

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 13 January 2015

OALJ Case No: 2015-TNE-00002
ETA Case No: C-12034-57956
WHD No: 1707144

In the Matter of:

LAKE PACKING COMPANY,

Employer.

DECISION AND ORDER ON CONSENT FINDINGS

This case arises out of enforcement of the labor certification for temporary and seasonal agricultural employment of nonimmigrant foreign workers (H-2B workers) under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. §1101, et seq., and its implementing regulations at 20 CFR Part 655, Subpart A.

By correspondence dated October 16, 2014, the Regional Administrator, Wage and Hour Division of the U.S. Department of Labor notified Respondent that an investigation under the INA involving an Application for Temporary Employment Certification covering a period in 2012 indicated that the Respondent had

“willfully misrepresented a material fact on the Application in violation of 20 CFR §655.60(b). This violation includes a substantial failure to meet a condition of the Application, ETA Form 9142, Appendix B, Attestation No. 13: Accuracy of temporary need – failed to accurately specify on the Application the number of worker positions needed. Violation cited for 2012.”

A civil money penalty was assessed and the Respondent was ordered to comply with the requirements of 20 CFR §655.22(n) in the future. The Respondent filed a timely request for a de novo hearing of the Administrator’s actions

On January 12, 2015, the Parties filed joint stipulations in support of a consent finding to constitute a full and final resolution of all issues raised by the Administrator’s Determination Letter issued to Respondent on October 16, 2014. The Parties have agreed and stipulated:

1. This action arises under the INA and its implementing regulations at 20 CFR Part 655, Subpart A.
2. The issues resolved by these Consent Findings were identified initially during an investigation conducted by the Wage and Hour Division of the U.S. Department of Labor (“Wage and Hour”) covering the period of 2010 through 2013 (“relevant time period”), regarding Respondent’s compliance with the H-2B provisions of the INA §1101(a)(15)(H)(ii)(b) and applicable regulations.
3. On October 16, 2014, the Administrator issued to Respondent a Determination Letter detailing its findings. A Summary of Violations and Remedies (“Summary”) was attached to the Determination Letter. The Summary stated that the investigation by Wage and Hour had determined that Respondent substantially failed to meet a condition on the Application in violation of 20 CFR §655.60(b) of the H-2B provisions of the INA.
4. The Administrator assessed a total of \$3,000.00 in civil money penalties.
5. On October 29, 2014, within the time period provided by 20 CFR §655.71, Respondent filed a Request for Hearing. In its Request for Hearing, Respondent contested the Administrator’s determination.
6. Counsel for the Administrator and Counsel for the Respondent have conducted discussions regarding resolution of this matter. The Parties have now agreed to resolve this matter so as to avoid the burden, expense and delay of further litigation.
7. Respondent as a good faith resolution of its dispute with the Administrator concerning the alleged violations, has agreed to pay civil money penalties of \$2,400.00 within thirty (30) days of the date that the Administrative Law Judge approves these Consent Findings by signing the Order in this matter.
8. Respondent agrees to comply with applicable law regarding the H-2B program.
9. The Parties agree that these Consent Findings do not affect the rights of the Respondent or the interested parties, if any, outside the scope of the INA and the regulations promulgated under the INA at 20 CFR Part 655.
10. Respondent agrees to make payment in the form of a cashier’s check or certified check made payable to “Wage and Hour Division, U.S. Department of Labor” (noting on the memo line “Case No. 2015-TLN-00002”), and to deliver payment to the United States Department of Labor, Wage and Hour Division, Attn: Mary Doughty, Suite 850W, 170 S. Independence Mall West, Philadelphia, PA 19106-3317, on or before the due date. Should Respondent fail to make the agreed payment within ten (10) days of the date scheduled, the entire amount shall immediately become due and payable, together with such additional collection and court costs as may be incurred by the Administrator in pursuing collection.

11. In the event of default, the Administrator may pursue collection actions including, but not limited to, administrative offset, referral of the account to credit reporting agencies, private collection agencies, and/or the Department of Justice.
12. Respondent, without admitting to any of the violations contained in the Determination Letter, agrees to the entry of these Consent Findings in settlement of this case without contest.
13. Each Party agrees to bear its own attorney's fees, costs and other expenses incurred by such Party in connection with any stage of the above referenced proceeding including, but not limited to, attorney's fees and costs which may be available under the Equal Access to Justice Act, as amended.
14. The Consent Findings and Order entered into in accordance with this agreement shall have the same force and effect as an Order made after full hearing.
15. The entire record on which the Order is based shall consist solely of the Determination Letter and the Consent Findings and the Order.
16. The Parties waive any right to challenge or contest the validity of the Consent Findings and Order entered into in accordance with this agreement.
17. All violations set forth in the Determination Letter shall be deemed fully resolved by these Consent Findings.
18. This Order shall become final immediately upon approval by the Administrative Law Judge.

Upon review, **IT IS HEREBY ORDERED** that **the Consent Findings are ADOPTED AND APPROVED** as the final administrative Order pursuant to the provisions of 29 CFR §655.75 and §655.72(a) and as set forth herein. This Order is effective upon the date of issue set forth.

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia