

U.S. Department of Labor

Office of Administrative Law Judges
2 Executive Campus, Suite 450
Cherry Hill, NJ 08002

(856) 486-3800
(856) 486-3806 (FAX)



Issue Date: 04 January 2010

Case No.: 2009-SCA-00008

In the Matter of

**MT. TRANSPORTATION & LOGISTICS
SERVICES, INC., a Corporation, and
ANTHONY ALVAREZ, as President-Sales
DELLA HERZOG as Vice President-Finance
TERRI CHESTER as Controller/General Manager**
Respondents

ORDER APPROVING CONSENT FINDINGS

The Consent Findings submitted on January 2, 2010, attached hereto and incorporated herein, are APPROVED and ADOPTED in their entirety.

SO ORDERED.

A

Ralph A. Romano
Administrative Law Judge

Cherry Hill, New Jersey

SOL:HWL

UNITED STATES OF AMERICA

DEPARTMENT OF LABOR

SCA NO. 09-SCA-8

IN THE MATTER OF:

MT TRANSPORTATION & LOGISTICS

SERVICES, INC.,

A Corporation, and

ANTHONY ALVAREZ, as President,

ANDREW MEYERS as Vice President-Sales,

DELLA HERZOG as Vice President-Finance,

And TERRI CHESTER as

Controller/General Manager,

Respondents.
-----CONSENT FINDINGS AND ORDER

The parties, the Administrator of the Wage Hour Division of the U.S. Department of Labor (Administrator/Complainant), MT Transportation & Logistics Services, Inc., Anthony Alvarez, as President, Andrew Meyers as Vice President-Sales, Della Herzog as Vice President-Finance, and Terri Chester as Controller/General Manager herein represent that they have reached an accord

to resolve this matter, and to this end stipulate and agree to the following findings and order:

1. Respondent MT TRANSPORTATION & LOGISTICS SERVICES, INC. is a corporation which has its principal office and place of business at 5 Inez Dr., Bay Shore, NY 11706.
2. During the period from June 20, 2007 to at least December 31, 2008, Respondent Anthony Alvarez was president of Respondent MT TRANSPORTATION & LOGISTICS SERVICES, INC. and exercised control and supervision of the operation of the Respondent MT TRANSPORTATION & LOGISTICS SERVICES, INC. and was responsible for the employment practices and management policies thereof.
3. Respondent ANDREW MEYERS is vice-president for sales of Respondent MT TRANSPORTATION & LOGISTICS SERVICES, INC. and exercises control and supervision of the operation of the Respondent MT TRANSPORTATION & LOGISTICS SERVICES, INC. and is responsible for the employment practices and management policies thereof.
4. During the period from December 1, 2005 to June 19, 2007, Respondent DELLA HERZOG was president of Respondent MT TRANSPORTATION & LOGISTICS SERVICES, INC. During the period from June 20, 2007 to at least December 31, 2008, DELLA HERZOG was vice-president for finance of Respondent MT TRANSPORTATION & LOGISTICS SERVICES, INC. In both capacities, DELLA HERZOG

exercised control and supervision of the operation of the Respondent MT TRANSPORTATION & LOGISTICS SERVICES, INC. and was responsible for the employment practices and management policies thereof.

5. During the period from July 2006 to at least February 2008, Respondent TERRI CHESTER was a consultant to Respondent MT TRANSPORTATION & LOGISTICS SERVICES, INC. From March 2008 to at least December 31, 2008, Respondent TERRI CHESTER was Controller/General manager of Respondent MT TRANSPORTATION & LOGISTICS SERVICES, INC. and exercised control and supervision of the operation of the Respondent MT TRANSPORTATION & LOGISTICS SERVICES, INC. and was responsible for the employment practices and management policies thereof.
6. Respondents MT TRANSPORTATION & LOGISTICS SERVICES, INC., ANTHONY ALVAREZ, ANDREW MEYERS, DELLA HERZOG, and TERRI CHESTER (Respondents) have provided mail hauling services under several contracts with the United States Postal Service (USPS).
7. The Government awarded respondent MT TRANSPORTATION & LOGISTICS SERVICES, INC. the contracts listed in the attached Exhibit A.
8. The contracts were awarded on or after December 1, 2005 and several were renewed one or more times. The above contracts called for the furnishing of all labor, material, and equipment to perform the duties

of providing mail hauling services pursuant to contracts with the United States Postal Service, said services to be provided at various locations throughout the United States. These contracts were subject to the McNamara-O'Hara Service Contract Act, as amended (79 Stat. 1034, 86 Stat. 789, 41 U.S.C. 351 et seq. (the Act), and the regulations issued there under (29 CFR Part 4) and were to be performed through the use of service employees, as defined by section 8 (b) of the Act (41 U.S.C. § 357(b)) and were each for an amount in excess of \$2500.

9. During the period December 1, 2005 through December 31, 2008, Respondents failed to pay and refrained from paying a number of the service employees employed in the performance of the aforesaid contracts the minimum hourly rate required by sections 2(a)(1) of the Act, 41 U.S.C. §351(a)(1) and (2), and by 29 CFR §§4.3 and 4.6(b).

10. During the period December 1, 2005 through December 31, 2008, Respondents failed to pay and refrained from paying a number of the service employees employed in the performance of the aforesaid contracts the minimum fringe benefits required by sections 2(a)(1) of the Act, 41 U.S.C. §351(a)(1) and (2), and by 29 CFR §§4.3 and 4.6(b).

11. Complainant and Respondents stipulate and agree that, as a result of the violations described in

paragraphs 9 and 10 above, employees of respondents are owed a total of \$1,800,000.00 for the period December 1, 2005 to December 31, 2008.

