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Issue Date: 29 January 2008

CASE NO. 2007-MSP-00005

In the Matter of:

GEORGE VALDEZ dba
G.V. FARM LABOR SERVICE,
Respondent.

DECISION AND ORDER GRANTING THE ADMINISTRATOR'S MOTION FOR SUMMARY DECISION AND DISMISSING THE CASE

This case arises under the Migrant & Seasonal Agricultural Workers Protection Act ("MSPA" or "the Act"), 29 U.S.C. § 1801 *et seq.*, and implementing regulations at 29 C.F.R. Part 500. The hearing in this case was originally scheduled for December 10 to 14, 2007 in Fresno, California. It was continued to an undetermined date to be set if Respondent's appeal survived this motion.

PROCEDURAL HISTORY

On December 13, 2006, the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor ("the Administrator") sent George Valdez dba GV Farm Labor Services ("Respondent") a notice of administrative determination in which it notified Respondent of its civil money penalty assessment for various violations of the MSPA. On January 5, 2007, Respondent filed with the Office of Administrative Law Judges its request for a hearing. Respondent filed its pre-hearing statement on May 31, 2007 and the Administrator filed its pre-hearing statement on June 1, 2007.

On June 7, 2007, Respondent filed a motion to discover confidential informants. On July 9, 2007, the Administrator filed an opposition to Respondent's motion to discover confidential informants. Also on July 9, 2007, Respondent filed a notice of withdrawal of its motion to discover confidential informants. On the same day, the Administrator filed an opposition to Respondents request to withdraw its motion.

On July 17, 2007, I issued an order denying the request to withdraw the motion to discover confidential informants and denying the motion to discover confidential informants. I noted that federal common law governed this issue; federal common law has long recognized the protection of government informants as a legitimate basis for limiting discovery. I then found that Respondent did not meet its burden of establishing that it had a substantial need for disclosure of the identities of the Administrator's informants that outweighed the public interest in protecting the flow of information to law enforcement.

On August 2, 2007, the Administrator filed a Motion to Compel Discovery Responses ("motion to compel") to the Administrator's Requests for Production of Documents (First Set). In the motion to compel, the Administrator also moved for sanctions if Respondent failed to comply with an order compelling production of documents. The Administrator listed the requested sanctions in Attachment A of the motion to compel. Respondent filed its opposition to the motion to compel on August 10, 2007. The Administrator then filed a reply on August 23, 2007.

On August 29, 2007, I granted the Administrator's motion to compel, finding that Respondent had not made a good faith attempt to respond to the Administrator's request for production of documents and had not met its burden of justifying this failure. I also held that if Respondent did not comply with the August 29 order, I would make adverse inferences and findings of fact, pursuant to 29 C.F.R. § 18.6(d)(2) and Attachment A to the motion to compel.

On September 10, 2007, Respondent produced GV Farm Labor Service's Supplemental Responses to the Administrator's Request for Production of Documents (First Set), in which Respondent denied every request for production. Respondent also produced a privilege log in which it claimed the Fifth Amendment privilege for thirteen listed documents.

On September 19, 2007, the Administrator filed a Renewed Motion to Compel Discovery Responses ("renewed motion"), arguing that Respondent failed to comply with the August 29 order. Respondent did not file a reply to the Administrator's September 19 renewed motion.

On October 18, 2007, I issued Order Granting Administrator's Renewed Motion to Compel and Impose Sanctions ("order imposing sanctions") ("ALJX 1"), finding that Respondent failed to comply with my August 29 order. Respondent did not produce a single document in response to the August 29 order. In response to the Administrator's requests relating to the transportation of MSPA workers, Respondent contradicted its May 2 assertion that it objected to production of those documents, instead asserting that those documents do not exist. Furthermore, Respondent repeatedly pointed the Administrator to the privilege log, when the specific documents requested by Respondent were not listed in the log. Lastly, Respondent did not provide the necessary support for its assertions of the Fifth Amendment privilege in its privilege log by addressing each prong of the four-prong framework, as explained in the August 29 order. Accordingly, pursuant to 29 C.F.R. § 18.6(d)(2), I made findings of fact based on adverse inferences in accordance with the recommended sanctions in Attachment A of the Administrator's motion to compel. These adverse findings corresponded to each document production request with which the Respondent did not comply.

