



In the Matter of:

**MARIA ECHAVESTE,  
ADMINISTRATOR, WAGE  
AND HOUR DIVISION,  
U.S. DEPARTMENT OF LABOR,**

**CASE NOS.:       93-CLA-18  
                      93-CLA-22  
                      93-CLA-23**

**COMPLAINANT,**

**DATE: September 27, 1996**

v.

**TOM SALYER, TOM SCOTT,  
AND SCOTT & SALYER WESTERN  
STEER STEAKHOUSE, INC.,**

**RESPONDENTS.**

BEFORE:   THE ADMINISTRATIVE REVIEW BOARD<sup>1/</sup>

### **FINAL DECISION AND ORDER**

This case arises under the child labor provisions of the Fair Labor Standards Act of 1938, as amended (FLSA or the Act), 29 U.S.C. §§ 212 and 216(e) (1988), and its implementing regulations, 29 C.F.R. Parts 570 and 579 (1990) and Part 580 (1991). In a Decision and Order (D. and O.) issued on November 30, 1995, the Administrative Law Judge (ALJ) modified a prior determination by the Deputy Regional Administrator regarding the appropriate penalty for the violations at issue in this case, and ordered Respondents to pay civil money penalties (CMPs) totaling \$21,100.00 for their commission of "numerous" Section 12 child labor violations. D. and O. at 10. This figure represented a reduction in the CMPs from the \$25,300.00 which had been recommended by the Deputy Regional Administrator, Wage and Hour Division.

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<sup>1/</sup> On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under this statute to the newly created Administrative Review Board. 61 Fed. Reg. 19978 (May 3, 1996). Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order, and regulations under which the Administrative Review Board now issues final agency decisions. Final procedural revisions to the regulations implementing this reorganization were also promulgated on that date. 61 Fed. Reg. 19982.

On review, the Administrator, Wage and Hour Division (Administrator) argues that the ALJ erred by reducing the Wage and Hour CMP assessment amount for certain post-November 5, 1990 violations “based solely on the fact that Wage and Hour assessed higher CMPs for continuing child labor violations after the effective date of Congress’ tenfold increase in the allowable maximum CMPs.” Statement of the Administrator (SA) at 4-5.

## BACKGROUND

Respondents’ steakhouse restaurant was originally inspected in 1982 and revealed no violations of the child labor provisions. Significantly, the record reveals that at the conclusion of this inspection, the compliance officer provided Respondents with all of the relevant child labor materials needed in order to assure compliance with the Act’s provisions and received Respondents’ assurance of compliance. Transcript (T) at 125, 149 and 150. *See also*, D. and O. at 3. The same compliance officer conducted another inspection of Respondents’ steakhouse some time in late 1990 and early 1991 -- an investigation which revealed “numerous violations of the child labor standards.” T. at 130, D. and O. at 3.<sup>2/</sup> The allegations involved some 32 separate child labor violations (31 of which were sustained by the ALJ) and an attendant CMP assessment of \$25,300.00. *See*, ALJ Exhibits (ALJX) 1, 5 and 8, D. and O. at 3, 4 and 5. The violations in this matter span the date when the Act was amended to allow for a tenfold increase in the maximum amount of allowable CMPs.<sup>3/</sup>

## DISCUSSION AND CONCLUSIONS OF LAW

The Administrator frames the issue to be determined on appeal as follows:

Whether the ALJ, as a matter of law, erred by imposing the same civil money penalty (cmp) for child labor violations that occurred before and after the amendment of the cmp provisions of the Fair Labor Standards Act that increased the maximum cmp from \$1,000.00 to \$10,000.00.

SA at 1-2. The ALJ found that, “all but one of the 32 child labor violations found by the compliance officer are supported by credible evidence of record.” D. and O. at 10. He also held that “[t]he corporation’s illegal employment of children was not sporadic but involved a majority of its employees. It is also obvious that the corporation was of sufficient size to be

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<sup>2/</sup> Principally, violations consisted of the failure to maintain birth date records for the minors employed; underage employment in a hazardous occupation (the operation of a dough mixing machine and a power band saw to cut steaks); and employing minors at improper times of the day.

<sup>3/</sup> Section 16(e) of the FLSA provides that any person who violates the provisions of Section 212 shall be subject to a civil money penalty for each violation. 29 U.S.C. § 216(e)(1988). Section 16(e) was amended by the Omnibus Reconciliation Act of 1990 to raise the maximum civil penalty for child labor violations from \$1,000.00 to \$10,000.00, effective November 5, 1990. Pub. L. No. 101-508, 104 Stat. 1388-29 (1990).

knowledgeable of the child labor requirements.” *Id.* at 13. Despite the ALJ’s conclusions that the penalties recommended by Wage and Hour officials were, “entitled to respect,” and “not inappropriate,” D. and O. at 11-12, he found “no reason the post-November 5, 1990 penalties should exceed the amounts proposed for the same violations that occurred prior to that date.” *Id.* at 15.

The Administrator argues that the ALJ’s ruling, which we find overall to be both thorough and in accordance with the directives of the Act and the regulations, 29 U.S.C. § 216(e) and 29 C.F.R. § 579.5, is inconsistent with the Secretary’s decision in a similar case which addressed this same issue. In *Acting Administrator, Wage and Hour Division v. Chism Trail, Inc., d/b/a Maxi Food and Ray Chism, Jr.*, Case No. 92-CLA-45, June 30, 1993, slip op. at 9, the Secretary, after an exhaustive review of the legislative history accompanying the increase in allowable child labor civil money penalties, noted that “the legislative history of the increased CMP provision as well as the Department’s own regulatory history *establishes* that the substantial increase in the CMP maximum was to have an impact on penalty sizes -- *even in cases which do not present the most egregious violations.*” (Emphasis supplied). One cannot review the legislative history of this amendment without coming to an understanding that the key underlying Congressional purpose in its enactment was to provide more vigorous enforcement of the child labor restrictions, including, *inter alia*, the use of the CMP mechanism. This is even more crucial in situations where, as here, underaged children are involved in an occupation and/or a working practice which the Secretary of Labor has deemed to be unacceptably hazardous. See, e.g., *Administrator v. Navaho Manufacturing*, Case No. 92-CLA-13, Sec. Dec., Feb. 21, 1996, slip op.

The ALJ has conscientiously carried out his fact finding and interpretive responsibilities under the Act. However, with regard to the issue of increased penalties for violations that span the “pre” and “post” amendment periods, we find his interpretation of law to be unduly restrictive and contrary to expressed Congressional purpose.

Accordingly, IT IS ORDERED that the contested civil money penalties be reinstated. Respondents shall pay civil money penalties totaling \$23,500.00 to the United States Department of Labor.

**SO ORDERED.**

**DAVID A. O’BRIEN**  
Chair

**KARL J. SANDSTROM**  
Member

**JOYCE D. MILLER**  
Alternate Member