12. Upon information and belief, the U.S. Postal Service is currently withholding funds in the amount of \$814,614.86 from Respondents' contracts as noted in ¶ 7 above pursuant to 29 CFR 4.187(a). In addition, the Administrator is currently holding a total of \$200,000, which is comprised of two payments from Respondents totaling \$75,000 and one payment from the USPS of \$125,000. The previous payments were made pursuant to an oral agreement made in *MT Transportation & Logistics Services, Inc. v. Secretary of Labor et al.*, Civil Action No. 09-cv-317 (EDNY 2009).

13. In recognition of the aforesaid violations, Respondents agree to pay a total of \$1,800,000.00 to the Administrator to be distributed to Respondents' employees in a manner to be determined by the Administrator. In addition to amounts already withheld by USPS or paid by Respondent MT Transportation to the Administrator, Respondents shall pay the sum of \$785,385.14 plus \$30,800.86 in interest for a total of \$816,186.00 to the Administrator for distribution in a manner to be determined by the Administrator. Payment of the aforesaid sum shall be made in monthly installments in accordance with the

schedule shown in Exhibit B attached hereto. Respondents shall pay the backwages by delivering certified checks, bank checks or money orders made payable to "Wage and Hour-U.S. Labor", mailed to the U.S. Department of Labor, Wage Hour Division, 170 S. Independence Mall West, Suite 859 West, Philadelphia, PA 19106-3317, ATT: Rita Gahagen, case ID 1502665. In addition, on each date that Respondents submit such payment to the Philadelphia address, Respondents shall send a copy of such payment to the U.S. Department of Labor, Wage and Hour Division, 1400 Old Country Road, Suite 410, Westbury, NY 11590, ATT: Millie Rodriguez, case ID 1502665.

14. Respondents authorize the U.S. Postal Service to release to the U.S. Department of Labor the sum of \$814,614.86 currently withheld in backwages on the contracts as noted in ¶ 12 above. Respondents also authorize such amounts to be distributed in accordance with a determination made by the Department of Labor.

15. Respondents agree that the Wage-Hour Division, U.S. Department of Labor, shall distribute any back wages released by the U.S. Postal Service or paid by any of the respondents, less appropriate deductions for social security and withholding taxes, to the employees, or their legal representatives, in amount to be determined by the Administrator. Any such amounts which remain undistributed for one year after

the completion of the payments by Respondents as provided in Exhibit B because of the parties' inability to locate the employee or representative shall be deposited with the Treasurer of the United States. Respondents recognize that they shall be responsible for any employer contributions required by federal or state law.

16. If the Respondents fail to make an installment payment on Exhibit B without making up the arrearage within two weeks after notice to Respondents, the entire balance shall become due and payable immediately.
17. Respondents MT TRANSPORTATION & LOGISTICS SERVICES, INC., ANTHONY ALVAREZ, ANDREW MEYERS, DELLA HERZOG, and TERRI CHESTER stipulate and agree to be debarred from receiving Federal Contracts for a period of three years for the violations indicated in paragraphs 9 and 10 above pursuant to 29 CFR 4.188 and as specified in § 5 of the Act (41 U.S.C. § 354(a)). The three year period shall run from the date of publication by the Comptroller General of a list of persons or firms declared to be ineligible from receiving Federal contracts.
18. The parties, the Administrator and Respondents, agree that an Order disposing of this proceeding in accordance with these Consent Findings and order shall have the same force and effect as an order made after

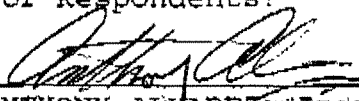
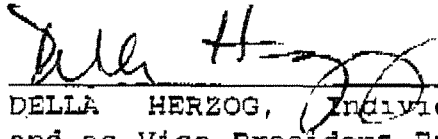
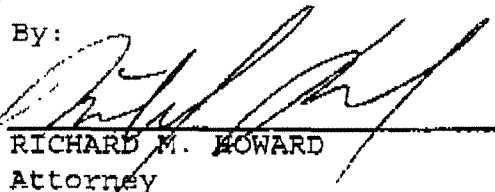
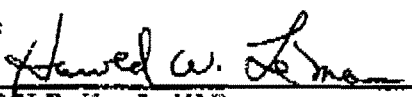
full hearing pursuant to 29 CFR 4.189 and in accordance with 29 CFR 18.9(b)(1).

19. The entire record on which this Final Order is based consists solely of the Complaint and these Consent Findings and Order in accordance with 29 CFR 18.9(b)(2).
20. The parties, the Administrator and Respondents, through agreement waive any further procedural steps before the Administrative Law Judge regarding this matter in accordance with 29 CFR 18.9(b)(3).
21. Respondents waive any right to challenge or contest the validity of these consent findings and order entered into in accordance with the agreement and in accordance with 29 CFR 18.9(b)(4).
22. Each party agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.
23. Neither the commencement of this action nor the provisions of these Consent Findings shall in any way affect, determine, or prejudice any and all legal rights of the Administrator to file any action against any of the Respondents for any violations alleged to have occurred after December 31, 2008.
24. Neither Respondents nor anyone on their behalf shall directly or indirectly solicit or accept the return or refusal of any sums paid under this Consent Findings and Order.

25. Respondents shall make available to the Administrator the social security number and last known address of each employee or former employee who performed work on any federal contract during the period December 1, 2005 to December 31, 2008.