On September 7, 2007, the Administrator filed a Motion to Bar the Testimony of Jesus Quiahua for his Non-Appearance at his Deposition After Being Properly Served with a Subpoena ("motion to bar testimony"). The Administrator argued that Jesus Quiahua Cobonzo ("Mr. Quiahua") should be barred from testifying at the hearing because he failed to appear at his deposition after being properly served with a subpoena. The Administrator explained that earlier, Respondent had delayed the taking of Mr. Quiahua's deposition by asking that his deposition, originally noticed for July 24, 2007, be rescheduled. Shortly after the deposition was rescheduled, Respondent informed the Administrator that it terminated Mr. Quiahua's

employment, without giving any explanation for why this decision was taken. Mr. Quiahua then failed to appear at his deposition.

I issued an order to show cause, asking Respondent to show why the motion to bar testimony should not be granted. On September 17, 2007, Respondent filed a response. Respondent argued that the U.S. Department of Labor ("DOL") only possesses the authority to issue subpoenas, not the authority to compel witnesses to comply with subpoenas, a power reserved for the federal district courts. In addition, Respondent explained that the specific type of subpoena issued to Mr. Quiahua was an investigatory administrative subpoena, and that this type of subpoena in particular could only be enforced through an order from a federal district court.

The Administrator replied on September 25, 2007, arguing that Respondent focused on the wrong type of subpoena. The Administrator explained that the subpoena issued by this court was issued in the course of litigation after an investigation of Respondent had already been completed and after Respondent had been assessed a civil money penalty by DOL. Therefore, the subpoena at issue in this case was not an investigative administrative subpoena, but a subpoena served during litigation, and, thus, this tribunal may rely on other remedies in addition to waiting for a federal district court's enforcement of the subpoena.

On October 18, 2007, I issued an order finding that it would be unfairly prejudicial to the Administrator to allow Mr. Quiahua to testify at trial after Mr. Quiahua failed to appear for his deposition and that it would be unjustly prejudicial to force the Administrator to delay litigation to seek the enforcement of the subpoena in federal district court. Further, I concluded that Respondent's arguments that this court does not possess the authority to bar Mr. Quiahua from testifying at the hearing were unsupported by the legal authorities it cited. The statutes cited by Respondent to support its argument dealt with the enforcement of investigatory subpoenas and did not anywhere support the contention that this court may not bar the testimony of Mr. Quiahua.

On October 26, 2007, Respondent's attorney filed her notice of withdrawal as counsel of record. Since that date, Respondent is representing itself. This tribunal has not received any filings or correspondence from Respondent since October 26, 2007.

On November 8, 2007, the Administrator filed Administrator's Motion for Summary Decision ("motion for summary decision") ("ALJX 2"), along with its Memorandum of Points and Authorities ("memorandum of points") ("ALJX 3"), Plaintiff's Statement of Uncontested Facts ("fact statement") ("ALJX 4"), Declaration of Norman E. Garcia ("ALJX 5"), Declaration of Andrew Noguchi ("ALJX 6"), Declaration of Ruben Jimenez ("ALJX 7"), Declaration of William Zapata ("ALJX 8"), Declaration of Manuel Pena Rios ("ALJX 9"), Declaration of Raul Gonzalez Velazco ("ALJX 10"), Declaration of Maurilo Solis Hernandez ("ALJX 11"), Declaration of Paulino Huerta ("ALJX 12").

On November 9, 2007, I issued an order to show cause why I should not grant summary decision. Respondent did not respond.

On November 9, 2007, the Administrator filed a motion to continue hearing. On November 13, 2007, I issued an order asking Respondent to show cause why the hearing should not be continued. Respondent did not respond. On November 28, 2007, I issued an order to continue the hearing to a later date, which would be determined after I issued the instant decision.

In its motion for summary decision, the Administrator argued that Respondent: (1) is subject to the MSPA; (2) violated the MSPA poster requirement; (3) failed to make required written disclosures to the MSPA workers that it employed; (4) failed to secure and maintain accurate records for all of its MSPA workers; (5) failed to provide MSPA workers with wage statements containing the required information; (6) collected illegal transportation fees and failed to pay MSPA workers for the time they spent transporting other MSPA workers; (7) transported MSPA workers in an unsafe manner; (8) relied on drivers without a valid driver's license to transport MSPA workers; (9) used vehicles without required insurance coverage to transport MSPA workers; (10) failed to register with DOL its employees who performed farm labor contracting activities; and (11) transported its MSPA workers without the required DOL authorization. Further, the Administrator argued that the civil money penalties assessed for the alleged violations listed here are appropriate, and were made after taking into account the factors under 29 C.F.R. § 500.143(b). Respondent did not respond to the Administrator's summary decision motion.

