U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 09 January 2020

Case No: 2018-TAE-00009

In the Matter of:

LANCASTER FARMS, INCORPORATED,
Employer.

DECISION AND ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DECISION AND REVERSING ADMINISTRATOR'S NOTICE OF DETERMINATION ASSESSING CIVIL PENALTIES

This case arises under the H-2A visa program, Temporary Agricultural Employment (TAE) of the Immigration and Nationality Act (Act), as amended by the Immigration Reform and Control Act of 1986, U.S. Code, Title 8, §§ 1101(a) and 1188(c), and is governed by the implementing Regulations found at Code of Federal Regulations, Title 20, Part 655, Subpart B. Per 29 CFR § 501.34(a), all proceedings will be held in a manner consistent with the procedural rules set forth in federal regulations at 29 CFR Part 18, Subpart A (29 CFR §§ 18.10 – 18.95).

The Administrator for the Wage and Hour Division (WHD), Employment Standards Administration, U.S. Department of Labor, filed an "Order of Reference," dated January 30, 2018, with the Office of Administrative Law Judges pursuant to 29 C.F.R. § 501.37. Included with the Order of Reference was a copy of the January 27, 2017 Notice of Determination of Wages Owed, Assessing Civil Money Penalties against the Respondent. The Notice of Determination stated that $82,158.88 was owed in unpaid wages for 48 workers and civil money penalties were assessed in the amount of $2,250.00 for violations of 20 C.F.R. § 655.122(a). The Administrator also filed an Assessment of Civil Money Penalties for child labor violations in the amount of $1,150.00, dated January 27, 2017.

The Parties requested a settlement judge to mediate. On March 28, 2018, an Order was issued appointing Administrative Law Judge Paul C. Johnson, Jr., as settlement judge. 29 C.F.R. § 18.9(e). On April 11, 2018, the settlement judge proceeding was terminated after the Office of the Regional Solicitor of Labor advised that upon reevaluation, this matter did not meet that Office's standards for alternative dispute resolution. This matter was set for hearing on March 13, 2019 in Newport News, Virginia.

Pursuant to the Notice of Hearing and Scheduling Order, the Administrator filed an "Administrator's Bill of Particulars." (Respondent's Exhibit 4) The Administrator's Bill of Particulars stated:

1. This action arises under the Immigration and Nationality ("Act") Act, 8 U.S.C. § 1101, *et seq*., and Regulations found at 29 C.F.R. Part 501 for final administrative determination of violation and assessment of civil money penalties.
2. The Administrator alleges that from June 1, 2012 to May 30, 2014 ("relevant period of investigation"), Respondent violated certain regulations under the H-2A guest worker program by giving preferential treatment to H-2A workers, specifically, paying bonuses to H-2A workers but not to corresponding workers; failing to keep adequate earnings records; and employing minors during school hours.
3. The H-2A regulations prohibit employers from preferential treatment of H-2A workers as follows:

> The employer's job offer must offer to U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2A workers. Job offers may not impose on U.S. workers any restrictions or obligations that will not be imposed on the employer's H-2A workers. This does not relieve the employer from providing to H-2A workers at least the same level of minimum benefits, wages, and working conditions which must be offered to U.S. workers consistent with this section.

   20 C.F.R. § 655.122(a). A majority of H-2A workers in Respondent's 2012 and 2013 seasons were paid a bonus at the end of each contract period, while very few corresponding workers received bonuses. In 2012, 15 of the 22 H-2A workers employed under the contract received a bonus at the end of the contract period, totaling $21,326.31. In 2013, records indicate that 22 of the 23 H-2A workers were paid a bonus at the end of the contract, totaling $23,723.11.
4. Back wages for this violation were computed by taking the total amount of bonuses paid to H-2A workers each year and dividing that figure by the total number of H-2A workers who received a bonus. In 2012, 15 H-2A workers received a total of $21,326.31 in bonuses. This is an average bonus of $1,421.75 per worker. This amount was then multiplied by the number of corresponding employees in 2012, or 32 workers, resulting in $45,496.00 in back wages for 2012. The total bonuses paid in 2013 were $23,723.11. This number was divided by the total number of H-2A workers, or 22, resulting in average bonus of $1,078.32 per worker. This average was then multiplied by the total number of corresponding workers in 2013, or 34, which resulted in $36,662.88 in back wages. A total of $82,158.88 in back wages is due to 48 corresponding workers for the two contract periods covered under this investigation.
5. Wage and Hour initially assessed a base penalty of $1,500 for this violation. *See* 29 C.F.R. § 502.19(a). Wage and Hour reduced the civil money penalty by 20% due to mitigating factors, bringing the total penalty down to $1,200.
6. Wage and Hour also found that the employer's earnings records failed to disclose the nature and amount of the work performed, in violation of 29 C.F.R. § 644.122(j). Specifically, Respondent's earnings records failed to show the nature and amount of the work performed and number of hours of work offered each day. Because Wage and Hour considered this a violation of one requirement under § 655.122(j), a based [sic] penalty of $1,500 was initially assessed. After applying a 30% reduction for mitigating factors, the total civil money penalty for this violation was reduced to $1,050.00.

