U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 17 October 2005

Case No.: 2005–LCA–0026

In the Matter of:

ADMINISTRATOR, WAGE & HOUR DIVISION,
U.S. DEPARTMENT OF LABOR,
Prosecuting Party

v.

AJAY INTERNATIONAL, INC.,
Respondent.

DECISION & ORDER GRANTING ADMINISTRATOR'S MOTION TO SHORTEN TIME AND MOTION FOR SUMMARY JUDGMENT

On April 5, 2005, the District Director for the U.S. Department of Labor ruled that Respondent violated the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101, and the implementing regulations, 20 C.F.R. part 655. The order debarred Respondent from future sponsorship under the Act and required Respondent to pay both a civil penalty and back wages. On April 15, 2005, the Chief ALJ assigned the case to an ALJ at Respondent's request. On July 20, 2005 and prior to the hearing, the parties announced a tentative settlement. However, after repeated efforts by the Administrator to contact the Respondent, Respondent failed to sign the agreement. At the Administrator's request, the Chief ALJ reassigned the case to the undersigned.

The undersigned set a new hearing for October 19, 2005. However, as of October 5, 2005, Respondent remained unreachable and failed to respond to discovery requests, a subsequent motion to compel, and finally my order to show cause. Thus on October 5, 2005, I held that Respondent admitted all discovery requests as a matter of law. On the same day, the Administrator moved for summary judgment and to shorten the time for filing a motion for summary judgment. For the following reasons, I grant both motions.

DISCUSSION

Motion for Summary Judgment

The Administrator moved for summary judgment after failed attempts at settlement and discovery. Under the regulations governing proceedings before an ALJ, a party may move for a summary decision on all or part of the proceeding. 29 C.F.R. § 18.40(a). The ALJ may grant the

motion if it shows that there is no genuine issue of material fact and that the moving party is entitled to prevail. 29 C.F.R. 18.40(d). In deciding the motion, the court must consider all the material submitted by both parties, drawing all reasonable inferences in a manner most favorable to the non-moving party. *Celotex Corp. v. Catrett*, 477 U.S. 317 at 322–323 (1986) *citing* Fed. R. Civ. P. 56(c). Further, the burden of proof is on the moving party, shifting only when it has shown that the other party cannot sufficiently establish an essential element of the case. *Id.*

Here, the Administrator made a number of allegations regarding Respondent's treatment of three employees. Initially, Respondent acquiesced to at least some of the allegations, but failed to sign the final settlement agreement. During the second phase of the matter, Respondent failed to respond to discovery requests, causing the undersigned to accept all the Administrator's allegations set forth in his Requests for Admissions as admitted. With no remaining dispute, the undersigned finds that there is no genuine issue of material fact and the Administrator is entitled to prevail as a matter of law.

Motion to Shorten Time

After waiting for a response from Respondent, the Administrator moves for an order shortening the time under which he may file the motion for summary judgment. Under the governing regulations, motions for summary judgment must be filed at least twenty days prior to the hearing. 29 C.F.R. § 18.40(a). However, the regulations also authorize the ALJ to modify any rule so long as no party is prejudiced and the ends of justice are achieved. 29 C.F.R. § 18.1(b).

Here, the Administrator filed the instant motions only fourteen days prior to the hearing, prudently waiting until the undersigned deemed matters admitted. For the past two and one half months Respondent rebuffed this proceeding, failing to communicate with either the Administrator or the undersigned who issued two separate Orders to Show Cause with respect to the Motion to Compel and, subsequently, the motion for summary judgment. Any prejudice it acquired resulted from its own inaction and not the lateness of the Administrator's motions. Additionally, the ends of justice are best served by the speedy resolution of matters uncontested. Therefore, I find it appropriate to shorten the time in which Respondent had to file its motion.

ORDER

Accordingly, it is ORDERED that:

1. The Administrator's Motion for Summary Decision is **GRANTED**;
2. The Administrator's Motion to Shorten Time is **GRANTED**;
3. The District Director's order is **AFFIRMED**;
4. The hearing scheduled herein on October 19, 2005, in Seattle, Washington, is hereby **CANCELLED**.
5. Respondent pay a civil penalty of $18,400 to the U.S. Department of Labor, Wage and Hour Division, according to the District Director's order;
6. Respondent pay back wages of $65,830.33 to the three workers, according to the District Director's order; AND

7. Respondent be debarred from filing any new Labor Condition Applications under the Act for a period of two years.

A

Russell D. Pulver
Administrative Law Judge

NOTICE OF APPEAL RIGHTS:

To appeal, you must file a Petition for Review ("Petition") that is received by the Administrative Review Board ("Board") within thirty (30) calendar days of the date of issuance of the administrative law judge's decision. *See* 20 C.F.R. § 655.845(a).

The Board's address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

At the time you file the Petition with the Board, you must serve it on all parties as well as the administrative law judge. *See* 20 C.F.R. § 655.845(a).

If no Petition is timely filed, then the administrative law judge's decision becomes the final order of the Secretary of Labor. Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 655.840(a).