

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 10 September 2013

CASE NO.: 2013-TAE-00010

In the Matter of:

S. ARNOLD & COMPANY, LLC

Respondent.

Upon request for a hearing regarding the
Assessment of a civil money penalty under
29 C.F.R. Part 501

Before: Timothy J. McGrath, Administrative Law Judge

Appearances:

Orly Shoham, Esquire, (U.S. Department of Labor, Office of the Solicitor)
Boston, Massachusetts, for Prosecuting Party

Christopher Schulte, Esquire, (CJ Lake LLC)
Washington, D.C., for Respondent

**DECISION AND ORDER APPROVING CONSENT FINDINGS
AND CANCELLING HEARING**

This case arises from a request for hearing filed by the Respondent in the above captioned matter, which involves the enforcement of the H-2A provisions of the Immigration and Nationality Act, 8 U.S.C. §1101(a)(15)(H)(ii)(a), 1184(c), and 1186, as amended (“the Act”), and the implementing regulations set forth at 20 C.F.R. Part 655, and 29 C.F.R. Part 501 *et seq.* On June 7, 2013, the Solicitor of Labor, on behalf of the Administrator, Wage & Hour Division, United States Department of Labor (“Administrator”) filed an Order of Reference referring this matter to the Office of Administrative Law Judges for a hearing.

The matter arose when the Administrator assessed a civil money penalty totaling \$31,500.00 for two separate violations. On May 29, 2013, the Respondent, pursuant to 20 C.F.R.

§ 655.71, timely filed a request for review of the Administrator's determination of the penalty. A formal hearing is scheduled for October 2, 2013, in Boston, Massachusetts.

On September 6, 2012, the Administrator filed Consent Findings (hereinafter "Agreement") signed by both parties which memorialize the terms of a settlement between the parties resolving the underlying issues in this case. Having reviewed the specific terms of the consent findings and settlement, I find that the terms are fair and reasonable and in substantial compliance with 29 C.F.R. § 18.9(b) and it is approved.

Pursuant to the Agreement the following order shall enter:

- (1) The Agreement is APPROVED and its terms are adopted and incorporated herein by reference;
- (2) The parties shall comply with each and every term contained in the Agreement;
- (3) At all times pertinent hereto, Respondent is an employer within the meaning of 29 CFR § 501.3(a), concerning the H-2A provisions of IRCA;
- (4) Upon written notice dated May 22, 2013, in accordance with 29 CFR § 501.19, Respondent was informed that it was assessed total civil money penalties of \$31,500.00 under the H-2A provisions of IRCA for alleged violations of 20 CFR §655.135(a) and 29 CFR §§1910.142(f)(ii) and (g);
- (5) Within thirty (30) days of receipt of the aforesaid H-2A notice, Respondent made a timely request for a hearing concerning civil money penalties, in accordance with 29 CFR § 501.33;
- (6) Respondent, without admitting the H-2A violations alleged, represents that it is presently in compliance with all applicable provisions of the H-2A provisions of IRCA, and all pertinent regulations thereunder, and will continue to comply therewith in the future;
- (7) The Administrator hereby amends the civil money penalties assessed for the alleged H-2A IRCA violations so that Respondent shall pay \$19,500.00 in civil money penalties;
- (8) In consideration of the Administrator's commitments herein, Respondent agrees and consents to pay the amended penalty of \$19,500.00 by cashier's or certified check or money order payable to "Wage and Hour Division – Labor," with the return of this Consent Findings. Respondents shall return this Consent Findings, along with the check or money order for the amended penalty, to the following

address: U.S. Department of Labor, Office of the Solicitor, JFK Federal Building, Room E-375, Boston, MA 02203;

- (9) Respondent hereby withdraws the aforesaid requests for hearing concerning the H-2A matters and agrees to the entry of these Consent Findings in settlement of the case without contest;
- (10) The final order disposing of this proceeding shall have the same force and effect as an order made after full hearing;
- (11) The entire record on which such final order is based shall consist solely of the notices of administrative determination and these agreements and consents;
- (12) Each party hereby agrees to bear its own costs, fees and other expenses incurred by it in connection with any stage of this matter;
- (13) The parties waive further procedural steps before an Administrative Law Judge and any right to challenge or contest the validity of these findings or any order entered in accordance herewith;
- (14) The parties agree that the settlement terms and conditions listed herein fully and completely resolve and finally settle all claims asserted by the Secretary based on the investigation covering Respondents' operations in the Wage and Hour Division case identified above;
- (15) The Agreement and this Order shall comprise my findings of fact and conclusions of law and shall constitute the full, final, and complete adjudication of this proceeding; and
- (16) The hearing scheduled for October 2, 2013 in Boston, Massachusetts is CANCELLED.

SO ORDERED.

TIMOTHY J. McGRATH
Administrative Law Judge

Boston, Massachusetts

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 calendar days of the date of issuance of the administrative law judge’s decision. *See* 20 C.F.R. § 655.76(a). The Board’s address is:

Administrative Review Board
U.S. Department of Labor
Room S-5220
200 Constitution Ave, NW
Washington, D.C. 20210

At the time you file the Petition with the Board, you must serve it on all parties to the case as well as the administrative law judge. 20 C.F.R. § 655.76(a).

No particular form is prescribed for the Petition, however, any such petition shall:

- (1) Be dated;
- (2) Be typewritten or legibly written;
- (3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;
- (4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;
- (5) Be signed by the party filing the petition or by an authorized representative of such party;
- (6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and
- (7) Attach copies of the administrative law judge's decision and order, and any other record documents which would assist the Board in determining whether review is warranted.

20 C.F.R. § 655.76(b). If the Board determines that it will review the ALJ's decision and order, it will issue a notice specifying (1) The issue or issues to be reviewed; (2) The form in which submissions shall be made by the parties (e.g., briefs); and (3) The time within which such submissions shall be made. When filing any document with the Board, the party must file an original and two copies of the document. 20 C.F.R. § 655.76(e).