7. Through its investigation, Wage and Hour discovered that Respondent employed two fifteen year old minors during school hours. Both minors were home schooled. The regulations state that minors under the age of 16 cannot be employed during school hours in agriculture work. 29 C.F.R. § 570.35. The requirement that minors be employed outside the school hours of the public school district in which the minor is living while employed in agriculture applies even if that minor does not attend public school, such as when a minor is home schooled. *Id.* Both minors reside in Smithfield, Virginia, under the Isle of Wright [sic] County School system. Based on this county's school year calendar, both minors were deemed working during school hours. A base civil money penalty of $575.00 was assessed for this FLSA violation and multiplied by two for the two distinct violations of this regulation, resulting in $1,150.00 in civil money penalties.

On February 11, 2019, the Administrator filed its timely Motion for Summary Decision and the Respondent filed its timely Motion for Partial Summary Decision. On February 14, 2019, an Order was issued cancelling the hearing pending review by the court of both Parties' Motions for Summary Decision. On February 25, 2019, the Administrator filed its Opposition to Respondent's Motion for Summary Decision and the Respondent filed its Opposition to Administrator's Motion for Summary Decision and Reply in Further Support of Respondent's Motion for Partial Summary Decision.

The Administrator presented three arguments. First, the Administrator argued that the Respondent violated the recordkeeping requirements of 20 C.F.R. § 655.122(j)(1). Second, the Administrator argued that the Respondent violated 29 C.F.R. § 655.122(a) by showing preferential treatment to H-2A workers when paying more in bonuses (both in amount of bonus per worker and number of workers paid) than to the corresponding workers. Third, the Administrator argued that the Respondent violated 29 C.F.R. § 579.3(b)(1) by employing minors during school hours.

The Respondent presented three arguments. First, Respondent conceded that it did not comply with the recordkeeping requirements of 20 C.F.R. § 655.122(j)(1). Second, the Respondent argued that bonuses awarded to H-2A workers were performance-based awards, based on neutral factors, and available to both H-2A and non-H-2A workers. Third, the Respondent argued that the Administrator was bound by the Bill of Particulars, which referenced a non-agricultural child labor violation, 29 C.F.R. § 570.35. The Respondent argued that 29 C.F.R. § 570.70(b) makes an explicit exception to the child labor rules: "This subpart shall not apply to the employment of a child below the age of 16 by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person." 29 C.F.R. § 570.70(b). The Respondent submitted affidavits by the parents of both minors naming Art Parkerson as legal guardian.

[1] The Respondent argued that the Administrator is foreclosed from pursuing this violation, as the Administrator cited to 29 C.F.R. § 570.35 (involving non-agricultural work) in its Bill of Particulars. The Administrator argued that Wage and Hour's Assessment of Civil Money Penalty for Child Labor Violations letter accurately listed the applicable agricultural regulation. The Administrator argued that in the Bill of Particulars, the Administrator stated, "Respondent employed two fifteen year old minors during school hours. Both minors were home schooled. The regulations state that minors under the age of 16 cannot be employed during school hours in agricultural work." Administrator's Bill of Particulars at 3. The Administrator argued that the Respondent received sufficient notice of the applicable violation.

DISCUSSION

The United States Department of Labor, Office of Administrative Law Judges, Rules of Practice and Procedure, govern all proceedings and hearings. 29 CFR §18. The Rules provide that when a party believes there is no genuine issue regarding a material fact, that party may file a Motion For Summary Decision for a decision as a matter of law. Administrator and Respondent filed a Motion For Summary Decision.

Under these procedural Rules, "A party may move for summary decision, identifying each claim or defense – or the part of each claim or defense – on which summary decision is sought. The judge shall grant summary decision if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to decision as a matter of law." 29 CFR §18.72.

