



Issue Date: 31 December 2020

Case No.: 2021-TNE-00006

In the Matter of

SWEENEY ENTERPRISES, LLC, d/b/a TERRACE TAVERN
Respondent

DECISION AND ORDER APPROVING CONSENT FINDINGS

The above-captioned matter arises from the request for hearing filed by Sweeney Enterprises, LLC, d/b/a Terrace Tavern (“Respondent”) on the determination of the Administrator, Wage and Hour Division (“Administrator”) dated October 13, 2020 which arose from the Secretary of Labor’s enforcement of H-2B provisions of the Immigration and Nationality Act (“INA”), 8 U.S.C. §1101(a)(15)(H)(ii)(b), as amended, and its implementing regulations set forth at 20 C.F.R. Part 655, Subpart A and 29 C.F.R. Part 503. The implementing regulations are found at 20 C.F.R. Part 655, Subpart A.¹

As outlined in a determination letter dated October 13, 2020, the Administrator concluded Respondent violated the H-2B provisions of the INA by substantially failing to properly classify H-2B workers according to their occupational duties during the relevant employment period of January 1, to December 31, 2019. The Administrator assessed civil money penalties and back wages against Employer – the civil money penalties totaled \$2,613.71 and the total back wages for eight H-2B non-immigrant workers were assessed at \$2,613.71.

On or about October 29, 2020, Respondent objected to the Administrator’s determination and requested a hearing. The case was docketed at the U.S. Department of Labor, Office of Administrative Law Judges (“OALJ”) and subsequently assigned to undersigned for adjudication.

By Order issued on November 17, 2020, a hearing was to be scheduled for the week of March 1, 2021 and a telephonic prehearing conference was to be held on December 10, 2020.

By letter dated December 8, 2020 and emailed on that date, the Administrator’s counsel enclosed a document entitled “Proposed Consent Findings” (“Consent Findings”) signed and executed by the parties. The Consent Findings so enclosed are attached to this Order and incorporated herein by reference.

The administrative procedures relevant to the approval of consent findings are set forth at 29 C.F.R. § 503.49. After reviewing the terms of the parties’ agreement as reflected in the Consent

¹ These regulations have been subject to court challenges that resulted in a preliminary injunction enjoining Department of Labor (DOL) from their implementation and enforcement. On April 29, 2015, the DOL and the Department of Homeland Security (DHS) jointly promulgated an interim final rule to replace the invalidated regulations and that interim final rule applies to this case. *See* Temporary Non-Agricultural Employment of H-2B Aliens in the United States, 80 Fed. Reg. 24,042 (Apr. 29, 2015) (codified at 8 C.F.R. Part 214, 20 C.F.R. Part 655, 29 C.F.R. Part 503).

Findings proposed, the undersigned is satisfied that such terms conform to the requirements of 29 C.F.R. § 503.49(b) and are a satisfactory resolution of the issues previously contested in this matter.

Reiterating what, in part, has been set forth in the Consent Findings attached to this Order, the parties waive any further proceeding before the OALJ and waive any right to challenge or contest the validity of the Consent Findings entered into in accordance with their agreement. 29 C.F.R. § 18.71(b)(3) and (4). Each party will bear its own costs, attorney's fees and other expenses incurred in connection with this proceeding. This Order approving the parties' Consent Findings will have the same force and effect as an order made after full hearing in accordance with 29 C.F.R. § 18.71(b)(1).

The prehearing conferenced scheduled for December 10, 2020 and the hearing to be scheduled for the week of March 1, 2021 are canceled.

SO ORDERED.

LYSTRA A. HARRIS
Administrative Law Judge

Cherry Hill New Jersey