

U.S. Department of Labor

Office of Administrative Law Judges
Washington, DC



ADMINISTRATOR, UNITED STATES EMPLOYMENT
SERVICE, U.S. DEPARTMENT OF LABOR

Complainant

vs.

Case No. 82-TAE-2

WALTER D. BROMLEY, JR. t/a BROMLEY ORCHARDS

Respondent

DECISION AND ORDER

This case arises under the Regulations of the Secretary of Labor governing the Labor Certification Process For The Temporary Employment Of Aliens In Agricultural and Logging Employment (20 C.F.R. 655, Subpart C) herein referred to as the "Regulations of the Secretary" promulgated by the Secretary under the authority of and pursuant to the Immigration and Nationality Act, 8 U.S.C. 1101, 1184(c), and Regulations Of the Attorney General (8 CFR 214.2(h)(3)(i)) issued thereunder.

Statement of the Case

On April 6, 1982, the Secretary of Labor, acting through the Regional Administrator, Employment and Training Administration, notified the Respondent that he would not be eligible to apply for temporary labor certification of agricultural workers in 1982 because of his violations of the Regulations Of the Secretary concerning the employment of such workers during 1981. was made by the Respondent and, A timely request for hearing pursuant to 20 C.F.R. §658.424, this matter was referred to the Office of Administrative Law Judges for adjudication.

On May 21, 1982, I invited the parties to submit one or before June 25, 1982 such legal arguments and supporting documentation, if any, which they wished to submit in support of their positions in this case. I further ordered the parties to show cause on or before June 25, 1982 why a hearing should be held in this case, or, alternatively, why a final determination should not be made by the undersigned Administrative Law Judge on the basis of the record in this case. My authority to adjudicate this case on the basis of the record without a hearing is set forth in the last sentence of 20 C.F.R. §658.424(b).

No communication has been received from either party pursuant to my Notice And Order to Show Cause of May 21, 1982. Accordingly, I have decided to adjudicate this case on the basis of the record transmitted to this office by the Regional Administrator.

Temporary labor certification was granted to the Respondent on June 19, 1981 for the employment of 48 alien farm workers for the period of July 10, 1981 to September 10, 1981. The Regulations of the Secretary require the prospective employer of temporary alien workers to provide employment to any qualified United States worker who applies for the job until fifty percent of the work contract under which foreign workers were hired, has elapsed. During the period from June 22, 1981 to July 11, 1981, 22 qualified United States workers applied to the Respondent for the jobs to be performed by the temporary alien workers. The uncontradicted evidence indicates that they were not hired but that they were told by the Respondent that they were not needed or to call back later in the season.

So that the employment of aliens will not adversely affect the wages and working conditions of similarly employed United States workers, the Regulations of the Secretary require that each employer's job offer to United States workers must offer them at least the same benefits which the employer is offering to temporary alien workers. The uncontradicted evidence indicates that during the summer of 1981 the Respondent paid wages to a United States crew leader and 11 United States workers at hourly rates substantially lower than the rates offered and paid to alien workers.

Findings of Fact and Conclusions of Law

1. The Respondent's rejection of qualified United States applicants for work during the summer of 1981 in favor of alien workers violated the terms of the temporary labor certification issued to the Respondent in 1981 and was in violation of the Regulations of the Secretary, 20 C.F.R. §655.203(e).
2. The payment of wages by the Respondent to United States workers below those offered and paid to alien workers for the same job duties during the summer of 1981 created an adverse effect on the employment of United States workers and was in violation of the Regulations of the Secretary, 20 C.F.R. §655.202(a).
3. In view of the Respondent's violations of the Regulations of the Secretary during the summer of 1981 the Respondent is not eligible to apply for or to receive temporary labor certification of alien workers for agricultural employment in 1982.

ORDER

The appeal of the Respondent from the determination of the Regional Administrator is hereby dismissed.

PHILLIP J. LESSER
Administrative Law Judge

Dated: 20 JUL 1982
Washington, D.C.
PJJ/rmw