The Rules provide that an Administrative Law Judge "may enter summary judgment for either party if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." 29 C.F.R. §18.72. A "material fact" is a fact that affects the outcome of the case. A "genuine issue" exists "if the evidence is such that a reasonable [fact finder] could return a verdict for the non-moving party," Anderson v. Liberty Lobby, Inc., 477 US 242, 248 (1986), after "drawing all reasonable inferences in favor of that [non-moving] party." Williams v. Utica College of Syracuse University, 453 F.3d 112, 116 (2nd Cir. 2006); Jeffery v. Sarasota White Sox, Inc., 64 F.3d 590 (11th Cir. 1995) (per curium) citing Anderson v. Liberty Lobby, Inc., Supra.

Once the moving party shows the absence of a genuine issue of material fact, the non-moving party cannot rest on his pleadings, but must instead present "specific facts showing that there is a genuine issue for trial." Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); 29 C.F.R. § 18.40(c). The non-moving party must present affirmative evidence to show that a genuine issue of material fact does exist. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257 (1986). Summary judgment must be entered "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden at trial." Dadeland Depot, Inc. v. St. Paul Fire and Marine Ins. Co., 479 F.3d 799, 802 (11th Cir. 2007), quoting Johnson v. Board of Regents, 263 F.3d 1234, 1243 (11th Cir. 2001), quoting Celotex Corp. v. Catrett, at 322. "If the non-moving party fails to make a sufficient showing on an essential element of [the non-moving party's] case with respect to which [the non-moving party] has the burden of proof, then the court must enter summary judgment for the moving party." Dadeland Depot, Inc. v. St. Paul Fire and Marine Ins. Co., Supra at 802, quoting Gonzalez v. Lee County Housing Auth., 161 F.3d 1290, 1294 (11th Cir. 1998), quoting Celotex Corp. v. Catrett, at 323.

A. Facts Not in Dispute

The following facts are not in dispute such that there is no genuine issue as to material fact:

Record Keeping Claim, 20 C.F.R. § 655.122(j)(1)

- Respondent admitted to the recordkeeping violation. "Respondent concedes liability on the recordkeeping violation under Section 655.122(j)(1) and does not seek summary decision on nor dismissal of that claim. Lancaster Farms has since updated its payroll software to record the hours offered." (Respondent's Motion for Partial Summary Decision at 2, f. 2; Respondent's Exhibit 3, Dep. Transcript Excerpts of Christopher J. Brown, at 66)

Preferential Treatment Claim

- In 2012, Respondent gave 15 out of 22 H-2A workers a bonus at the end of the contract period.
- In 2012, Respondent gave 2 out of 32 corresponding workers a bonus at the end of 2012 season.
- In 2013, Respondent gave 22 out of 23 H-2A workers a bonus at the end of the contract period.
- In 2013, Respondent gave 2 out of 34 corresponding workers a bonus at the end of the 2013 season.

Child Labor Claim

- Respondent employed two minors, aged 14 and 15, in agricultural work. (Respondent's Motion for Partial Summary Decision at 12)
- The minors employed by Respondent were home schooled. (Respondent's Motion for Partial Summary Decision at 13; Bill of Particulars at 3)
- The parents of both minors signed affidavits giving guardianship of the minors to Art Parkerson, CEO of Lancaster Farms, while the minors were at work for Lancaster Farms. (Respondent's Motion for Partial Summary Decision, Exhibit 7)

Findings of Fact and Conclusions of Law

Based on the evidence in the record, the law, the Regulations, and the arguments of the Parties, the undersigned finds:

1. Respondent admitted a record keeping violation, procedures were corrected, and the Administrator assessed no penalties.
2. Respondent did not violate the law by paying the bonus.
3. Respondent did not violate the law by employing the two minors.

Alleged Recordkeeping Claim

There are no facts in dispute regarding the recordkeeping violation under 20 C.F.R. § 655.122(j)(1). Respondent admitted to the recordkeeping violation stating in its Motion for Partial Summary Decision, "Respondent concedes liability on the recordkeeping violation under Section 655.122(j)(1) and does not seek summary decision on nor dismissal of that claim. Lancaster Farms has since updated its payroll software to record the hours offered." (Respondent's Motion for Partial Summary Decision at 2, f. 2)

In its Motion for Summary Decision, the Administrator stated, "While the Administrator did not assess a civil money penalty for Respondent's failure to maintain records that show the nature and amount of work performed during the investigative period, he still seeks an order from this Court affirming the violation as there are no material facts in dispute with respect to this violation." (Administrator's Motion for Summary Decision at 15)

There is no genuine dispute of material fact regarding the above.