26. Respondents will establish a compliance program as is set forth in Exhibit C which is incorporated herein. Whereas Respondent Terri Chester may cease employment with Respondent MT Transportation or one of its successors or otherwise cease performing services for Respondent MT Transportation or one of its successors sometime before December 31, 2010. To the extent that Respondent Terri Chester ceases employment with Respondent MT Transportation or one of its successors and ceases to perform any services for Respondent MT Transportation or one of its successors in any capacity, Respondent Terri will give notice to the parties. At such time, the requirements under the Compliance Agreement would no longer apply to Respondent Terri Chester.

Approved as to Form and Content:

For Respondents:  ANTHONY ALVAREZ, Individually and as former President  ANDREW MEYERS, Individually and as Vice President-Sales  DELLA HERZOG, Individually and as Vice President-Finance  TERRI CHESTER, Individually and as former Controller/General Manager By:  RICHARD M. HOWARD Attorney Meltzer, Lippe, Goldstein & Breitstone, LLP 190 Willis Ave. Mineola, NY 11501 516-747-0300 Attorneys for Respondents	For the Complainant: Associate Solicitor of Labor for Fair Labor Standards PATRICIA M. RODENHAUSEN Regional Solicitor By:  HAROLD W. LEMAR Senior Trial Attorney Attorneys for the Acting Administrator of the Wage Hour Division U.S. Department of Labor
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SO ORDERED

Date _____
Cherry Hill, NJ

ADMINISTRATIVE LAW JUDGE

EXHIBIT A

Contract	Contract Start	Contract End
07021	10/29/2005	10/26/2007
07021	10/27/2007	10/23/2009
10420	1/31/2004	1/27/2006
10424	7/26/2005	7/20/2007
10424	7/21/2007	3/30/2009
11414	7/1/2005	6/30/2007
11414	7/1/2007	6/30/2009
11430	11/26/2005	11/23/2007
11433	12/12/2007	3/30/2009
11529	10/8/2005	10/5/2007
11529	10/6/2007	10/5/2009
11712	5/14/2005	5/11/2007
11713	5/14/2005	5/11/2007
11715	8/5/2006	8/1/2008
11715	8/2/2008	3/31/2010
11720	10/29/2005	10/26/2007
11720	10/22/2007	2/8/2008
11720	11/15/2008	5/6/2009
11721	11/3/2006	10/31/2008
11721	11/1/2008	10/29/2010
11730	7/1/2004	6/30/2006
11730	7/1/2006	6/30/2010
11730	7/1/2008	6/30/2010
11734	7/1/2006	6/27/2008
11735	7/1/2006	6/27/2008
11736	7/1/2006	6/27/2008
101M6	9/27/2004	9/22/2006
101M6	9/23/2006	9/19/2008
101M6	9/20/2008	10/31/2008
101N1	6/10/2008	6/4/2010
110LO	6/12/2004	6/9/2006
110LO	6/10/2006	6/6/2008
110U0	7/29/2006	6/6/2008
110U0	6/6/2008	6/6/2010
112Y0	6/28/2008	2/6/2009
112Y0	6/28/2008	6/30/2010

Contract	Contract Start	Contract End
114AK	7/31/2004	7/29/2006
114AK	7/30/2006	7/25/2008
114AK	7/26/2008	10/3/2008
117AD	6/25/2005	6/22/2007
117AD	6/23/2007	9/3/2007
117AR	9/6/2006	8/29/2008
117AR	8/30/2008	8/24/2012
117CK	10/29/2005	10/28/2007
117CK	12/8/2007	10/23/2009
117DK	7/31/2004	7/29/2006
117DK	7/30/2006	7/25/2008
117DK	7/30/2008	6/30/2012
117ET	6/28/2008	7/4/2008
117FK	7/31/2004	7/29/2006
117FK	7/30/2006	7/25/2008
117FK	7/26/2008	10/3/2008
117L1	7/2/2005	6/30/2007
117LJ	9/10/2005	9/7/2007
117LJ	9/8/2007	9/7/2009
117LJ	9/4/2009	6/30/2011
117PJ	11/12/2005	11/9/2007
117SH	12/5/2005	12/24/2005
190M1	6/11/2005	6/10/2007
190M1	6/11/2007	7/31/2007
192M3	6/14/2005	6/13/2007
270JE	10/5/2004	6/30/2006
270JE	7/1/2006	6/6/2008
270JE	7/1/2007	6/30/2011
302M7	7/1/2006	3/31/2008
320GE	3/1/2005	8/26/2005
331M7	11/26/2005	6/30/2007

Payment	Due on or before	Amount
1	December 25, 2009	\$ 27,206.20
2	January 25, 2010	27,206.20
3	February 25, 2010	27,206.20
4	March 25, 2010	27,206.20
5	April 25, 2010	27,206.20
6	May 25, 2010	27,206.20
7	June 25, 2010	27,206.20
8	July 25, 2010	27,206.20
9	August 25, 2010	27,206.20
10	September 25, 2010	27,206.20
11	October 25, 2010	27,206.20
12	November 25, 2010	27,206.20
13	December 25, 2010	27,206.20
14	January 25, 2011	27,206.20
15	February 25, 2011	27,206.20
16	March 25, 2011	27,206.20
17	April 25, 2011	27,206.20
18	May 25, 2011	27,206.20
19	June 25, 2011	27,206.20
20	July 25, 2011	27,206.20
21	August 25, 2011	27,206.20
22	September 25, 2011	27,206.20
23	October 25, 2011	27,206.20
24	November 25, 2011	27,206.20
25	December 25, 2011	27,206.20
26	January 25, 2012	27,206.20
27	February 25, 2012	27,206.20
28	March 25, 2012	27,206.20
29	April 25, 2012	27,206.20
30	May 25, 2012	27,206.20
	Total	\$816,186.00

