

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



IN THE MATTER OF:

**ADMINISTRATOR, WAGE
AND HOUR DIVISION, UNITED
STATES DEPARTMENT OF LABOR,

PROSECUTING PARTY,**

**ARB CASE NO. 2023-0025

ALJ CASE NOS. 2022-MSP-00002
2022-TAE-00004
CHIEF ALJ STEPHEN R. HENLEY**

v.

DATE: July 31, 2023

**A&M LABOR MANAGEMENT, INC.,

RESPONDENT.**

Appearances:

For the Administrator, Wage and Hour Division:

**Elena Goldstein, Esq.; Jennifer S. Brand, Esq.; Sarah Kay Marcus,
Esq.; Rachel Goldberg, Esq.; Sejal Singh, Esq; *U.S. Department of
Labor, Office of the Solicitor; Washington, District of Columbia***

For the Respondent:

Shaina Thorpe, Esq.; *ThorpeLaw, P.A.; Tampa, Florida*

**Before HARTHILL, Chief Administrative Appeals Judge, and BURRELL,
Administrative Appeals Judge**

DECISION AND ORDER

HARTHILL, Chief Administrative Appeals Judge:

This case arises under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA),¹ including the U.S. Department of Labor's (DOL) implementing regulations.²

On December 3, 2019, the DOL's Wage and Hour Division (WHD) sent a Determination of Civil Money Penalties for MSPA Violations (Notice of Determination) to A&M Labor Management, Inc. (Respondent or A&M), finding violations of the MSPA and assessing civil money penalties (CMPs).³ Respondent sought review of the Notice of Determination and requested a hearing.

On March 23, 2023, DOL Chief Administrative Law Judge (Chief ALJ) Stephen R. Henley issued a D. & O. after a hearing.⁴ In the D. & O., the Chief ALJ found that Respondent violated the MSPA, but the Chief ALJ reduced the amount of CMPs owed.⁵ On April 12, 2023, the Administrator of WHD (Administrator) filed a Petition for Review with the Administrative Review Board (Board or ARB).

For the reasons set forth below, we **VACATE** the Chief Judge's ruling that A&M committed a single violation of the MSPA. The Board rules that A&M committed eight separate violations of the MSPA. In addition, we **MODIFY** the Chief ALJ's assessment of CMPs, increasing the CMPs from \$2,505.00 to \$20,040.00.

BACKGROUND AND PROCEDURAL HISTORY

A&M is a farm labor contractor (FLC) which, during the period relevant to this appeal, employed migrant or seasonal agricultural workers and was subject to MSPA.⁶ The alleged MSPA violations relate to whether Respondent failed to obtain

¹ 29 U.S.C. §§ 1801-1872. The MSPA protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures, and recordkeeping. See <https://www.dol.gov/agencies/whd/agriculture/mspa>.

² 29 C.F.R. Part 500 (2023).

³ Decision and Order (D. & O.) at 2.

⁴ The Chief ALJ's D. & O. also covered H-2A issues. However, this decision only addresses the MSPA portion of the D. & O. On April 24, 2023, the Administrator separately appealed the D. & O.'s H-2A issues, and the H-2A appeal will proceed under a different ARB case number, 2023-0038.

⁵ D. & O. at 2.

⁶ Hearing Transcript at 19; Respondent Closing Brief at 10.

required liability insurance coverage for individuals involved in a November 23, 2018 vehicle accident.⁷

1. MSPA Violations, WHD's Determination, and Chief ALJ's D. & O.

A. A&M Did Not Obtain Insurance Coverage for Eight Workers Transported in an A&M Vehicle

On March 30, 2016, A&M contracted with Impact Staff Leasing (ISL) to process A&M's payroll and provide workers' compensation insurance for A&M's workers that were on ISL's payroll.⁸ To receive workers' compensation coverage under the contract, A&M had to submit to ISL each employee's application, I-9 form, and other tax forms (hiring documents) *before* the employee began work for A&M.⁹ A&M failed to provide ISL with the hiring documents for A&M's driver and seven of its workers involved in the November 23, 2018 vehicle accident, which left those employees without workers' compensation coverage.¹⁰

On December 2, 2016, A&M separately contracted with Bruce Hendry Insurance for a vehicle insurance policy and general liability insurance, but A&M rejected passenger liability insurance for workers transported in A&M vehicles.¹¹ A&M informed Bruce Hendry Insurance that it had already obtained workers' compensation insurance through ISL for group transportation of employees.¹² Thus, the eight workers who were excluded from ISL's workers' compensation coverage also lacked vehicle passenger insurance.