Alleged Preferential Treatment Claim

Respondent argued that the difference between bonuses awarded to H-2A workers and bonuses awarded to corresponding workers was due to performance-related reasons and the calculation of other wages included in "bonus payments" in Respondent's payroll software. Respondent argued that the "bonus payments" category in its software included final-week wages for H-2A workers who did not have bank accounts, and travel expenses paid to H-2A workers who were returning home at the end of the contract season. Respondent argued that performance-related bonuses were based on the following neutral factors:

> Consistency, showing up, leadership, honesty, identifying problems and issues and voicing them, setting a good example, keeping a clean workplace, promptness, not taking excessive breaks, insight that they – like an employee who sees a better way to do things and process improvement.

(Respondent's Motion for Partial Summary Decision and Memorandum of Law in Support Exhibit 2 at 42)

Art Parkerson, majority owner and Chief Executive Officer of Lancaster Farms, stated that he shared those factors with H-2A workers and with corresponding workers. (Respondent's Motion for Partial Summary Decision and Memorandum of Law in Support, Exhibit 2 at 44) Mr. Parkerson stated that non-H-2A workers could receive "bonus" payments that included time-sheet corrections, reimbursements for vehicle repairs and personal cell phone usage for work, and performance-based bonuses "which

could take the form of a bonus or a pay increase." (Administrator's Exhibits in Support of Administrator's Opposition to Respondent's Motion for Partial Summary Decision Exhibit A at 56) The performance-based factors he considered for bonuses were the same as those considered for H-2A workers. *Id.*

Respondent argued that Exhibit 5 to its Motion for Partial Summary Decision stated the specific performance-related reasons for each of the U.S. workers who did not receive performance pay. This exhibit included a list of names in one column, with two columns for 2012 and 2013. A coded reason was next to the names in each year column for not awarding performance bonus. The reasons were: not employed; did not complete season or did not work full season; first year, limited experience; poor attendance, unreliable; poor performance; and received other compensation (bonus, holiday, sick, vacation). (Respondent's Motion for Partial Summary Decision and Memorandum of Law in Support Exhibit 5) Respondent argued that there were also "U.S. workers who improved their performance and were given raises or promoted, including some of the workers for whom the Administrator seeks 'back pay' for the 2012 or 2013 seasons." (Respondent's Opposition to Administrator's Motion for Summary Decision at 8) Respondent argued that this additional compensation was not reflected in the "bonus payment" payroll software report, and these raises and promotions were not given to H-2A workers. *Id.*

Respondent argued that Exhibit 6 to its Motion for Partial Summary Decision showed a list of corresponding workers in 2012 and 2013 "who consistently received additional performance-based pay…." *Id.* Respondent argued that the Administrator did not include this in its analysis.

Owner and CEO of Lancaster Farms, Art Parkerson, testified at deposition that the computer system used by Lancaster Farms labeled multiple types of compensation as "bonus." (Administrator's Exhibits in Support of Administrator's Opposition to Respondent's Motion for Partial Summary Decision Exhibit A at 30) He testified:

> A bonus is anything that is not hour [sic] times the hourly rate or anything that is not shown up as sick leave, vacation, or piece-rate. So all other compensation that can't be, other than piece-rate, deduced by the hour is labeled as a bonus.

Id. at 29.

Mr. Parkerson testified that this "bonus" category included compensation for travel. *Id.* at 30. He testified, "That's the way our computer system labels it." *Id.* He testified that employers are required to pay inbound transportation for H-2A workers, as well as a per diem amount. *Id.* He testified that the "bonus" category could also be used to correct an error in payment. *Id.* at 37. He testified that the "bonus" category was also used to pay H-2A workers for their last week of work, because they typically did not have a bank account. *Id.* at 39. He testified:

> So I would calculate all their hours and take them out of the payroll system and then enter the amount that I owed them for that week's wages and it would appear as a bonus. It would – and that was included – at various times I've done it different ways. Sometimes, for instance, I'm confident….
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> …
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> I am confident that Exhibit 3, the first page, Payroll Week #43, it says, Employee Bonus Payroll. Those are individuals that left that week. From those figures, I'm certain that that was what they would have been paid if payroll had been run the following Tuesday. If payroll had run, those are the amounts that they would have been paid for that week's wages.

Id. at 39-40.

