U.S. Department of Labor

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Issue Date: 09 January 2019

OALJ Case No.: 2019-TAE-00005

In the Matter of:

DEL MONTE FRESH PRODUCTION, INC.,
Respondent

ORDER APPROVING CONSENT FINDINGS

This proceeding arises under the H-2A provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act, 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a), 1184(c), and 1186; and regulations found at 20 C.F.R. Part 655 and 29 C.F.R. Part 501.

Respondent filed separate applications for temporary employment certification for the periods July 14, 2014 through October 13, 2014 (H-300-14168-125588) ("TEC 1") and June 15, 2015 through August 28, 2015 (H-300-15104-188890) ("TEC 2"). On May 3, 2016, the Administrator, Wage and Hour Division, United States Department of Labor ("Prosecuting Party"), issued a determination letter to Respondent on TEC 1, finding violations of 20 C.F.R. § 655.122(d)(1) (providing substandard housing; (h)(1) (failure to pay inbound travel expenses); (h)(2) (failure to pay outbound travel expenses); (h)(4) (failure to provide safe transportation; (k) (failure to properly record number of hours; (l) (failure to pay required rate of pay) and (q) (failure to provide H-2A work contract to workers). On April 13, 2017, the Prosecuting Party issued a determination letter to Respondent on TEC 2, finding violations of 20 C.F.R. § 655.122(d)(1) (providing substandard housing); (h)(4) (failure to provide safe transportation; and (l) (failure to pay required rate of pay).

As a result of both investigations, the Prosecuting Party ordered Respondent to pay back wages in the amount of $168,545.40 to 500 H-2A workers. Respondent agreed to pay and did pay $27,972.34 to 101 workers, leaving $140,573.06 remaining. The Prosecuting Party also assessed a total of $466,950.00 in civil money penalties ("CMP").

On June 1, 2016, Respondent timely requested a hearing on TEC 1, and on May 11, 2017, requested a hearing on TEC 2. However, the parties subsequently conferred and reached a settlement obviating the need for a hearing.

On January 3, 2019, the Administrator contemporaneously filed an *Order of Reference*, *Consent Findings*, and a *[Proposed] Decision and Order*, dated December 21, 2018, resolving all issues for litigation.[1]

Section 501.40(d) provides that the presiding Administrative Law Judge shall accept any agreement containing consent findings if he or she is "satisfied with its form and substance." After reviewing its terms, I am satisfied that the agreement conforms to the requirements set forth in § 501.40(b)(1)-(4) and is a satisfactory resolution of the issues previously contested.

The terms of the *Consent Findings*, dated December 21, 2018, are APPROVED and are adopted and incorporated in full into this Order. To the extent not already done so, the parties shall execute the terms of the agreement. Upon payment of the agreed CMP, this matter is DISMISSED WITH PREJUDICE.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge

[1] In part, Plaintiff agrees to reduce the CMP to $214,800.00, which Respondent agrees to pay, in addition to $138,620.20 in back wages.