Exhibit B

ATTACHMENT C - COMPLIANCE PROGRAM

Respondents MT Transportation & Logistics Services, Inc., ("MT Transportation"), Anthony Alvarez, Andrew Meyers, Della Herzog, and Terri Chester (collectively, "Respondents") shall comply with all of the provisions of the McNamara O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 351 et seq. ("SCA"). Respondents also agree to establish a comprehensive, ongoing wage and hour compliance program ("Compliance Program") with the following components:

1) Respondents shall not discharge or take any retaliatory action against any employee because the employee engages in any of the following activities:

a. Discloses, or threatens to disclose, to a supervisor, owner, and/or agent of Respondents or to a public agency, any activity, policy or practice of the employer or another employer, with whom there is or was a business relationship, that the employee reasonably believes is in violation of the SCA, or a rule or regulation promulgated pursuant to the SCA;

b. Provides information to, or testifies before, any public agency or entity conducting an investigation, hearing or inquiry into any alleged violation of the SCA, or a rule or regulation promulgated pursuant to the SCA, by the employer or

another employer with whom there is or was a business relationship;

c. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes is in violation of the SCA, or a rule or regulation promulgated pursuant to the SCA.

2) Within thirty days of the approval of the Consent Findings and Order in 09-SCA-8 ("Approval Date"), Respondents shall implement record-keeping policies that are compliant with the SCA. Among other things, MT Transportation's records for employees working on any existing contracts between MT Transportation and the U.S. Postal Service ("USPS contract") must comply with the following requirements: (a) Respondents must maintain payroll records which clearly identify and segregate health and welfare payments from wage payments; (b) Respondents must maintain payroll records which clearly segregate work performed on federal contracts and work performed on non-federal contracts; (c) Respondents must maintain a daily and weekly record of hours worked for all employees working on USPS Contracts; (d) if a change to an employee's record of hours worked is made after the initial input of hours via punch clock or sign-in sheet, such change must be authorized in writing by a manager; and (d) the reason for any such changes to an employee's record of hours must be documented. All records

maintained must be made readily available to the U.S. Department of Labor, Wage and Hour Division upon request.

3) By March 1, 2010, Respondents shall retain an independent accountant to conduct an audit of Respondents' payroll practices. On or before April 15, 2010, Respondents shall require that the accountant prepare a report to be submitted to the Administrator at U.S. Department of Labor, Wage and Hour Division, 1400 Old Country Road, Suite 410, Westbury, NY 11590, ATT: Richard Mormile. The report shall state the status of Respondents' compliance with respect to prevailing wages, fringe benefits and record-keeping under the Service Contract Act for the period January 1, 2009 to date of audit. The report shall also identify any and all active USPS Contracts, and include copies of all the contracts and wage determinations.

4) Within thirty days of the Approval Date, and on June 1 and December 1 of each year thereafter until six months after the completion of all USPS Contracts, Respondents shall provide to the Administrator at U.S. Department of Labor, Wage and Hour Division, 1400 Old Country Road, Suite 410, Westbury, NY 11590, ATT: Richard Mormile, with a list of the names and addresses, telephone numbers, hire date and, if applicable, termination dates of any employee performing work on any USPS Contract during the six-month period preceding the date of report.

5) Within thirty days of the date of Approval Date of the CONSENT FINDINGS AND ORDER, Respondents must hold an informational meeting of all employees at which Respondents' representatives shall provide employees with a review of their rights under the SCA and the Fair Labor Standards Act (FLSA). Among other things, Respondents must advise employees of the employees' legal protections against retaliation for asserting their rights under this Compliance Program and the FLSA, and be assured that no retaliation will occur. Respondents shall provide each employee with Fact Sheet #67, the McNamara-O'Hara Service Contract Act (attached as Ex. 1) and a Handy Reference Guide to the Fair Labor Standards Act (attached as Ex. 2). Respondents shall inform each employee who performs work on a federal contract the required prevailing hourly rate(s), fringe benefit rate(s) and holiday and vacation requirements applicable to that/those contract(s) on which the employee performs work. Subsequent to that informational meeting, Respondents shall notify newly assigned employees who perform work on one or more federal contract of the same information applicable to that/those contract(s) on which the employee performs work within seven days of when the employee commences working on a federal contract. Respondents shall also provide newly assigned employees who perform work on a federal contract, Fact Sheet #67, the McNamara-O'Hara Service Contract Act (attached as Ex.

1) and a Handy Reference Guide to the Fair Labor Standards Act (attached as Ex. 2).

6) In the event of a change in the wages or benefits required by an applicable wage determination for a USPS Contract, Respondents will provide to employees who perform work on any federal contract an updated Wage Determination and Employee Summary within thirty days of such change.

7) Within thirty days of the Approval Date of the CONSENT FINDINGS AND ORDER, Respondents will conduct a separate training of managers and payroll personnel regarding Respondents' responsibilities under the SCA and FLSA, as well as Respondents' responsibilities under the CONSENT FINDINGS AND ORDER. Such training must include, inter alia, an explanation of Respondents' duty not to retaliate against employees as outlined above, and the responsibility of managers and payroll personnel to identify and report any potential breaches of this duty to the Respondents. All managers and payroll personnel hired or promoted into their managerial or payroll position after the training described above must be so trained within thirty days of beginning any supervisory or payroll work for Respondents.

8) In the event that any of the USPS Contracts are assigned or sub-contracted to another corporation, MT Transportation is not relieved of its responsibilities under this Compliance Program.