Section 655.122 requires the employer to pay the H-2A worker "at least the AEWR, the prevailing hourly wage rate, the prevailing piece rate, the agreed-upon collective bargaining rate, or the Federal or State minimum wage rate, in effect at the time work is performed, whichever is highest, for every hour or portion thereof worked during a pay period." 29 C.F.R. § 655.122(l). Section 655.120(a) requires the employer to offer, advertise, and pay "a wage that is the highest of the AEWR, the prevailing hourly wage or piece rate, the agreed-upon collective bargaining wage, or the Federal or State minimum wage, except where a special procedure is approved for an occupation or specific class of agricultural employment." 29 C.F.R. § 655.120(a). The Administrator argued that § 655.120(a) means that an employer "can only pay H-2A workers the adverse effect wage rate (AEWR)." (Administrator's Motion for Summary Decision at 10) The Administrator argued that the Regulations preclude Respondent from awarding pay increases or bonuses to H-2A workers, although it was not clear to which particular Regulation the Administrator was referring. *Id.*

Section 655.122 requires the employer to pay <u>at least</u> the AEWR, prevailing hourly wage rate, prevailing piece rate, agreed-upon collective bargaining rate, or Federal or State minimum wage rate, whichever is highest. Section 655.122(l). (Emphasis added) The Regulations create a floor for the offered wage, not, as the Administrator argued, a ceiling.

There is no dispute that bonuses were offered to both H-2A workers and corresponding United States workers, some of both groups received these bonuses at the end of the season for legitimate reasons, such that there was no violation under the Act.

Alleged Child Labor Claim

The Administrator cited to 29 C.F.R. § 570.35 in the Bill of Particulars when it described the alleged child labor violation. Section 570.35 falls under Subpart C of the Regulations. Section 570.32 states: "This subpart concerns the employment of youth between 14 and 16 years of age in nonagricultural occupations; standards for the employment of minors in agricultural occupations are detailed in subpart E-1." 29 C.F.R. § 570.32. (Emphasis added.) It is undisputed that the youth in this case were employed in agriculture. Despite citing to an inapplicable Regulation, the Administrator stated that the youth were involved in agricultural work. Respondent argued that the Administrator erred and relied on the wrong statute in the Administrator's Bill of Particulars and is bound by its erroneous argument. Respondent stated that instead, 29 CFR § 570.70(b) permitted the Respondent to employ the two youths. Section 570.70(b) states: "This subpart shall not apply to the employment of a child below the age of 16 by his parent or by a person standing in the place of his parent on a Farm owned or operated by such parent or person." 29 C.F.R. § 570.70(b).

There is no genuine issue of material fact that Art Parkerson had guardianship of the two youths. (Respondent's Exhibit 7) The Administrator overlooked the exception that minors under the age of 16 can be employed during school hours by their parent or a person standing in place of their parent. 20 C.F.R. § 570.70(b); DOL WHD Child Labor Bulletin No. 102.

A review of 29 CFR § 570.35 shows that homeschooled students were not considered or specifically excluded by the Regulations. The Regulations only State "school hours refers to hours that the local public school district where the minors resides while employed is in session…." (29 CFR § 570.35(b) Definitions.) However, pursuant to § 570 (c) Exceptions, "school is not considered to be in session, and exceptions from the hours limitations" include "any youth 14 or 15 years of age who…(ii) Has been excused from compulsory school attendance by the state.…" It is undisputed that the two youths were homeschooled. This results in their being excused from compulsory school district school attendance.

There is no genuine issue of material fact that they were homeschooled and therefore met the exception to compulsory school district attendance, allowing agricultural employment.

It is undisputed that both youth identified in this matter were under the age of 16, that they were employed in agricultural work during the workweek during the school year, and that the parents granted legitimate guardianship to Art Parkerson, CEO of Lancaster Farms, for the time that they worked at Lancaster Farms, that they met the exception. Therefore, there was no violation under the Act.

ORDER

In view of the foregoing, it is hereby ORDERED that:

1. Administrator's Motion for Summary Decision on the issue of recordkeeping violations under 20 C.F.R. § 655.122(j)(1) is **GRANTED.**
2. Respondent's Motion for Summary Decision on the issue of "preferential treatment" in the form bonuses under 20 C.F.R. § 655.122 is **GRANTED, as there was no violation**.
3. Respondent's Motion for Summary Decision on the alleged child labor violation is **GRANTED, as there was no violation**.

SO ORDERED.

DANA ROSEN
Administrative Law Judge

DR/SS/mjw
Newport News, VA

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: https://dol-appeals.entellitrak.com. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1982.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1982.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor, Division of Fair Labor Standards. *See* 29 C.F.R. § 1982.110(a).

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1982.109(e) and 1982.110(a). 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. §§ 1982.110(a) and (b).