SUMMARY OF DECISION

The Administrator showed that there is no genuine issue of material fact to be decided and it is entitled to a decision as a matter of law. The evidence the Administrator submitted in support of its motion for summary decision showed that Respondent committed the alleged violations of the Migrant & Seasonal Agricultural Workers Protection Act and that the fines assessed against Respondent were appropriate. Respondent did not reply to the Administrator's summary judgment motion and thus failed to set forth specific facts showing that there is a genuine issue for trial. Therefore, the Administrator's motion for summary decision is granted for the full amount of civil money penalties assessed against Respondent, $ 37,200.

FACTUAL BACKGROUND

George Valdez ("Mr. Valdez") owns GV Farm Labor Services as sole proprietor. ALJX 4 at Fact 2; Respondent's Exhibit ("RX") 1 at 1; ALJX 7 at ¶ 3. Respondent provides farm labor contractor ("FLC") services to agricultural businesses in Central California. ALJX 4 at Facts 3-6; RX 1 at 1-3, 9; RX 2 at 1; RX 3 at 2; RX 4; RX 5; RX 6; ALJX 7 at ¶¶ 3-5; ALJX 5 at ¶¶ 3-4. Respondent is subject to the MSPA because it functions as an FLC to agricultural workers covered by the MSPA.[1] ALJX 3 at 4. Mr. Valdez admitted that he was an FLC who provided

[1] Under 29 U.S.C. § 1802(7), a "farm labor contractor" is "any person, other than an agricultural employer, an agricultural association, or an employee of an agricultural employer or agricultural association, who, for any money or other valuable consideration paid or promised to be paid, performs any farm labor contracting activity." "Farm labor contracting activity" is "recruiting, soliciting, hiring, employing, furnishing, or transporting any migrant or seasonal agricultural worker." 29 U.S.C. § 1802(6). A "migrant agricultural worker" is an individual who is employed in agricultural employment of a seasonal or other temporary nature,

farm labor contracting services, and showed his MSPA Farm Labor Contractor Certificate of Registration to DOL, Wage and Hour Division investigators. ALJX 4 at Facts 3-4. Mr. Valdez also presented the Farm Labor Contractor Certificate of Registration to agricultural businesses with which he dealt, ALJX 4 at Facts 5-6, and billed Tos Farms and Ito Packing Company for MSPA services. ALJX 4 at Facts 8-9; RX 7 at 10:8-14, 11:21-22, 19:7-9, 35:4-8; RX 8 at 10:9-13, 12:2-5, 22:13-15, 25:13-25. Further, one of his crew bosses, Manuel Pena Rios ("Mr. Rios"), admitted that he performed farm labor contracting services for Mr. Valdez. ALJX 4 at Fact 11; ALJX 9 at ¶¶ 7, 9. Finally, as part of its FLC activities, Respondent transported MSPA workers from their homes to the MSPA worksites where Respondent employed them. ALJX 4 at Facts 11-12, 13-16; ALJX 10 at ¶¶ 6-8; ALJX 11 at ¶ 7; ALJX 12 at ¶ 6-7.

Violations

Failure to Display MSPA Posters (29 U.S.C. §§ 1821(b) and 1831(b))

Respondent did not display the MSPA poster in accordance with the requirements set out under 29 U.S.C. §§ 1821(b) and 1831(b).[2] Fact sanction number four from the order imposing sanctions (ALJX 1) established that Respondent did not display the required MSPA poster at its work site, which was inspected on May 23, 2006 by DOL's Wage and Hour Division. ALJX 4 at Fact 19; ALJX 1 at 5.

The Wage and Hour Division, Assistant District Director, Andrew Noguchi ("the Director"), assessed Respondent a $50.00 civil monetary penalty for failing to post the MSPA poster. ALJX 3 at 6. The Director took into account the assessment factors required by 29 C.F.R. § 500.143[3] in making his decision, noting that, for example, Respondent had a history of

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and who is required to be absent overnight from his permanent place of residence," 29 U.S.C. § 1802(8), and a "seasonal agricultural worker" is "an individual who is employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence," 29 U.S.C. §1802(10).

[2] Sections 1821(b) and 1831(b) of Title 29 of the United States Code mandate that FLCs must "at the place of employment, post in a conspicuous place a poster provided by the Secretary setting forth the rights and protections afforded such workers under this chapter." 29 U.S.C. §§ 1821(b) and 1831(b).

