



In the Matter of

Case No. 86-TAE-1

FAIRVIEW ORCHARDS ASSOCIATES

DECISION AND ORDER

This case arises under the regulations governing the labor certification process for the Temporary Employment of Aliens in Agricultural and hogging Employment, 20 CFR §655 Subpart C, promulgated pursuant to the Immigration and Nationality Act, 8 USC §1101, 1184(c).

Following a request for hearing by Complainant Fairview Orchards, hereinafter Fairview, appealing a decision of the Regional Administrator of the Employment and Training Administration, the parties were given an opportunity to submit legal arguments and supporting documentation and to show cause why the matter could not properly be decided on the basis of the record. On February 19, 1986, an order was issued indicating that no additional documentation had been submitted and that no cause had been shown why a formal hearing would be necessary. Briefs on the matter were ordered due by March 31, 1986.

Since that time, Fairview, by and through its counsel,¹ has requested at least three extensions of time in which to file a brief. On two occasions, as the deadline neared, counsel was contacted regarding the status of its brief. The third deadline passed on May 23, 1986, with no filing or attempt to contact this office by the Complainant or its counsel.

The only arguments put forth by Fairview in its filing of January 28, 1986, were that the Scrivens crew failed to properly file the necessary documentation and that the Regional Administrator exceeded his regulatory authority by conducting the investigation more than one year after the alleged refusal to hire.

Fairview has not presented any basis for its allegations regarding the actions of the Regional Administrator, nor is any violation apparent from the record. With regard to the Scrivens crew, even if Fairview had bothered to present some evidence of its charge, Scrivens' actions might well be excused when the attitude of Fairview, as brought to light in the subsequent investigation, is considered.

¹ Fairview changed counsel, apparently sometime in March 1986; at least two extensions for filing a brief were granted on this basis.

The Complainant's complete failure to substantiate any of its charges causes there to be no reason why the decision of the Regional Administrator should not be affirmed. ' The alleged deficiency has not been shown. A review of the investigation record and subsequent report discloses no basis for the conclusion that the investigation was beyond the scope of the Regional Administrator's authority. It is clear that Fairview has been given substantial opportunity to respond, yet, it is the only party which has failed to do so. Accordingly, based on the record as a whole, the decision of the Regional Administrator is affirmed.

ORDER

The September 30, 1985, decision of the Regional Administrator is AFFIRMED.

AARON SILVERMAN
Administrative Law Judge

Dated: JUN 9 1986
Washington, D.C.
AS/dew