



Issue Date: 18 October 2018

CASE NO.: 2018-TAE-00019

IN THE MATTER OF:

**W & W PRODUCE, INC.
Respondent**

DECISION AND ORDER APPROVING CONSENT FINDINGS

The Plaintiff, the Administrator of the Wage and Hour Division of the United States Department of Labor (the "Administrator") and Respondent, W&W Produce, Inc., file the following Consent Findings pursuant to 29 C.F.R. § 18.9. These Consent Findings constitute a full and final resolution of this action and of all issues raised by the Determination Letter issued to W&W Produce, Inc., on September 27, 2017 and Notice of Debarment issued on December 1, 2017, with respect to allegations of violations of the H-2A regulation requirements.

1. Beginning May 11, 2015 to November 1, 2015, and again from May 9, 2016 to October 31, 2016, Respondent employed approximately 10 and 10 respective workers covered by the H-2A provisions of the Immigration and Naturalization Act ("INA" or "the Act"), 8U.S.C. §§ 1101 *et seq.* and the implementing regulations at 20 C.F.R. §§ 655 *et seq.* and C.F.R 29 Part 501.

2. On September 27, 2017, the Wage and Hour Division ("WH") issued to W&W Produce, Inc., a Determination Letter that detailed its findings.

3. A Summary of Violations ("Summary") was attached to the Determination Letter.

The Summary stated the following violations by Respondents:

- Failure to comply with transportation to place of employment and daily subsistence requirements;
- Failure to comply with return transportation and daily subsistence requirements;
- The employer (or agents(s)) sought or received payment from the employees for an activity related to obtaining labor certification;
- Failure to comply with earnings records requirements;
- Failure to comply with hours and earnings statements requirements;
- Failure to comply with applicable housing and safety standards; and

- Failure to provide transportation in compliance with all applicable Federal, State, or local laws and regulations between the worker's living quarters and employer's worksite without cost to the worker.

in violation of Section 301 of the Act and regulations issued thereunder. Accordingly, \$7,912.76 in unpaid wages were computed and \$7,539.60 in civil money penalties were assessed against Respondent in compliance with 29 C.F.R. § 502.19(b). Respondent subsequently paid all unpaid wages but not the civil money penalties.

4. Respondent then failed to file a timely exception contesting the findings of the Administrator, Wage and Hour Division (Administrator) within the timeframe stated in the September 27, 2017 Determination Letter and therefore, the determination of the Administrator became a final and unappealable Order of the Secretary of Labor on November 4, 2017, and Respondent waived any and all rights to appeal or contest such assessment.

5. Pursuant to Section 218 of the Immigration and Nationality Act as amended by Section 301 of the Immigration Reform and Control Act of 1986 (the "Act"), 8 U.S.C. 1188, and in accordance with 29 C.F.R. Part 501, a Notice of Debarment dated December 1, 2017, was sent to Respondent. The Notice of Debarment informed Respondent that it had failed to pay the civil money penalty per the agreement. As a consequence, the Administrator determined that Respondent shall be debarred from applying to the Department of Labor for H-2A certification for a period of three years.

6. On December 27, 2017, Respondent timely filed with the Administrator a request for a hearing contesting debarment. This matter was then submitted for a final determination of the Administrator's determination of debarment, as provided by 29 C.F.R. Part 501.

7. Subsequently, Counsel for the Administrator and Respondent conducted settlement discussions regarding this matter. Administrator and Respondent agree to a settlement without the burden, expense, and delay of further litigation.

8. Respondent, without admitting any of the aforesaid violations contained in the Determination Letter and as a good faith resolution of its dispute with Administrator concerning the assessed civil money penalties, agrees to pay \$7,562.00, and has already submitted a payment in that amount, in resolution of the civil money penalties assessed for all violations cited in the Determination Letter.

9. Administrator hereby agrees to accept \$7,562.00 in resolution of the civil money penalties assessed for all violations cited in the Determination Letter, and to withdraw its Notice of Debarment.

10. Administrator and Respondent agree that the above Consent Findings and Order disposing of this proceeding shall have the following effect:

- (i) that any order entered pursuant to this agreement shall have the same force and effect as an order made after full hearing;

(ii) that the entire record on which any order in this cause may be based shall consist solely of the complaint, Respondent's request for a hearing, and these consent findings;

(iii) that Administrator hereby withdraws its Notice of Debarment dated December I, 2017, and Respondent hereby withdraws its contest as to the debannment. All ,violations set forth in the Determination Letter issued to Respondent are and shall be deemed fully resolved by these Consent Findings;

(iv) that these Consent Findings shall become final immediately upon approval of the Administrative Law Judge;

(v) that Administrator and Respondent waive any further procedural steps before the Administrative Law Judge and the Administrative Review Board regarding those matters which are the subject of this agreement; and

(vi) that Administrator and Respondent waive any right to challenge or contest the validity of the findings and any order entered into in accordance with these Consent Findings.

Therefore, agreement reached by Administrator and W&W Produce, Inc., as to all contested issues which concern Respondent, the parties further stipulate and agree that each party shall bear its own costs, fees and other expenses incurred by such party in connection with any stage of this proceeding.

Respondent and Attorney **HEREBY** consent to the entry of this Decision and Order:

ORDERED this 18th day of October, 2018, at Covington, Louisiana.

**CLEMENT J. KENNINGTON
ADMINISTRATIVE LAW JUDGE**