



DATE: 6-16-94
CASE NO: 93-TAE-0002

IN THE MATTER OF

Anonymous Workers,
Complainants

v.

Grapevine Corporation (formerly Tri-County Growers, Inc.),
Respondent,

FINAL ORDER DISMISSING COMPLAINT

I have considered the briefs which were filed following the Order to Show Cause issued on April 15, 1994.

I agree with the Administrator that the regulation applicable in this situation is 20 C.F.R. 655.110 and that he has the authority to consider violations of certifications issued under the Immigration and Nationality Act of 1952.

However, in all of his discussions of this matter in his brief, the Administrator ignores the fact that §655.110 opens with the provision in subsection (a) that, "If, during the period of two years after a temporary alien agricultural labor certification has been granted (in whole or in part), the RA [Regional Administrator] has reason to believe that an employer violated a material term or condition of the temporary alien agricultural labor certification, the RA shall. . ."

This matter involves alleged violations of certifications issued for the years 1983 through 1987. The violations found by the Regional Administrator here were first called to his attention on August 31, 1989, more than two years after the granting of the certifications in question. Therefore, the condition set forth in the language just quoted has not been met, and the Regional Administrator lacked the authority to proceed with the investigation in this matter.

The Regional Administrator is admonished for failing in his brief to have acknowledged the existence of the crucial and I..determinative language in the regulations which is quoted above, and for having dealt with the regulatory provisions as If they did not contain the quoted language. The actions of the Regional Administrator were misleading and fall below the level of candor which he owes to this tribunal. The Regional Administrator has not alleged any reason he might have had within the specified two year period for believing that the Grapevine Corporation violated any terms of its certifications.

The complaint against Grapevine in this matter is hereby dismissed.

Charles P. Rippey
Administrative Law Judge
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