EXHIBIT 1

U.S. Department of Labor Wage and Hour Division



(Revised July 2009)

Fact Sheet #67: The McNamara-O'Hara Service Contract Act (SCA)

This fact sheet provides general information concerning the McNamara-O'Hara Service Contract Act.

Coverage

The McNamara-O'Hara Service Contract Act (SCA) covers contracts entered into by federal and District of Columbia agencies that have as their principal purpose furnishing services in the U.S. through the use of "service employees." The definition of "service employee" includes any employee engaged in performing services on a covered contract other than a bona fide executive, administrative, or professional employee who meets the exemption criteria set forth in 29 CFR Part 541.

The SCA does not apply to certain types of contract services. The contracts exempt from SCA coverage include:

- Contracts for construction, alteration, or repair, including painting, and decorating, of public buildings or public works (these are covered by the Davis-Bacon Act);
- Work required in accordance with the provisions of the Walsh-Healey Public Contracts Act;
- Contracts for transporting freight or personnel where published tariff rates are in effect;
- Contracts for furnishing services by radio, telephone, telegraph, or cable companies subject to the Communications Act of 1934;
- Contracts for public utility services;
- Employment contracts providing for direct services to a federal agency by an individual or individuals;
- Contracts for operating postal contract stations for the U.S. Postal Service;
- Services performed outside the U.S. (except in territories administered by the U.S., as defined in the Act); and
- Contracts subject to administrative exemptions granted by the Secretary of Labor in special circumstances because of the public interest or to avoid serious impairment of government business.

Basic Provisions/Requirements

SCA contract clauses require contractors and subcontractors performing services under prime contracts in excess of \$2,500 to pay service employees in various classes no less than the wage rates and fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement. The Department of Labor issues SCA wage determinations for the federal contracting agencies to incorporate them, along with the required contract clauses, into covered contracts. The fringe benefit requirements (usually "health and welfare," vacation, and holiday benefits) are separate and in addition to the hourly monetary wage requirement under the SCA.

On contracts equal to or less than \$2,500, at least the federal minimum wage established by section 6(a)(1) of the Fair Labor Standards Act applies (\$7.25 per hour effective July 24, 2009, under the "Fair Minimum Wage Act of 2007").

Contractors and subcontractors must notify employees performing SCA contract work of the compensation due them under the applicable SCA determination in the covered contract, and must post the "Notice to Employees

Working on Government Contracts." Department of Labor Publication W11-1313, at a prominent and accessible place at the worksite.

Penalties/Sanctions and Appeals

Violations of the SCA may result in the withholding of contract payments in sufficient amounts to cover wage and fringe benefit underpayments, contract termination and liability for any resulting costs to the government, legal action to recover the underpayments, and debarment from future contracts for up to three years.

Contractors and subcontractors may challenge determinations of violations and debarment before an Administrative Law Judge (ALJ). Interested parties may appeal ALJ decisions to the Department's Administrative Review Board. Final Board determinations on violations and debarment may be appealed to and are enforceable through the federal courts.

Typical Problems

(1) Underpayment of service workers due to misclassification. (2) Erroneously considering workers exempt without regard to 29 C.F.R. Part 541 rules. (3) Failure to make timely payment of wages or fringe benefit contributions. (4) Lack of proper recordkeeping when cash payments are made to satisfy fringe benefit requirements. (5) Failure to notify service employees of the applicable wage and fringe benefit requirements, or failure to post the "Notice to Employees Working on Government Contracts" at a prominent and accessible place at the worksite. (6) Failure to use the conformance procedure for unlisted classes of employees. (7) Failure to segregate and keep records on hours spent on contract work and non-contract work for employees who do both. (8) Failure to implement rate increases (if any) in a new wage determination in a multi-year contract subject to annual appropriations.

Relation to State, Local, and Other Federal Laws

This Act applies only to contracts for services awarded by the federal or District of Columbia governments. Some contracts covered by SCA also call for construction work to which the Davis-Bacon Act prevailing wage requirements apply. Employees performing SCA contract work may also be subject to overtime pay requirements under Contract Work Hours and Safety Standards Act (which applies to prime contracts over \$100,000) and/or the Fair Labor Standards Act. Both laws require at least time and a half pay for all hours worked over 40 in a workweek. State and local wage and hour laws may also apply to workers concurrent with compensation requirements under SCA.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us

EXHIBIT 2

Handy Reference Guide to the Fair Labor Standards Act



U.S. Wage and Hour Division

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

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This publication is available on the Internet on the Wage and Hour Division Home Page at the following address:
<http://www.wagehour.dol.gov>.

This material will be made available to sensory impaired individuals upon request.

Voice Phone: 1-866-487-9243
(1-866-4US-WAGE)

TDD* Phone: 1-877-889-5627

*Telecommunications Device for the Deaf

Handy Reference Guide to the Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, record-keeping, and youth employment standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments.

The Wage and Hour Division (Wage-Hour) administers and enforces FLSA with respect to private employment, State and local government employment, and Federal employees of the Library of Congress, U.S. Postal Service, Postal Rate Commission, and the Tennessee Valley Authority. The FLSA is enforced by the U.S. Office of Personnel Management for employees of other Executive Branch agencies, and by the U.S. Congress for covered employees of the Legislative Branch.

Special rules apply to State and local government employment involving fire protection and law enforcement activities, volunteer services, and compensatory time off instead of cash overtime pay.