[3] Under 29 C.F.R. § 500.143, in determining the amount of penalty to be assessed for a violation of the MSPA or relevant regulations, the Secretary must consider the type of violation and relevant factors, including but not limited to:

(1) Previous history of violation or violations of this Act and the Farm Labor Contractor Registration Act;
(2) The number of workers affected by the violation or violations;
(3) The gravity of the violation or violations;
(4) Efforts made in good faith to comply with the Act (such as when a joint employer agricultural employer/association provides employment-related benefits which comply with applicable law to agricultural workers, or takes reasonable measures to ensure farm labor contractor compliance with legal obligations);
(5) Explanation of person charged with the violation or violations;
(6) Commitment to future compliance, taking into account the public

violating the MSPA, the violation affected a high number of workers, and there was no evidence of Respondent's effort to comply with this requirement. ALJX 3 at 6; ALJX 6 at ¶¶ 3, 4.

Failure to Make Required Written Disclosures (29 U.S.C §§ 1821(a) and 1831(a))

Respondent failed to make the written disclosures required under 29 U.S.C §§ 1821(a) and 1831(a).[4] ALJX 3 at 7. Fact sanctions one and twenty-seven from the order imposing sanctions established that Respondent did not make written disclosures to MSPA workers recruited from January 1, 2006 to September 23, 2006 and, further, did not have procedures in place for making disclosures to MSPA workers during that period. ALJX 4 at Fact 23; ALJX 1 at 4, 9.

The Director assessed Respondent a $100.00 civil monetary penalty for this violation. ALJX 3 at 8. The Director weighed the seven assessment factors required by 29 C.F.R. § 500.143 in making his decision, finding that Respondent had several negative determinations, such as a previous history of violating the MSPA and no evidence of efforts to comply with this requirement. ALJX 3 at 8; ALJX 6 at ¶¶ 3, 5.

Failure to Make and Keep Required Records on MSPA Workers (29 U.S.C. §§ 1821(d) and 1831(c) and 29 C.F.R. §500.80(a))

Respondent did not make and keep the required records on hours worked by MSPA workers, deductions withheld from MSPA workers, and MSPA workers' permanent addresses and social security numbers, as required by 29 U.S.C. §§ 1821(d) and 1831(c) and 29 C.F.R. §500.80(a).[5] ALJX 3 at 9-10. Fact sanctions five, six, seven, nine, and thirteen from the order

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health, interest or safety, and whether the person has previously violated the Act;

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury to the workers.

29 C.F.R. § 500.143(b)(1)-(7).

[4] Under 29 U.S.C §§ 1821(a) and 1831(a), FLCs are required to disclose in writing to workers: "(1) the place of employment; (2) the wage rates . . . ; (3) the crops and kinds of activities on which the worker may be employed; (4) the period of employment; (5) the transportation . . . and any other employee benefit to be provided, if any, and any costs to be charged for each of them; (6) the existence of any strike or other concerted work stoppage . . . ; (7) the existence of any arrangements . . . under which the farm labor contractor . . . is to receive a commission or any other benefit resulting from any sales by such establishment to the workers; and (8) whether State workers' compensation insurance is provided . . ." 29 U.S.C. §§ 1821(a) and 1831(a).

[5] Sections 1821(d) and 1831(c) of Title 29 of the U.S. Code, requires that MSPA FLCs make, keep, and preserve records for three years with (1) the basis on which wages are paid; (2) the number of piecework units earned, if applicable; (3) the number of hours worked; (4) the total pay period earnings; (5) the sums withheld and the purpose of the withholding; and (6) the net pay. 29 U.S.C. §§ 1821(d) and 1831(c). In addition, 29 C.F.R. § 500.80(a) requires that FLCs that employ MSPA workers keep a record of workers' names and social security numbers.

imposing sanctions established that Respondent failed to collect and maintain the social security numbers and permanent addresses of all of his MSPA workers, the number of hours that MSPA workers transported their fellow MSPA workers, the deductions taken from MSPA workers for transportation, and all records required under 29 C.F.R. § 500.80(a). ALJX 4 at Fact 29; ALJX 1 at 5-7.

The Director assessed a $400.00 civil money penalty for Respondent's failure to make, keep, and preserve MSPA records on hours worked, deductions, social security numbers, and permanent addresses. ALJX 3 at 10-11. The Director took into account the assessment factors required by 29 C.F.R. § 500.143 in making his decision. ALJX 6 at ¶¶ 3, 6; ALJX 3 at 10-11.

