



In the Matter of:

DAVID LOWN FARMS AND DAVID LOWN, .
Respondents.

DATE: DEC 5 1994

CASE NO.: 95-TAE-1

ORDER ACCEPTING CONSENT FINDINGS

On November 16, 1994, Plaintiff, the Administrator, Wage and Hour Division, United States Department of Labor, filed an Order of Reference pursuant to 29 C.F.R. §501.37 in the above-styled matter. In addition, Plaintiff filed an original and copy of Consent Findings signed by both parties. The Consent Findings, attached and incorporated by reference, comply with the requirements at 29 C.F.R. §501.40 and are hereby ACCEPTED.

John M. Vittone
Deputy Chief Judge

SOL:LPB:rf
40141, 40147

U.S. DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C.

In the Matter of :
 :
ADMINISTRATOR, WAGE & HOUR :
DIVISION, :
U.S. DEPARTMENT OF LABOR :
 : Case No. -TAE-
Plaintiff, :
 :
v. :
 :
DAVID LOWN FARMS and :
DAVID LOWN, :
 :
Respondents :

CONSENT FINDINGS

Come now the parties, by and through their respective representatives, and pursuant to 29 CFR 501.40, agree to the following Consent Findings:

I

At all times pertinent hereto, the respondents have been agricultural employers who utilized the services of temporary alien agricultural workers admitted under section 216 of the Immigration and Nationality Act, commonly known as the H-2A program.

II

By notices dated November 18, 1992 and October 14, 1993, pursuant to section 301 of the Immigration Reform and Control Act of 1986, (8 USC 1188), and in accordance with 29 CFR 501.19 and 501.31, a backwage assessment in the amount of \$3,540.00 and a civil money penalty in the amount of \$3,000.00

were assessed by plaintiff against respondents as a result of respondents' alleged violation of the H-2A provisions of section 301 of the Act (8 USC 1188) and the regulations issued thereunder (29 CFR Part 501) and issued at 20 CFR 655 SS -102 (b)(14), .102(b) (5), .102(b) (7), .102(b)(8), .103(c) and 20 CFR 654 §§ -407, .404(b), .410(d), . 417(h) and .412(a).

III

By Order of Reference filed simultaneously with the Office of Administrative Law Judges this matter is hereby determination of the civil money penalties submitted for a assessed and a determination of the back wages due and owing to employees as a result of respondents' failure to pay the 3/4 guarantee to two (2) domestic workers engaged in corresponding employment with H-2A workers, pursuant to 29 CFR 501.16(b).

IV

By letters dated December 14, 1992 and November 22, 1993 respondents filed timely exceptions to the assessed civil money penalties and to the backwages alleged to be due pursuant to 29 CFR 501.33.

V

Respondents certify that they are presently in compliance with all applicable provisions of the Act, and the regulations set forth at 29 CFR Part 501, and further agree that they will continue in compliance therewith.

VI

Upon further consideration of this matter, pursuant to the provisions of 29 CFR 501.40, plaintiff hereby modifies the notice of penalty dated November 18, 1992, by reducing the assessed civil money penalty to \$1,540.00 and hereby stipulates and agrees with respondents that the total back wages due is \$3,000.00. (See Exhibit A). Respondents agree to pay the modified civil money penalties and backwages due pursuant to the installment schedule listed in Exhibit A. If any payment is more than ten (10) days in arrears, and such arrearages are not made up within said ten (10) days, the entire balance becomes due and owing immediately.

VII

Respondents hereby withdraw their exception to the assessed civil money penalties due, agree to accept the aforesaid modified penalty as final and binding, and agree to pay said penalty by certified checks or money orders made payable to "Wage & Hour Division, U.S. Department of Labor" by forwarding such payments to: U.S. Department of Labor, Wage and Hour Division, Regional Office, 201 Varick Street, Suite 750, New York, New York 10014.

VIII

Respondents hereby withdraw their exception to the back wages due, agree to accept the aforesaid stipulated back wages as final and binding, and agree to pay said back wages as follows: Back-wage payments shall be deemed satisfied when respondents deliver to plaintiff's representatives, U.S. Department of Labor, Wage and Hour Division, Regional Office, 201 Varick Street, Suite 750, New York, New York 10014, certified checks made payable to each employee named in Exhibit A and in the alternative to Wage-Hour Division-Labor (e.g. "John Doe or Wage-Hour Division-Labor") in the back wage amounts specified in Exhibit A less legal deductions. Neither respondents nor any one on their behalf shall directly or indirectly solicit or accept the return or refusal of any sums paid as back wages under these Consent Findings. Plaintiff shall distribute the proceeds of such checks to the employees involved, or to their estates, if that is necessary, and any sums not distributed to the employees named herein, or to their personal representatives because of inability to locate the proper persons or because of such persons' refusal to accept such sums, shall be deposited by the Secretary of Labor in a special deposit account to be paid to the rightful employee. When recovered wages have not been claimed by the employee within three years the Secretary of Labor shall deposit them into the United States Treasury as miscellaneous receipts.

IX

Plaintiff and respondents agree that any order entered in accordance with these Consent Findings shall, pursuant to 29 CFR 501.40 have the same force and effect as an Order made after full hearing.

X

Plaintiff and respondents agree that the entire record upon which any final order in this matter may be based shall,

pursuant to 29 CFR 501.40 consist solely of the notice of penalty and back-wages as modified herein, and these Consent Findings.

XI

Respondents state that any and all further procedural steps available to them before an Administrative Law Judge, and any rights to challenge or contest the validity of these Consent Findings or any Order issued pursuant thereto are, pursuant to 29 CFR 501.40, hereby waived.

XII

Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

Dated this 15 th day of November, 1994

Approved as to Form and Content:
For the Secretary of Labor:

ROBERT B. REICH
Solicitor of Labor

PATRICIA M. RODENHAUSEN
Regional_Solicitor

BY:
LESLIE PAUL BRODY
Attorney

For Respondent:

DAVID LOWN FARMS
DAVID LOWN

EXHIBIT A

<u>Name</u>	<u>Gross Amounts Due</u>
Stephen White	\$1,500.00
Donald Schecter	\$1,500.00

INSTALLMENT SCHEDULE

Due Date	Amount Due
January 15, 1995	\$750.00 to Stephen White
February 15, 1995	\$750.00 to Donald Schecter
March 15, 1995	\$750.00 to Stephen White
April 15, 1995	\$750.00 to Donald Schecter
May 15, 1995	\$800.00 Civil Money Penalty
June 15, 1995	\$740.00 Civil Money Penalty
Total backwages and Civil Money Penalties due	\$4,540.00