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Basic Wage Standards

Covered, nonexempt workers are entitled to a minimum wage of not less than \$5.85 per hour effective July 24, 2007; \$6.55 per hour effective July 24, 2008; and \$7.25 per hour effective July 24, 2009. Special provisions apply to workers in American Samoa and the Commonwealth of the Northern Mariana Islands. Nonexempt workers must be paid overtime pay at a rate of not less than one and one-half times their regular rates of pay after 40 hours of work in a workweek.

Wages required by FLSA are due on the regular payday for the pay period covered. Deductions made from wages for such items as cash or merchandise shortages, employer-required uniforms, and tools of the trade, are not legal to the extent that they reduce the wages of employees below the minimum rate required by FLSA or reduce the amount of overtime pay due under FLSA.

The FLSA contains some exemptions from these basic standards. Some apply to specific types of businesses; others apply to specific kinds of work.

While FLSA does set basic minimum wage and overtime pay standards and regulates the employment of minors, there are a number of employment practices which FLSA does not regulate.

For example, FLSA does not require:

- (1) vacation, holiday, severance, or sick pay;
- (2) meal or rest periods, holidays off, or vacations;
- (3) premium pay for weekend or holiday work;
- (4) pay raises or fringe benefits; or
- (5) a discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.

The FLSA does not provide wage payment or collection procedures for an employee's usual or promised wages or commissions in excess of those required by the FLSA. However, some States do have laws under which such claims (sometimes including fringe benefits) may be filed.

Also, FLSA does not limit the number of hours in a day or days in a week an employee may be required or scheduled to work, including overtime hours, if the employee is at least 16 years old.

The above matters are for agreement between the employer and the employees or their authorized representatives.

Who Is Covered?

All employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person, are covered by FLSA.

A covered enterprise is the related activities performed through unified operation or common control by any person or persons for a common business purpose and —

- (1) whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated); or
- (2) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill who reside on the premises; a school for mentally or physically disabled or gifted children; a preschool, an elementary or secondary school, or an institution of higher education (whether operated for profit or not for profit); or

(3) is an activity of a public agency.

Any enterprise that was covered by FLSA on March 31, 1990, and that ceased to be covered because of the revised \$500,000 test, continues to be subject to the overtime pay, child labor and recordkeeping provisions of FLSA.

Employees of firms which are not covered enterprises under FLSA still may be subject to its minimum wage, overtime pay, recordkeeping, and child labor provisions if they are individually engaged in interstate commerce or in the production of goods for interstate commerce, or in any closely-related process or occupation directly essential to such production. Such employees include those who: work in communications or transportation; regularly use the mails, telephones, or telegraph for interstate communication, or keep records of interstate transactions; handle, ship, or receive goods moving in interstate commerce; regularly cross State lines in the course of employment; or work for independent employers who contract to do clerical, custodial, maintenance, or other work for firms engaged in interstate commerce or in the production of goods for interstate commerce.

Domestic service workers such as day workers, housekeepers, chauffeurs, cooks, or full-time babysitters are covered if:

- (1) their cash wages from one employer in calendar year 2007 are at least \$1,500 (this calendar year threshold is adjusted by the Social Security Administration each year); or
- (2) they work a total of more than 8 hours a week for one or more employers.

Tipped Employees

Tipped employees are individuals engaged in occupations in which they customarily and regularly receive more than \$30 a month in tips. The employer may consider tips as part of wages, but the employer must pay at least \$2.13 an hour in direct wages.

The employer who elects to use the tip credit provision must inform the employee in advance and must be able to show that the employee receives at least the applicable minimum wage (see above) when direct wages and the tip credit allowance are combined. If an employee's tips combined with the employer's direct wages of at least \$2.13 an hour do not equal the minimum hourly wage, the employer must make up the difference. Also, employees must retain all of their tips, except to the extent that they participate in a valid tip pooling or sharing arrangement.

Employer-Furnished Facilities

The reasonable cost or fair value of board, lodging, or other facilities customarily furnished by the employer for the employee's benefit may be considered part of wages.

Industrial Homework

The performance of certain types of work in an employee's home is prohibited under the law unless the employer has obtained prior certification from the Department of Labor. Restrictions apply in the manufacture of knitted outerwear, gloves and mittens, buttons and buckles, handkerchiefs, embroideries, and jewelry (where safety and health hazards are not involved). The manufacture of women's apparel (and jewelry under hazardous conditions) is generally prohibited. If you have questions on whether a certain type of work is restricted, or who is eligible for a homework certificate, or how to obtain a certificate, you may contact the local Wage-Hour office.

Subminimum Wage Provisions

The FLSA provides for the employment of certain individuals at wage rates below the statutory minimum. Such individuals include student-learners (vocational education students), as well as full-time students in retail or service establishments, agriculture, or institutions of higher education. Also included are individuals whose earning or productive capacity is impaired by a physical or mental disability, including those related to age or injury, for the work to be performed. Employment at less than the minimum wage is authorized to prevent curtailment of opportunities for employment. Such employment is permitted only under certificates issued by Wage-Hour.

Youth Minimum Wage

A minimum wage of not less than \$4.25 an hour is permitted for employees under 20 years of age during their first 90 consecutive calendar days of employment with an employer. Employers are prohibited from taking any action to displace employees in order to hire employees at the youth minimum wage. Also prohibited are partial displacements such as reducing employees' hours, wages, or employment benefits.

Exemptions

Some employees are exempt from the overtime pay provisions or both the minimum wage and overtime pay provisions.

Because exemptions are generally narrowly defined under FLSA, an employer should carefully check the exact terms and conditions for each. Detailed information is available from local Wage-Hour offices.

