



Issue Date: 22 September 2016

CASE NO.: 2016-TNE-1

IN THE MATTER OF

ADMINISTRATOR, WAGE AND HOUR DIVISION

Prosecuting Party/Complainant

v.

PROFESSIONAL IRRIGATION SYSTEMS, LLC

Respondent

**DECISION AND ORDER
APPROVING CONSENT FINDINGS AND ORDER**

Pursuant to 29 C.F.R. § 503.49(b) and 29 C.F.R. § 18.71¹, the parties to this action, Administrator, Wage and Hour Division, United States Department of Labor ("Administrator"), and Professional Irrigation Systems, LLC ("Respondent"), have negotiated and executed these Consent Findings and Order. These Consent Findings and Order constitute a full and final resolution of this action and of all issues raised by the Administrator's Determination Letter issued to Respondent on November 12, 2015.

JURISDICTION AND PROCEDURAL HISTORY

1. This action arises from the Administrator's enforcement authority under the H-2B provisions of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 (a)(15)(H)(ii)(b) and 8 U.S.C. § 1184 (c)(14), and the regulations, 29 C.F.R. §§ 503.7, 503.15.

¹ This Court's July 27, 2016 Order cites 29 C.F.R. § 18.9(e)(10) as authority for the approval of settlement or consent findings. This regulation is currently located in 29 C.F.R. § 18.71.

2. The issues resolved by these Consent Findings and Order were identified initially during an investigation conducted by the Wage and Hour Division ("WHD") covering the period from April 1, 2010 to December 15, 2013.
3. On November 12, 2015, the Administrator issued to Respondent a Determination Letter identifying Respondent's alleged H-2B violations. Specifically, Respondent was cited for substantially failing to comply with the conditions of the United States Citizenship and Immigration Services Form I-129, Petition for a Nonimmigrant Worker ("I-129 Petition"), and/or willfully misrepresenting a material fact in the I-129 Petition. These alleged violations included: misrepresenting the amount of workers needed on three I-129 Petitions; failing to properly notify the United States Citizenship and Immigration Services, in connection with three I-129 Petitions, of H-2B workers who completed work they were hired for more than thirty days early; and failing to pay outbound transportation to eleven H-2B workers in connection with three I-129 Petitions.
4. Based on the above cited alleged violations, WHD assessed back wages and civil money penalties ("CMPs") to be paid by Respondent.
5. Respondent timely filed a Request for Hearing with respect to the alleged violations set forth in the Determination Letter.
6. WHD assessed the total amount of back wages for failing to pay outbound transportation as \$4,204.00.
7. WHD assessed the CMPs for the above violations as \$35,704.00.
8. Representatives of the Administrator and Respondent conducted settlement discussions regarding this matter. The parties have now agreed to a settlement without the burden, expense, and delay of further litigation.
9. The parties agree upon the following as provisions of these Consent Findings and ORDER:

GENERAL PROVISIONS

10. These Consent Findings and order disposing of this proceeding shall have the same force and effect as an Order made after a full hearing.

11. The entire record forming the basis on which the Consent Findings and Order is entered shall consist of the Determination Letter and the provisions contained herein.
12. The parties hereby waive all further procedural steps between themselves before the Administrative Law Judge.
13. The parties waive any right to challenge or contest the validity of these Consent Findings and Order.
14. All violations alleged in the Determination Letter issued by the Administrator are and shall be deemed fully resolved by these Consent Findings and Order with regard to all parties.
15. These Consent Findings and Order shall become final immediately upon approval of the Administrative Law Judge. The "Effective Date" of these Consent Findings and Order shall be the date of this Decision and Order by the Administrative Law Judge.

SPECIFIC PROVISIONS

16. Respondent agrees to pay Four Thousand Two Hundred and Four Dollars (\$4,204.00), representing back wages to the eleven (11) individuals named in Exhibit A of the Consent Findings and Order in the amounts shown. Respondent will pay this amount in one (1) payment. The payment shall be due no later than thirty (30) calendar days after the Effective Date of this Decision and Order. A certified or cashier's check shall be made payable to "U.S. Department of Labor/Wage and Hour Division," and shall include a reference to "Case No. 1673863," and shall be sent to Wage and Hour Division, P.O. Box 2638, Chicago, Illinois, 60690-2638. Along with this payment, Respondent shall furnish to the Administrator its federal tax identification number and the social security number, if available, and last known address for each employee identified in Exhibit A, as referenced above.

