Administrator in the amount of \$1,185.00 to two H-2B workers, Antonio Frew and Triston Robinson, on or by June 30, 2014, less lawful required deductions, including each person's share of social security and withholding taxes;
- (4) Without admitting or denying liability, Respondent agrees to pay \$19,358.00 in H-2B civil money penalties, in accordance with a payment scheduled agreed upon by the parties;
- (5) Interest shall accrue on all amounts due from and after the execution of the Consent Findings, at a rate of 1% per annum, until payments are made;
- (6) Respondent agrees to comply in all respects with the Act and applicable regulations in the future;
- (7) Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the terms of the Consent Findings is retained by the U.S. Department of Labor, Office of Administrative Law Judges ("OALJ");
- (8) The entire record upon which this Order was issued consists of the Administrator's determination letter, Respondent's request for a hearing, and the Consent Findings;
- (9) The parties waive any further procedural steps before an administrative law judge and any right to challenge or contest the validity of the Consent Findings, this Order, and any other order issued in accordance with the Consent Findings;
- (10) This Order and the parties' Consent Findings 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 September 25, 2013;

- (11) This Order shall have the same force and effect as an order made after a full hearing;
- (12) 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;
- (13) Nothing in the Consent Findings or this Order is binding on any other governmental agency other than the United States Department of Labor, Wage and Hour Division; and
- (14) This Order issued in accordance with the parties' Consent Findings shall constitute the full, final, and complete adjudication of this proceeding.

SO ORDERED.

COLLEEN A. GERAGHTY
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).