



IN THE MATTER OF:

U.S. Department of Labor
Plaintiff

v.

Case No.: 92-TAE-9

F.R.W. Maintenance, Inc.
Kogut Florist & Nurseryman,
Inc. and Frank Kogut,
Individually
Respondents

Appearances:

Paul J. Katz, Esq.
Office of the Regional Solicitor
U.S. Department of Labor
One Congress Street
Boston, MA 02114
For the Complainant

Andrew Weiss, Esq.
370 E. 76th Street
Suite C-802
New York, New York 10021

Before: **MARTIN J. DOLAN, JR.**
Administrative Law Judge

DECISION AND ORDER

This proceeding arises under the provisions of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1188) and implementing regulations found in 29 C.F.R. Part.501. By notice dated March 25, 1992, a total civil money penalty in the amount of \$166,000.00 was assessed against the respondents for violations of the "H2A" provisions of Section 301 of the Act.

This case matter was scheduled for hearing on November 4, 1992 and again on January 5, 1993 in Boston, Massachusetts. The scheduled hearings were continued upon motion of the parties so as to allow prehearing discovery and facilitate a resolution of the outstanding issues via an agreed settlement. Counsel for the parties subsequently advised the undersigned that they had formulated and reached a settlement which would dispose of the outstanding issues which were

presented for adjudication. Counsel subsequently furnished a written settlement agreement in the form of 'Consent Findings' by which they wished to effect their settlement of the matter. This agreement has been submitted for consideration and final order by me without further presentation of the evidence. I have reviewed the agreement, which is incorporated herewith and made a part hereof, and so approve the settlement agreement.

This settlement is intended by the Secretary and the Respondent to be a final resolution of this matter and each party hereby agrees to bear its own fees and expenses incurred by such party in connection with any stage of this proceeding. It is further agreed that this Order shall have the same force and effect as an order made after full hearing; that the entire record on which any order may be based shall consist solely of the Complaint, Order of Reference and this agreement; that the parties waive any further procedural rights regarding those matters which are the subject of these Consent Findings; and that the parties further waive any right to challenge or contest the validity of these Consent Findings and the Order entered into in accordance therewith.

Accordingly, it is hereby **ORDERED** that the parties promptly comply with all of the terms and conditions of the incorporated settlement agreement.

MARTIN J. DOLAN, JR.
Administrative Law Judge

Dated: AUG 24 1993
Boston, Massachusetts
MJD:dr

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C.

IN THE MATTER OF: *
F.R.W. MAINTENANCE, INC., KOGCJT *
FLORIST & NURSERYMAN, INC. and * Case No. 92-TAE-9
FRANK KOGUT, individually, *
* ORDER OF REFERENCE
upon a request for a hearing on the *
assessment of a civil money penalty *
under 29 CFR Part 501 *

CONSENT FINDINGS

These consent findings are entered into by and between the Secretary of Labor, hereinafter referred to as the "Secretary" and F.R.W. Maintenance, Inc., Kogut Florist & Nurseryman, Inc. and Frank Kogut, Individually, hereinafter referred to, collectively, as the "Respondent." The Secretary and Respondent agree as follows: (1) There is now pending before the Office of Administrative Law Judges, U.S. Department of Labor, a proceeding under Sec. 301 of the Immigration Reform and Control Act of 1986 and 29 CFR Part 501 to determine a dispute concerning the payment of back wages (transportation cost repayment) and civil money penalties regarding non-H2A workers of F.R.W. Maintenance, Inc. and Kogut Florist & Nurseryman, Inc.

(2) It is the desire of the Secretary and the Respondent to dispense with such proceeding and to dispose of all issues raised therein, including any and all legal, equitable and other defenses the Respondent may have, by payment by the Respondent of (a) \$14,380 in back wages and interest to these persons listed on Exhibit A, attached hereto, (b) payment of \$8,500 in civil money penalties to the Secretary of Labor in settlement of all wage and penalty claims made by the Secretary on behalf of said employees. The employees and amounts are set forth at Exhibit 1, attached hereto.

Payment shall be made pursuant to the following installment schedule: Respondent shall transmit to the Secretary a certified or bank check, payable to "Wage-Hour- U.S. Department of Labor", in the amount of \$10,000 on or before July 15, 1993; Respondent shall thereafter transmit certified checks or bank checks to the Secretary in the amount of \$2,000 on before the thirtieth day of each month commencing on July 30, 1993 until Respondent has paid the total of \$22,880 (consisting of \$14,380 , in back wages and

\$8,500 in civil penalties). The Regional Administrator shall first distribute the back wages to the employees listed above or their estates if necessary and any sums which within three years from the date of this agreement have not been distributed to the employees, or their personal representatives, because of the inability to locate the proper persons or because of such persons' refusal to accept such sums, shall be deposited with the Treasurer of the United States.

(3) This settlement is intended by the Secretary and the Respondent to be a final resolution of this matter and each party hereby agrees to bear its own fees and expenses incurred by such party in connection with any stage of this proceeding.

(4) The Secretary and Respondent further agree that:

(a) any order entered in accordance with these consent findings shall have the same-force and effect as an Order made after full hearings.

(b) The entire record upon which any final order may be based shall consist of the Complaint, Order of Reference, and this agreement.

(c) all further procedural rights and any rights to contest the validity of this Agreement or any Order issued pursuant thereto are hereby waived.

DATED _____

F.R.W. MAINTENANCE
By FRANK J. KOGUT, V.P.

Judith Kramer
Deputy Solicitor

KOGUT FLORIST & NURSERYMAN, INC.
and FRANK KOGUT, Individually

By FRANK J. KOGUT, Pres.

Albert Ross
Regional Solicitor

By FRANK J. KOGUT

By Andrew Weiss, Esq.
Attorney For Respondent

Paul Katz
Senior Trial Attorney

EXHIBIT A

<u>Name</u>	<u>Back Wages</u>
Jesus Adorno	\$28.52
Mario Adorno	\$574.07
Ismael Barreto	\$28.52
Raul Barreto	\$28.52
Emiliano Bruno	\$574.07
Afonzo Burgos	\$574.07
Jose Casiano	\$545.54
Ricardo Colon	\$545.54
Hippolito Crispo-Torres	\$574.07
Juan Garcia-Torres	\$859.17
Pedro Heredia	\$28.52
Angel M. Hernandez	\$574.07
Jose A. Irizarry-Serrano	\$545.54
Joaquin Lagare	\$28.52
Laureano Maldonado	\$545.54
Isaac Martinez-Torres	\$545.54
Jose Oquendo	\$28.52
Ezequiel Ortega	\$575.07
Eduardo Ortiz	\$28.52
Gerald Otero-Vigo	\$28.52
Juan Pabon-Chevere	\$545.54
Eusebio Padillo-Lopez	\$545.54
Carmen A. Pagan	\$545.54

Miquel Quirones-DeJesus	\$545.54
Angelico Rivera-Castro	\$574.07
Jose C. Rodriquez	\$545.54
Raul Rodriquez-Galarza	\$545.54
Walter Rodriquez	\$545.54
Raphael Santiago	\$545.54
Alcides Serrano-Ramos	\$545.54
Moises Serrano-Ramos	\$545.54
Hippolito Torres, Sr.	\$545.54
Reinaldo Villafare	\$545.54
TOTAL	----- \$14,380.00