On November 23, 2018, A&M's bus was involved in an accident.¹³ Eight out of eighteen people onboard the bus were denied workers' compensation coverage

⁷ D. & O. at 2, 4.

⁸ *Id.* at 4.

⁹ *Id.* at 4, 4 n.10.

¹⁰ *Id.* at 4, 11.

¹¹ *Id.* at 4.

¹² *Id.* at 4, 4 n.11.

¹³ *Id.* at 4.

because A&M had failed to provide each of those workers' hiring documents to ISL, leaving them without workers' compensation coverage.¹⁴

B. Procedural History and Administrator's Appeal

On December 3, 2019, the West Palm Beach, Florida WHD office sent A&M its Notice of Determination that A&M had violated the MSPA. The Notice of Determination indicated that A&M failed to obtain required workers' compensation insurance coverage for eight MSPA-covered workers who were in the 2018 bus accident.¹⁵ The Administrator assessed the maximum CMP at the time of \$2,505 for each of the eight workers whom A&M transported in the bus without first obtaining workers' compensation coverage, amounting to a total CMP of \$20,040.00.¹⁶

A&M sought review of the Notice of Determination, and the Chief ALJ held a hearing on July 21, 2022, and July 27, 2022.¹⁷ On March 23, 2023, the Chief ALJ issued a Decision and Order in which he found that A&M violated the MSPA by failing to obtain either workers' compensation insurance or vehicle liability insurance covering the eight workers transported in the bus that A&M owned and operated.¹⁸ However, the Chief ALJ determined that A&M's failure to provide insurance coverage to eight workers on the bus only amounted to a single MSPA violation.¹⁹ The Chief ALJ found that "the gravamen of this offense is the failure to provide workers' compensation coverage."²⁰ Therefore, the Chief ALJ reduced the CMPs from \$20,040.00 to \$2,505.00, finding that it was impermissible to assess "a separate penalty for each individual denied workers compensation coverage."²¹ The Chief ALJ determined that the CMP "cannot be multiplied by the number of

¹⁴ *Id.* at 4, 11. A&M had also declined liability insurance from Bruce Hendry Insurance. *Id.* at 4.

¹⁵ *Id.* at 2, 5.

¹⁶ *Id.* 2, 5, 17 n.30.

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 10-11

¹⁹ *Id.* at 17-18.

²⁰ *Id.* at 17.

²¹ *Id.* 17-18 (citing *Bittner v. United States*, 143 S. Ct. 713 (2023)).

mistakes made where a single mistake is sufficient to violate the relevant statute or regulation.”²²

The Administrator timely filed a Petition for Review. The Board accepted the following issue for review:

- Whether the MSPA regulations at 29 C.F.R. §§ 500.120-.128 (requiring farm labor contractors to obtain insurance for “any migrant or seasonal agricultural worker” before transporting workers in a vehicle), permit the Administrator to find a violation and assess a CMP for each worker impacted by the contractor’s failure to comply with MSPA.²³

JURISDICTION AND STANDARD OF REVIEW

The Secretary has delegated the authority to review this matter to the Board.²⁴ Under the MSPA, the Board may modify or vacate the D. & O. of an ALJ.²⁵ In addition, “[o]n appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”²⁶

DISCUSSION

On appeal, the Administrator argues that the ALJ erred in concluding that A&M was subject to only a single CMP assessment.²⁷ The Administrator contends that the plain text of the MSPA and its implementing regulations demonstrate that a FLC has a legal duty to obtain insurance coverage for each covered worker it

²² D. & O. at 17.

²³ Notice of Intent to Modify or Vacate a Decision and Order at 2. 29 C.F.R. § 500.265(b).