Failure to Provide MSPA Workers with Required Itemized Wage Statements (29 C.F.R. § 500.80(d))

Respondent did not provide his MSPA workers with the itemized wage statements required under 29 C.F.R. § 500.80(d).[6] ALJX 3 at 11-12. Fact sanction number fourteen established that Respondent did not provide its MSPA workers in 2006 with itemized, written statements that contained all of the information required by 29 C.F.R. § 500.80(a)-(d). ALJX 4 at Fact 33; ALJX 1 at 7.

The Director assessed Respondent a $100.00 civil money penalty for its failure to provide MSPA workers with wage statements containing the information required under 29 C.F.R. § 500.80(d). ALJX 3 at 12-13. The Director took into account the assessment factors required by 29 C.F.R. § 500.143 in making his decision. ALJX 3 at 12-13; ALJX 6 at ¶¶ 3, 7.

Charging MSPA Workers Illegal Transportation Fees (29 U.S.C. §§ 1822(a) and 1832(a))

Respondent received illegal transportation fees from MSPA workers, in violation of 29 U.S.C. §§ 1822(a) and 1832(a).[7] ALJX 3 at 13-15. It has been established through the fact sanctions that Respondent charged a transportation fee to transport workers from their residences to their work sites (fact sanctions 36 and 48); charged $776.00 in illegal transportation deductions from workers' pay (fact sanctions 9, 11, 13, 14, 36 and 48); did not disclose transportation fees at the time of recruitment (fact sanction 28); did not inadvertently sign Form WH-56, dated December 12, 2006 (fact sanction 51); and, further, failed to pay MSPA workers $237.75 for the time they spent transporting other MSPA workers (fact sanctions 7 and 10-15). ALJX 1 at 5-7, 10-11, 13; ALJX 4 at Fact 36 A-G.

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[6] Section 500.80(d) of Title 29 of the Code of Federal Regulations requires that FLCs provide "each migrant or seasonal agricultural worker employed with an itemized written statement of this information at the time of payment for each pay period which must be no less often than every two weeks . . . ."

[7] The MSPA requires "[e]ach farm labor contractor . . . which employs any migrant agricultural worker shall pay the wages owed to such worker when due." 29 U.S.C. §§ 1822(a) and 1832(a).

The Director assessed $4,200 in civil money penalties for Respondent's failure to provide its MSPA workers with all of the wages they were due. ALJX 3 at 15. The Director determined this amount by multiplying the number of affected workers (twenty-one) by $200.00. ALJX 3 at 15; ALJX 6 at ¶ 8. The Director took into account the assessment factors required by 29 C.F.R. § 500.143 in making his decision. ALJX 3 at 15-16; ALJX 6 at ¶¶ 3, 8.

Violation of MSPA Transportation Safety Requirements (49 C.F.R. § 398.4(b) and 29 C.F.R. § 500.104(1))

Respondent's MSPA workers violated the California Vehicle Code when transporting other MSPA workers to MSPA worksites.[8] ALJX 3 at 16-18. First, the California Highway Patrol determined that Moises de Jesus Romero, an employee of Respondent, caused an accident on May 16, 2006, when he drove his vehicle across double parallel yellow lines and collided with another vehicle. ALJX 4 at Fact 40; RX 17; ALJX 7 at ¶ 14. As a result of this accident, three passengers died and eight others were taken to the hospital with injuries. ALJX 4 at Fact 41; RX 17. The California Highway Patrol cited Mr. Romero for a turning movement violation (California Vehicle Code § 22107) and for illegally crossing over parallel double lines (§ 21460(a)), ALJX 4 at Fact 42; RX 17, and also determined that two of Mr. Romero's passengers were not using seat belts at the time of the accident (California Vehicle Code § 27315), ALJX 4 at Fact 41; RX 17.[9] Finally, fact sanctions eighteen and forty established both that the vehicle involved in this accident did not have sufficient seat belts for all of the passengers and that Respondent's crew boss, Mr. Quiahua, instructed Respondent's MSPA workers to transport Respondent's MSPA workers to Respondent's worksites. ALJX 4 at Fact 45; ALJX 1 at 8, 12.