Following are examples of exemptions which are illustrative, but not all-inclusive. These examples do not define the conditions for each exemption.

Exemptions from Both Minimum Wage and Overtime Pay

- (1) Executive, administrative, and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and employees in certain computer-related occupations (as defined in Department of Labor regulations);
- (2) Employees of certain seasonal amusement or recreational establishments, employees of certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery;
- (3) Farmworkers employed by anyone who used no more than 500 "man-days" of farm labor in any calendar quarter of the preceding calendar year;
- (4) Casual babysitters and persons employed as companions to the elderly or infirm.

Exemptions from Overtime Pay Only

- (1) Certain commissioned employees of retail or service establishments; auto, truck, trailer, farm implement, boat, or aircraft sales-workers; or parts-clerks and mechanics servicing autos, trucks, or farm implements, who are employed by non-manufacturing establishments primarily engaged in selling these items to ultimate purchasers;
- (2) Employees of railroads and air carriers, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees paid on approved trip rate plans;

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- (3) Announcers, news editors, and chief engineers of certain non-metropolitan broadcasting stations;
 - (4) Domestic service workers living in the employer's residence;
 - (5) Employees of motion picture theaters; and
 - (6) Farmworkers.

Partial Exemptions from Overtime Pay

- (1) Partial overtime pay exemptions apply to employees engaged in certain operations on agricultural commodities and to employees of certain bulk petroleum distributors.
- (2) Hospitals and residential care establishments may adopt, by agreement with their employees, a 14-day work period instead of the usual 7-day workweek. If the employees are paid at least time and one-half their regular rates for hours worked over 8 in a day or 80 in a 14-day work period, whichever is the greater number of overtime hours.
- (3) Employees who lack a high school diploma, or who have not attained the educational level of the 8th grade, can be required to spend up to 10 hours in a workweek engaged in remedial reading or training in other basic skills without receiving time and one-half overtime pay for these hours. However, the employees must receive their normal wages for hours spent in such training and the training must not be job specific.
- (4) Public agency fire departments and police departments may establish a work period ranging from 7 to 28 days in which overtime need only be paid after a specified number of hours in each work period.

Youth Employment (Child Labor) Provisions

The FLSA youth employment provisions are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being. The provisions include restrictions on hours of work for minors under 16 and lists of hazardous occupations orders for both farm and non-farm jobs declared by the Secretary of Labor to be too dangerous for minors to perform. Further information on prohibited occupations is available from <http://www.youthrules.dol.gov>.

Nonagricultural Jobs (Youth Employment)

Regulations governing youth employment in non-farm jobs differ somewhat from those pertaining to agricultural employment. In non-farm work, the permissible jobs and hours of work, by age, are as follows:

- (1) Youths 18 years or older may perform any job, whether hazardous or not, for unlimited hours;
- (2) Youths 16 and 17 years old may perform any nonhazardous job, for unlimited hours; and
- (3) Youths 14 and 15 years old may work outside school hours in various nonmanufacturing, non-mining, nonhazardous jobs under the following conditions: no more than 3 hours on a school day, 18 hours in a school week, 8 hours on a non-school day, or 40 hours in a non-school week. Also, work may not begin before 7 a.m., nor end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m. Under a special provision, youths 14 and 15 years old enrolled in an approved Work Experience and Career Exploration Program (WECEP)

may be employed for up to 23 hours in school weeks and 3 hours on school days (including during school hours).

Fourteen is the minimum age for most non-farm work. However, at any age, youths may deliver newspapers; perform in radio, television, movie, or theatrical productions; work for parents in their solely-owned non-farm business (except in manufacturing or on hazardous jobs); or gather evergreens and make evergreen wreaths.

Farm Jobs (Youth Employment)

In farm work, permissible jobs and hours of work, by age, are as follows:

- (1) Youths 16 years and older may perform any job, whether hazardous or not, for unlimited hours;
- (2) Youths 14 and 15 years old may perform any nonhazardous farm job outside of school hours;
- (3) Youths 12 and 13 years old may work outside of school hours in nonhazardous jobs, either with a parent's written consent or on the same farm as the parent(s);
- (4) Youths under 12 years old may perform jobs on farms owned or operated by parent(s), or with a parent's written consent, outside of school hours in nonhazardous jobs on farms not covered by minimum wage requirements.

Minors of any age may be employed by their parents at any time in any occupation on a farm owned or operated by their parents.

Recordkeeping

The FLSA requires employers to keep records on wages, hours, and other items, as specified in Department of Labor recordkeeping regulations. Most of the information is of the kind generally maintained by employers in ordinary business practice and in compliance with other laws and regulations. The records do not have to be kept in any particular form and time clocks need not be used. With respect to an employee subject to the minimum wage provisions or both the minimum wage and overtime pay provisions, the following records must be kept:

- (1) personal information, including employee's name, home address, occupation, sex, and birth date if under 19 years of age;
- (2) hour and day when workweek begins;
- (3) total hours worked each workday and each workweek;
- (4) total daily or weekly straight-time earnings;
- (5) regular hourly pay rate for any week when overtime is worked;
- (6) total overtime pay for the workweek;
- (7) deductions from or additions to wages;
- (8) total wages paid each pay period; and
- (9) date of payment and pay period covered.

Records required for exempt employees differ from those for nonexempt workers. Special information is required for homeworkers, for employees working under uncommon pay arrangements, for employees to whom lodging or other facilities are furnished, and for employees receiving remedial education.