²⁴ Secretary’s Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board) (Secretary’s discretionary review of ARB decisions), 85 Fed. Reg. 13,186 (Mar. 6, 2020).

²⁵ 29 C.F.R. § 500.263; *see also* *Adm’r, Wage & Hour Div., U.S. Dep’t of Lab. v. Wyrick & Sons Pine Straw*, ARB No. 2017-0046, ALJ No. 2015-MSP-00001, slip op. at 3 (ARB July 30, 2020).

²⁶ 5 U.S.C. § 557(b).

²⁷ Administrator Brief (Adm’r Br.) at 9.

transports.²⁸ The Administrator also claims that the ALJ's reliance on *Bittner v. United States*²⁹ was misplaced because *Bittner's* conclusion is specific to a banking statute, not the MSPA.³⁰ Thus, the Administrator argues that A&M committed a separate violation for each of the eight workers it transported without legally-mandated insurance, and the MSPA authorizes eight corresponding penalties.³¹

In response, A&M argues the Board should not disturb the ALJ's ruling. A&M claims MSPA mandates that the employer must have insurance coverage that meets certain parameters, but that the MSPA does not speak in terms of insurance being required for each worker.³²

Upon consideration of the parties' briefs and arguments on appeal, and having reviewed the evidentiary record, the Board vacates in part and modifies in part the Chief ALJ's ruling. The Board determines that (1) *Bittner* does not preclude per-worker violations and penalties under MSPA; (2) MSPA imposes a legal duty on contractors to obtain insurance coverage for each worker transported; (3) A&M committed eight violations of MSPA for failure to provide insurance coverage for each of the eight workers transported; and (4) a CMP of \$20,040.00 is appropriate, reflecting an award of \$2,505.00 for each of the eight violations.

1. *Bittner* Does Not Preclude Per-Worker Violations and Penalties for Each Worker Under MSPA

The Chief ALJ found that A&M's failure to provide insurance coverage to workers on the bus only amounted to a single violation and penalty, not multiple violations and separate penalties for each individual without insurance coverage.³³ To support his decision, the Chief ALJ cited to *Bittner v. United States*.³⁴ We disagree with the Chief ALJ's reliance on *Bittner* because the MSPA's statutory and regulatory text is distinct from the statutory text analyzed and discussed in *Bittner*.

²⁸ Adm'r Br. at 8.

²⁹ 143 S. Ct. 713 (2023).

³⁰ Adm'r Br. at 23.

³¹ *Id.* at 8-9.

³² A&M Response Brief at 5-6.

³³ D. & O. at 17-18.

³⁴ 143 S. Ct. 713.

In *Bittner*, the United States Supreme Court examined the text of the Bank Secrecy Act (BSA) to identify the relevant legal duty created by the statute.³⁵ The BSA requires individuals to file annual reports about their foreign bank accounts.³⁶ The Court considered whether a single violation of the BSA occurred for each improperly filed *report*, or whether multiple violations occurred for every improperly recorded *account* in each report.³⁷

The Court reviewed the statutory language and determined that the BSA only created a legal duty to file a timely and accurate report, not a duty related to each account within the report. The Court noted how BSA “Section 5314 does not speak of accounts” and “[t]he word ‘account’ does not even appear.”³⁸ Instead, the Court noted how “the relevant legal duty is the duty to file reports.”³⁹ Accordingly, the Court found that penalties “accrue[d] on a per-report, not a per-account, basis.”⁴⁰

The Chief ALJ cited to *Bittner*, characterizing it as establishing that “when the legal duty imposed by a statute is violated regardless of the number of errors made, it is not appropriate to multiply the resulting penalty by the number of errors that were actually made.”⁴¹ The Chief ALJ broadly concluded that per-worker CMPs are impermissible when an employer’s “single mistake is sufficient to violate the relevant statute or regulation,” and therefore that MSPA’s insurance requirement did not authorize the Administrator to assess a separate violation and penalty for each individual denied workers’ compensation coverage.⁴²

We disagree with the Chief ALJ’s application of *Bittner* to the case at hand. *Bittner* involves a different statutory scheme and limits its discussion to interpreting the legal duties and penalties under the BSA. *Bittner* does not sweep so broadly as to preclude per-worker violations and penalties under the MSPA.