Second, the California Highway Patrol found that another driver for Respondent, Raul Gonzalez Velazco ("Mr. Velazco"), caused a second accident on August 22, 2006. ALJX 4 at Fact 46; RX 18; ALJX 7 at ¶ 15. The California Highway Patrol determined that Mr. Velazco caused the accident by failing to stop at a stop sign in violation of California Vehicle Code § 22450(A). ALJX 4 at Fact 46; RX 18. Further, Mr. Velazco admitted that he caused this accident by failing to obey a stop sign in the process of driving Respondent's MSPA workers to an MSPA worksite at Tos Farms, under the direction of a crew boss working for Respondent. ALJX 4 at Fact 47; ALJX 10 at ¶¶ 10, 12. Mr. Velazco also admitted that two of his passengers were not wearing seatbelts at the time of this accident, in violation of California Vehicle Code § 27315. ALJX 4 at Fact 48; ALJX 10 at ¶ 11.

Third, and finally, Respondent transported its MSPA workers in an unsafe manner by putting more people in a vehicle than that vehicle was designed to carry, in violation of 29

[8] A motor vehicle used to transport migrant workers is required to be driven in accordance with the "laws, ordinances, and regulations of the jurisdiction in which it is being operated, unless such laws, ordinances and regulations are at variance with specific regulations of this Administration which impose a greater affirmative obligation or restraint." 49 C.F.R. § 398.4(b).

[9] An MSPA worker and driver for Respondent, Maurilo Solis Hernandez, admitted that a crew boss for Respondent instructed him to drive Respondent's MSPA workers. ALJX 11 at ¶ 7; ALJX 4 at Fact 14, 16(D); ALJX 1 at 5 (fact sanction determining that "testimony of any of Respondent's employees . . . that testifies on behalf of the Administrator is representative of Respondent's other employees).

C.F.R. § 500.104(1).[10] ALJX 3 at 18. Mr. Romero transported more than seven people in a 1995 Dodge Caravan, which is only designed to carry seven people. ALJX 4 at Fact 50, 51; RX 17; RX 19; ALJX 7 at ¶ 14.

The Director assessed a total of $23,000 in civil money penalties for the above transportation safety violations. ALJX 3 at 18-19. The Director multiplied the number of MSPA workers affected by the unsafe driving in the two vehicle accidents (fifteen) by $1,000 to assess $15,000 in civil money penalties for the traffic violations leading to the two accidents. ALJX 3 at 19; ALJX 6 at ¶ 9. The Director then assessed $8,000 by multiplying by $1,000 the number of MSPA workers (eight) in the first accident who were injured by being jolted by other MSPA workers who were not wearing seatbelts. ALJX 4 at 19; ALJX 4 ¶ 9. In making his assessment, the Director took into account the factors required by 29 C.F.R. § 500.143, weighing the fact that the violations resulted in three deaths, that Respondent had two serious accidents in three months, that Respondent had a history of violating the MSPA in general, in addition to several other negative factors. ALJX 3 at 19; ALJX 6 at ¶¶ 3, 9.

Violation of Driver's License Requirement (29 U.S.C. § 1841(b)(1)(B))

Respondent's MSPA drivers transported other MSPA workers to MSPA worksites without a valid state driver's license, in violation of 29 U.S.C. § 1841(b)(1)(B).[11] ALJX 3 at 20. It has been established by fact sanctions sixteen and forty-two that Respondent's MSPA employees did not possess a valid driver's license when they transported Respondent's MSPA workers to MSPA work sites from January 1, 2006 to September 23, 2006. ALJX 1 at 7, 12; ALJX 4 at Fact 57. Further, the California Highway Patrol found that Respondent's two drivers, Mr. Romero and Mr. Velazco, involved in the two aforementioned accidents, occurring on May 16, 2006 and August 22, 2006, did not possess a driver's license at the time of the accidents. ALJX 4 at Fact 53; RX 17; RX 18; ALJX 7 at ¶¶ 14, 15.

The Director assessed a $200.00 civil money penalty for Respondent's failure to ensure its drivers had valid driver's licenses at the time they transported MSPA workers. ALJX 3 at 21. The Director took into account the assessment factors required by 29 C.F.R. § 500.143 in making his decision. ALJX 3 at 21; ALJX 6 at ¶¶ 3, 10.

[10] Section 500.104(1) of Title 29 of the Code of Federal Regulations, requires that a secure seat be provided for each vehicle occupant.

[11] Under 29 U.S.C. § 1841(b)(1)(B), FLCs shall "ensure that each driver has a valid and appropriate license, as provided by State law, to operate the vehicle."

Violation of Insurance Requirement (29 U.S.C. § 1841(b)(1)(C) and 29 C.F.R. § 500.120))

Respondent did not possess the vehicle insurance coverage required by 29 U.S.C. § 1841(b)(1)(C) and 29 C.F.R. § 500.120.[12] ALJX 3 at 21-22.

