

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 18 August 2005

In the Matter of:
In the Matter of

UNITED STATES DEPARTMENT OF LABOR
Complainant

v.

2005 LCA 00027

VITAL STATISTICS, INCORPORATED
Respondent

DECISION AND ORDER
APPROVING STIPULATION

This case was brought pursuant to 20 C.F.R. § 655.820 et seq., as amended by the interim final regulations published by the Department of Labor on December 20, 2000, 65 Fed. Reg. 80110 et seq. (2000) to implement the H-1B provisions of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101(a)(15)(H)(i)(B) and 1182(n), and in accordance with 29 C.F.R. Part 18 of the Rules of Practice and Procedure of the Office of Administrative Law Judges. A hearing was scheduled for August 25, 2005. However, I was advised that the parties had agreed to a settlement and that a consent order would be sent to me within thirty days. Accordingly, I cancelled the hearing and on August 10, 2005 received a Settlement Agreement and Consent Findings.

The parties stipulate, to an entry of findings, as follows:

1. This action arises under the Immigration and Nationality Act as amended [8 U.S.C. § 1101 (a)(15)(H)(I)(b), 1184 (f)(1), hereinafter “the Act”], and 20 C.F.R. Part 655 for a hearing involving alleged violations of the provisions of section 1185(n) of the Act.
2. On April 4, 2005, the Administrator of the Wage and Hour Division, United States Department of Labor, issued a determination that a basis existed to make a finding that Respondent failed to pay wages as required by the Act.
3. Respondent made a timely request for a hearing challenging the Administrator’s determination.
4. The parties subsequently entered into negotiations designed to resolve this matter

amicably. As a result of these negotiations, the parties have agreed to settle this litigation in exchange for certain mutual agreements. These agreements are as follows:

a. Respondent agrees to the payment of back wages in the amount of \$12,000.00 less deductions for the employee's share of social security and withholding taxes. These back wages are to be paid by check or money order, payable to "Carolyn Carney or Wage & Hour - Labor" and sent to the United States Department of Labor, Wage & Hour Division, 150 Court Street, Room 423, New Haven, CT 06510. Respondent shall transmit the total amount of these back wages to Complainant in twenty-four (24) equal installments of \$500.00. The first initial installment shall be postmarked to Complainant on or before October 20, 2005. The remaining installments shall be postmarked to Complainant on or before the 20th day of each of the next twenty-three (23) months interest shall accrue on the outstanding balance at the rate of 1% Per annum from the date of entry of this Settlement Agreement and Consent Findings through the date of payment. Respondent further agrees that should it fail to mail any amount due on or before the date it is due, the entire balance shall immediately become due. Nothing herein shall prevent Respondent from paying the back wages owed sooner than provided in this paragraph.

b. Respondent shall not institute any lawsuit against the employee identified in paragraph 4a relating to any and all claims existing prior to the date of entry of this Settlement Agreement and Consent Findings.

c. Respondent agrees to comply in all respects with the Act and applicable regulations in connection with any further 1-1-113 application.

d. The Complainant agrees to provide Respondent with a grace period of five (5) calendar days from the date each payment is due, regardless of legal holidays etc. within which to make the payments agreed to in paragraph 4a.

5. Respondent's failure to carry out any portion of this settlement agreement shall subject Respondent to the statutory penalties for failure to pay wages found at 8 U.S.C. § 1182(n) and 20 C.F.R. Part 655.

6. The entire record on which the Order issued by the Court is based shall consist of the Administrator's determination, Respondent's request for hearing, and this agreement.

7. The parties waive any further procedural steps before the administrative law judge and waive any right to challenge or contest the validity of this Settlement Agreement and Consent Findings and any order entered into in accordance with this agreement.

8. This agreement shall fully and finally resolve all outstanding issues between the parties that were raised, or reasonably could have been raised, in the Administrator's determination of April 4, 2005.

9. Each party shall bear its own costs, attorney's fees and expenses.

After having been fully advised in these premises, I accept these stipulations as findings. In accordance with such Consent Findings, it is hereby:

ORDERED

That the terms and conditions set forth in the Consent Findings are **AFFIRMED**.

A

DANIEL F. SOLOMON
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: Pursuant to 20 CFR § 655.845, any party dissatisfied with this Decision and Order may appeal it to the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210, by filing a petition to review the Decision and Order. The petition for review must be received by the Administrative Review Board within 30 calendar days of the date of the Decision and Order. Copies of the petition shall be served on all parties and on the administrative law judge.