³⁵ *Id.* at 719.

³⁶ *Id.* at 717.

³⁷ *Id.* at 719 (emphasis added).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 720.

⁴¹ D. & O. at 18 n.31.

⁴² *Id.* at 17-18.

Instead, *Bittner* illustrates that textual interpretation determines the legal duties from which violations and corresponding penalties flow. Therefore, we turn to the language of the MSPA and its regulations for the outcome here.

2. MSPA Imposes a Legal Duty on FLCs to Provide Each Worker Transported with Appropriate Insurance Coverage

Under 29 U.S.C. § 1853, the Secretary may assess “a civil money penalty” for “each violation” of MSPA or any of its implementing regulations.⁴³ To understand what constitutes a “violation” of the MSPA and how to assess a penalty for “each violation,” we must review the legal duties that parties violate to incur penalties. We begin with the relevant MSPA provisions that outline the legal duties.

Read collectively, both the statutory and regulatory text speak in terms of legal duties contractors owe to each of their workers.⁴⁴ The MSPA’s motor vehicle safety provision at 29 U.S.C. § 1841 applies “to the transportation of *any* migrant or seasonal agricultural worker.”⁴⁵ Section 1841 also specifies that an FLC that owns or operates a vehicle used to transport MSPA-covered workers must have insurance against liability for injury to “persons.”⁴⁶

The MSPA and its implementing regulations allow contractors to satisfy MSPA by either obtaining (1) vehicle liability insurance that covers injury to passengers,⁴⁷ or (2) workers’ compensation coverage for each such worker.⁴⁸

⁴³ 29 U.S.C. § 1853(a)(1); *see also* 29 C.F.R. § 500.143(a) (“A civil money penalty may be assessed for each violation of [MSPA] or these regulations.”).

⁴⁴ In the following paragraphs, we agree with the Administrator’s statutory and regulatory analysis.

⁴⁵ 29 U.S.C. § 1841(a)(1) (emphasis added).

⁴⁶ *Id.* § 1841(b)(1)(C). The implementing regulations have similar requirements to the statutory requirements. *See* 29 C.F.R. § 500.120 (providing that a farm labor contractor shall not transport “*any* migrant or seasonal agricultural worker” in a vehicle owned, operated, or controlled by the contractor, unless the contractor first obtains an insurance policy covering injury to “persons”) (emphasis added); 29 C.F.R. § 500.121(d) (providing that vehicle insurance must cover liability for personal injury to “employees” whose transportation is not covered by workers’ compensation insurance).

⁴⁷ 29 U.S.C. § 1841(b); 29 C.F.R. §§ 500.120-.121.

⁴⁸ 29 U.S.C. § 1841(c); 29 C.F.R. § 500.122.

When contractors opt to satisfy MSPA’s requirements by obtaining passenger insurance through vehicle liability coverage, the regulation requires that coverage be no less than “\$100,000 for *each seat* in the vehicle.”⁴⁹ And FLCs must have a certificate evidencing that the liability insurance they purchase “covers *the workers* while being transported.”⁵⁰ Alternatively, MSPA provides that a farm labor contractor that employs “any” MSPA-covered worker may satisfy MSPA’s insurance requirements if it “provides workers’ compensation coverage for *such* worker.”⁵¹

Under either option of liability insurance or workers’ compensation, an FLC cannot satisfy MSPA’s requirements simply by obtaining an insurance policy. Rather, an FLC must ensure that insurance protects each individual MSPA-covered worker, whether by obtaining passenger insurance on a per-seat basis,⁵² or by obtaining workers’ compensation coverage on a per-worker basis “for such worker.”⁵³ Because an FLC owes a legal duty to each of its workers, a contractor commits a separate violation of the regulations every time it fails to insure any such worker.⁵⁴

3. A&M Committed a Separate Violation of MSPA for Each of the Eight Workers Without Insurance Coverage

A&M violated its legal duty to obtain insurance coverage for each worker prior to transporting them in an A&M vehicle. To receive workers’ compensation coverage, A&M had to provide hiring documents to ISL before each employee began work for A&M.⁵⁵ At the time of the November 23, 2018 bus accident, A&M had not

⁴⁹ 29 C.F.R. § 500.121(b) (emphasis added).