The California Highway Patrol found that both of Respondent's MSPA drivers involved in the two aforementioned accidents, Mr. Romero and Mr. Velazco, were driving without the required insurance coverage. ALJX 4 at Fact 58; RX 17; RX 18; ALJX 7 at ¶¶ at 14, 15. Further, Mr. Hernandez, an MSPA employee of Respondent, admitted that he also did not have the required vehicle insurance for the vehicle he used on May 23, 2006 to transport Respondent's MSPA workers. ALJX 4 at Fact 60; ALJX 11 at ¶ 9. And Mr. Rios, a crew boss for Respondent, admitted to transporting MSPA workers in a vehicle without the required insurance. ALJX 4 at Fact 61; ALJX 9 at ¶¶ 7-8. Lastly, it has been established as a fact in this case that the vehicles used to transport Respondent's workers to his MSPA worksites either did not have insurance or had insufficient insurance at the time of this transportation. ALJX 4 at Fact 62; ALJX 1 at 12 (fact sanction 45).

The Director assessed $4,000.00 in civil money penalties for Respondent's violation of the insurance requirements. ALJX 3 at 22-23. The Director assessed this amount by multiplying the number of "worker vehicles/drivers" having no or insufficient insurance (four) by $1,000. ALJX 3 at 23; ALJX 7 at ¶¶ 3, 11.

Failure to Register Farm Labor Contractors with DOL (29 U.S.C. § 1811(b))

Respondent did not register its employees who performed FLC activities with DOL, as required by 29 U.S.C. § 1811(b).[13] ALJX 3 at 23-24. None of Respondent's FLCs in 2006 were registered with DOL when they performed farm labor contracting activities for Respondent. ALJX 3 at 23. Respondent employed at least seven crew bosses who performed FLC activities from May to September 2006 who were not registered with DOL. ALJX 4 at Facts 7, 63-65. In addition, three of Respondent's MSPA workers performed FLC activities without being registered with DOL. ALJX 4 at Fact 66. Finally, it has been established in this case by fact

[12] Under 29 U.S.C. § 1841(b)(1)(C), FLCs shall "have an insurance policy or a liability bond that is in effect which insures . . . [it] against liability for damage to persons or property arising from the ownership, operation, or the causing to be operated, of any vehicle used to transport any migrant or seasonal agricultural worker." And under 29 C.F.R. § 500.120, FLCs "shall not transport any migrant or seasonal agricultural worker or his property in any vehicle such [FLC] owns, operates, controls, or causes to be operated unless he has an insurance policy or liability bond in effect which insures against liability for damage to persons or property arising from the ownership, operation, or causing to be operated of such vehicle." Further, 29 C.F.R. § 500.121(b) requires that "[t]he amount of vehicle liability insurance shall not be less than $100,000 for each seat in the vehicle, but in no event in the total insurance required to be more than $5,000,000 for any vehicle.

[13] Section 1811(b) of Title 29 of the United States Code requires that "[n]o person shall engage in any farm labor contracting activity, unless such person has a certificate of registration from the Secretary specifying which farm labor contracting activities such person is authorized to perform." Under 29 U.S.C. § 1802(6), "farm labor contracting activity" means "recruiting, soliciting, hiring, employing, furnishing, or transporting any migrant or seasonal agricultural worker."

sanctions nineteen and twenty that DOL did not issue a Farm Labor Contractor Employee Certificate of Registration to any person employed by Respondent as an FLC from January 1, 2000 to the present. ALJX 4 at Fact 68; ALJX 1 at 8.

The Director assessed $4,550 in civil money penalties for Respondent's failure to register all of his FLCs. ALJX 3 at 24-25. The Director determined this amount by multiplying the number of unregistered farm labor contractors (seven) working for Respondent whom he knew of at the time of the assessment (Jesus Quiahua, Luis Meraz, Manuel Rios, Anselmo Lopez, Moises de Jesus Romero, Raul Gonzalez Velazco, and Martin Alonso (a.k.a. Maurilo Solis Hernandez)) by $650.00. ALJX 3 at 24, n. 13; ALJX 6 ¶¶ 3, 12. In making his decision, the Director took into account the assessment factors required by 29 C.F.R. § 500.143. ALJX 6 ¶¶ 3, 12; ALJX 3 at 24-25.