17. The Administrator may distribute the above-referenced \$4,204.00, less legally required deductions, to the individuals in Exhibit A. Any back wages which remain undistributed for three (3) years because of the parties' inability to locate the individual or authorized representative shall be deposited with the Treasurer of the United States.

18. Respondent remains responsible for the employer's share of F.I.C.A. taxes, if any, for the wages paid under these Consent

Findings and Order.

19. Respondent admits for purposes of the Consent Findings and Order that the above-referenced \$4,204.00 are "back wages," but reserves the right to argue in any non-Department of Labor litigation that the \$4,204.00 are not "wages."

20. The Administrator, in consideration of the facts of this case and other pertinent litigation factors, hereby agrees to reduce the aggregate CMPs assessed from \$35,704.00 to \$19,954.00.

21. Respondent agrees to pay Nineteen Thousand Nine Hundred and Fifty-Four Dollars (\$19,954.00), representing the CMPs for the above violations. Respondent will pay this amount in one (1) payment. The payment shall be due no later than thirty (30) calendar days after the Effective Date of this Decision and Order. A certified or cashier's check shall be made payable to "U.S. Department of Labor/Wage and Hour Division," and shall include a reference to "Case No. 1673863," and shall be sent to Wage and Hour Division, P.O. Box 2638, Chicago, Illinois, 60690-2638.

22. Should Respondent fail to make payment on or before the due date for either the back wages or CMPs, the amount shall be immediately due and payable without further notice or demand and shall be subject to the assessment of interest, administrative cost charges, and penalties in accordance with the Debt Collection Act of 1996 and U.S. Department of Labor policies.

23. In resolving this matter, Respondent agrees to comply with all the requirements of the H-2B provisions under the INA, the regulations promulgated thereunder, and the conditions of the I-129 Petition, and the regulations promulgated thereunder. By agreeing to comply with the H-2B program and entering into these Consent Findings and Order, Respondent is not admitting, and shall not be deemed to have admitted, to the alleged violations cited above and in the November 12, 2015 Determination Letter.

24. Nothing in the Consent Findings and Order precludes the Administrator at any time from investigating Respondent or instituting any enforcement actions for violations of the H-2B program.

25. In view of the aforesaid agreements, Respondent withdraws its Request for Hearing filed in this matter.

26. Respondent agrees to the entry of these Consent Findings and Order in settlement of this case without contest.

REPORTING AND ENFORCEMENT

27. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of Paragraphs 16-21 of these Consent Findings and Order, is retained by the Office of Administrative Law Judges to the extent authorized by law. If the Administrator believes that Respondent has violated applicable law, the Administrator must comply with any enforcement procedure that is mandated by statute or regulation with respect to such alleged violation.

28. Enforcement proceedings, including declaratory relief, for an alleged violation of Paragraphs 16-21 of these Consent Findings and Order may be initiated at any time by the filing of a motion for an Order of enforcement or sanctions to the extent authorized by law with the Administrative Law Judge. The parties shall be notified of any such motion as follows:

If to Professional Irrigation Systems:

Wendel Hall, Esq.
Hall Law Office. PLLC
1200 G Street, N.W.
Suite 800
Washington, D.C. 20005
(202) 661-2173 (p)
(202) 434-8717(f)

If to the Administrator:

Associate Regional Solicitor
Office of the Solicitor
United States Department of Labor
2300 Main Street
Suite 1020
Kansas City, MO 64108

If Respondent's notice information changes, Respondent shall notify the Administrator at the notice address above.

29. Each party will bear its own fees and other 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

or the Small Business Regulatory Enforcement Act of 1996, as amended.

30. These Consent Findings and Order shall constitute the final Administrative Order in this case.

ORDERED this 22nd day of September, 2016, at Covington, Louisiana.

LEE J. ROMERO, JR.
Administrative Law Judge