⁵⁰ *Id.* § 500.121(e) (emphasis added).

⁵¹ 29 U.S.C. § 1841(c) (emphasis added); *see also* 29 C.F.R. § 500.122(a) (FLC that employs “a” MSPA-covered worker may satisfy the MSPA’s insurance requirement by obtaining workers’ compensation coverage for “*such* worker”) (emphasis added).

⁵² 29 C.F.R. § 500.121(b), (e).

⁵³ 29 U.S.C. § 1841(c); 29 C.F.R. § 500.122(a).

⁵⁴ *Cf. Adm’r, Wage & Hour Div., U.S. Dep’t of Lab. v. Washington Farm Lab. Ass’n*, ARB No. 2021-0069, ALJ No. 2018-TAE-00013, slip op. at 40 (ARB Mar. 31, 2023) (“[E]ach instance in which a domestic worker was denied the same benefits and working conditions as the H-2A workers constitutes a separate violation.”).

⁵⁵ D. & O. at 4, 11.

submitted hiring documents to ISL for seven of A&M’s workers and the bus driver.⁵⁶ In addition, A&M declined vehicle liability insurance from Bruce Hendry Insurance.⁵⁷ Due to A&M’s failure, the eight workers did not have insurance coverage and were denied workers’ compensation coverage following the bus accident.⁵⁸

Accordingly, the Board holds that A&M violated the MSPA and its implementing regulations by not providing insurance coverage for each worker, committing eight separate violations. The Chief ALJ erred in ruling that A&M committed a single violation of the MSPA’s vehicle insurance coverage requirements. Therefore, the board vacates the Chief ALJ’s ruling that A&M committed a single violation of MSPA.

4. The Board Exercises its Authority to Modify the Chief Judge’s Assessment of CMPs

The Secretary may assess “a civil money penalty” for “each violation” of MSPA or any of its implementing regulations.⁵⁹ As noted in Section 3, the Board found that A&M committed eight separate violations of the MSPA and its implementing regulations. To account for A&M’s eight violations of the MSPA, the Board modifies the Chief ALJ’s penalty from \$2,505.00 for one violation of the MSPA to a total CMP of \$20,040.00, reflecting a penalty of \$2,505.00 for each of the eight violations.⁶⁰

⁵⁶ *Id.* at 11.

⁵⁷ *Id.* at 4.

⁵⁸ *Id.*

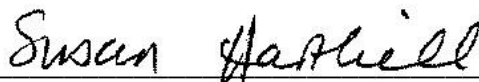
⁵⁹ 29 U.S.C. § 1853(a)(1); *see also* 29 C.F.R. § 500.143(a) (“A civil money penalty may be assessed for each violation of [MSPA] or these regulations.”) The plain meaning of this text is that A&M may face separate penalties for “each” separate violation of MSPA’s insurance requirements. *Cf. Washington Farm Lab. Ass’n*, ARB No. 2021-0069, slip op. at 40 (ARB Mar. 31, 2023) (holding that per-worker penalties are appropriate when regulatory text grants the Administrator “discretion to assess CMPs ‘for each violation’ of the H-2A program requirements”).

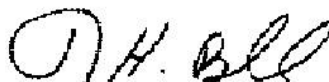
⁶⁰ When the Administrator assessed CMPs in the Notice of Determination, the maximum CMP applicable was \$2,505.00 per violation. D. & O. at 17 n.30.

CONCLUSION

We conclude that the Chief ALJ erroneously ruled that A&M committed a single violation of the MSPA and **VACATE** that finding. The Board rules that A&M committed eight separate violations of the MSPA. Accordingly, we **MODIFY** the penalty to a total CMP of \$20,040.00, assessing a \$2,505.00 penalty for each of the eight violations.

SO ORDERED.



SUSAN HARTHILL**Chief Administrative Appeals Judge**

THOMAS H. BURRELL**Administrative Appeals Judge**