Transportation of MSPA Workers Without Required DOL Authorization (29 U.S.C. 1811(a))

Respondent transported MSPA workers without the required DOL authorization, in violation of 29 U.S.C. 1811(a).[14] It has been established in this case by fact sanctions nineteen and twenty that Respondent transported his MSPA workers when not authorized to do so by DOL. ALJX 4 at Fact 68; ALJX 1 at 8. Further, the Farm Labor Contractor Certificate of Registration that DOL issued to Respondent specifically noted that it did not authorize transportation of MSPA workers. ALJX 4 at Fact 4; RX 4; ALJX 7 at ¶ 5.

The Director assessed $1,000 in civil money penalties for this violation. ALJX 3 at 26. In making his decision, the Director took into account the assessment factors required by 29 C.F.R. § 500.143. ALJX 6 at ¶¶ 3, 13; ALJX 3 at 26.

ANALYSIS

Section 18.40 of Title 29 of the Code of Federal Regulations sets forth the protocol for summary adjudication in cases arising under the MSPA. The summary judgment standard for MSPA cases is essentially the same as the standard set out in Rule 56 of the Federal Rules of Civil Procedure. An administrative law judge may grant summary decision if the pleadings, affidavits, materials obtained by discovery or otherwise, or matters officially noticed, show that there is no genuine issue as to any material fact. 29 C.F.R. § 18.40(d). A fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or a defense asserted by the parties. *Matsushita Elec. Indus. Co. Ltd. v. Zenith*, 475 U.S. 574 (1986). If the slightest doubt remains as to the facts, the motion must be denied. However, a non-moving party may not rest upon mere allegations or denials in his pleadings, but must set forth specific facts showing that there is a genuine issue for trial. *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242 (1986).

[14] Under 29 U.S.C. 1811(a), nobody may engage in labor contracting activity without a certificate of registration from the Secretary that specifies which farm labor contracting activities he or she is authorized to perform.

The burden of proof in a motion for summary decision is borne by the party bringing the motion. By moving for summary decision, a party asserts that based on the present record and without the need for further exploration of the facts and conceding to the opposing party all unfavorable inferences which may be drawn from the record, there is no genuine issue of material fact to be decided and that the moving party is entitled to a decision as a matter of law. Fed. R. Civ. P. 56; 29 C.F.R. § 18.40(d).

The Administrator showed that Mr. Valdez is the sole proprietor of Respondent, GV Farm Labor Services, and Respondent is a farm labor contractor subject to the MSPA. The Administrator also showed that no issue of material fact remains to be decided in relation to any of the alleged MSPA violations—i.e. violations of 29 U.S.C. §§ 1821(b), 1831(b), 1821(a), 1831(a), 1821(d), 1831(c), 1822(a), 1832(a), 1841(b)(1)(B), 1841(b)(1)(C), 1811(b), 1811(a), 29 C.F.R. §§ 500.80(a), 500.80(d), 500.104(1), 500.120, and 49 C.F.R. § 398.4(b). The majority of facts relied upon by the Administrator were established by the order imposing sanctions. For the facts not determined by the sanctions, the Administrator provided clear and undisputed evidence to support the existence of the violations. Respondent did not present any facts to dispute the existence of the violations or call into question the evidence presented by the Administrator. Thus, there is no issue left to be decided regarding Respondent's violations of the MSPA and its implementing regulations.

Furthermore, the Administrator showed that the Director assessed the appropriate civil money penalties, in accordance with the seven factors listed in 29 C.F.R. § 500.143. Respondent did not present any facts to show that any of the penalties were improper. Therefore, there is also no issue left to be decided regarding the civil money penalties assessed.

CONCLUSION

The Administrator showed that there is no genuine issue of material fact to be decided and is entitled to a decision as a matter of law. The evidence the Administrator submitted in support of its motion for summary decision showed that Respondent committed the alleged violations of the Migrant & Seasonal Agricultural Workers Protection Act and that the fines assessed against Respondent were appropriate. Respondent did not reply to the Administrator's summary judgment motion and thus failed to set forth specific facts showing that there is a genuine issue for trial. Therefore, the Administrator's motion for summary decision is granted for the full amount of civil money penalties assessed against Respondent, $ 37,200.

ORDER

The motion for summary decision filed by the Administrator is **HEREBY GRANTED**.

Respondent is assessed and is ordered to pay the Administrator civil money penalties in the amount of $ 37, 200.00.

This Decision and Order Granting the Administrator's Motion for Summary Decision leaves no remaining issues in dispute before me. Therefore, there is no need for a hearing in this case and this case is **HEREBY DISMISSED** in its entirety.

SO ORDERED.

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ANNE BEYTIN TORKINGTON
Administrative Law Judge

ABT:iag