Terms Used in FLSA

Workweek - A workweek is a period of 168 hours during 7 consecutive 24-hour periods. It may begin on any day of the week and at any hour of the day established by the employer. Generally, for purposes of minimum wage and overtime payment, each workweek stands alone; there can be no averaging of 2 or more workweeks. Employee coverage, compliance with wage payment requirements, and the application of most exemptions are determined on a workweek basis.

Hours Worked - Covered employees must be paid for all hours worked in a workweek. In general, "hours worked" includes all time an employee must be on duty, or on the employer's premises or at any other prescribed place of work, from the beginning of the first principal activity of the work day to the end of the last principal work activity of the workday. Also included is any additional time the employee is allowed (i.e., suffered or permitted) to work.

Computing Overtime Pay

Overtime must be paid at a rate of at least one and one-half times the employee's regular rate of pay for each hour worked in a workweek in excess of the maximum allowable in a given type of employment. Generally, the regular rate includes all payments made by the employer to or on behalf of the employee (except for certain statutory exclusions). The following examples are based on a maximum 40-hour workweek applicable to most covered nonexempt employees.

- (1) **Hourly rate** (regular pay rate for an employee paid by the hour) - If more than 40 hours are worked, at least one and one-half times the regular rate for each hour over 40 is due.

Example: An employee paid \$8.00 an hour works 44 hours in a workweek. The employee is entitled to

at least one and one-half times \$8.00, or \$12.00, for each hour over 40. Pay for the week would be \$320 for the first 40 hours, plus \$48.00 for the four hours of overtime - a total of \$368.00.

- (2) **Piece rate** - The regular rate of pay for an employee paid on a piecework basis is obtained by dividing the total weekly earnings by the total number of hours worked in that week. The employee is entitled to an additional one-half times this regular rate for each hour over 40, plus the full piecework earnings.

Example: An employee paid on a piecework basis works 45 hours in a week and earns \$405. The regular rate of pay for that week is \$405 divided by 45, or \$9.00 an hour. In addition to the straight-time pay, the employee is also entitled to \$4.50 (half the regular rate) for each hour over 40 - an additional \$22.50 for the 5 overtime hours - for a total of \$427.50.

Another way to compensate pieceworkers for overtime, if agreed to before the work is performed, is to pay one and one-half times the piece rate for each piece produced during the overtime hours. The piece rate must be the one actually paid during nonovertime hours and must be enough to yield at least the minimum wage per hour.

- (3) **Salary** - The regular rate for an employee paid a salary for a regular or specified number of hours a week is obtained by dividing the salary by the number of hours for which the salary is intended to compensate. The employee is entitled to an additional one-half times this regular rate for each hour over 40, plus the salary.

If, under the employment agreement, a salary sufficient to meet the minimum wage requirement in every workweek is paid as straight time for whatever number of hours are worked in a workweek, the regular rate is obtained by dividing the salary by the number of hours worked each week. To illustrate, suppose an

employee's hours of work vary each week and the agreement with the employer is that the employee will be paid \$480 a week for whatever number of hours of work are required. Under this agreement, the regular rate will vary in overtime weeks. If the employee works 50 hours, the regular rate is \$9.60 (\$480 divided by 50 hours). In addition to the salary, half the regular rate, or \$4.80, is due for each of the 10 overtime hours, for a total of \$528 for the week. If the employee works 60 hours, the regular rate is \$8.00 (\$480 divided by 60 hours). In that case, an additional \$4.00 is due for each of the 20 overtime hours for a total of \$560 for the week.

In no case may the regular rate be less than the minimum wage required by FLSA.

If a salary is paid on other than a weekly basis, the weekly pay must be determined in order to compute the regular rate and overtime pay. If the salary is for a half month, it must be multiplied by 24 and the product divided by 52 weeks to get the weekly equivalent. A monthly salary should be multiplied by 12 and the product divided by 52.

Enforcement

Wage-Hour's enforcement of FLSA is carried out by investigators stationed across the U.S. As Wage-Hour's authorized representatives, they conduct investigations and gather data on wages, hours, and other employment conditions or practices, in order to determine compliance with the law. Where violations are found, they also may recommend changes in employment practices to bring an employer into compliance.

It is a violation to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under FLSA.

Willful violations may be prosecuted criminally and the violator fined up to \$10,000. A second conviction

may result in imprisonment.

Violators of the youth employment provisions are subject to a civil money penalty of up to \$11,000 for each employee who was the subject of a violation.

Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to a civil money penalty of up to \$1,100 for each such violation.

The FLSA prohibits the shipment of goods in interstate commerce which were produced in violation of the minimum wage, overtime pay, child labor, or special minimum wage provisions.

Recovery of Back Wages

Listed below are methods which FLSA provides for recovering unpaid minimum and/or overtime wages.

- (1) Wage-Hour may supervise payment of back wages.
- (2) The Secretary of Labor may bring suit for back wages and an equal amount as liquidated damages.
- (3) An employee may file a private suit for back pay and an equal amount as liquidated damages, plus attorney's fees and court costs.
- (4) The Secretary of Labor may obtain an injunction to restrain any person from violating FLSA, including the unlawful withholding of proper minimum wage and overtime pay.

An employee may not bring suit if he or she has accepted back wages under the supervision of Wage-Hour or if the Secretary of Labor has already filed suit to recover the wages.

A 2-year statute of limitations applies to the recovery

of back pay, except in the case of willful violation, in which case a 3-year statute applies.

Other Labor Laws

In addition to FLSA, Wage-Hour enforces and administers a number of other labor laws. Among these are:

- (1) the Davis-Bacon and Related Acts, which require payment of prevailing wage rates and fringe benefits on federally-financed or assisted construction;
- (2) the Walsh-Healey Public Contracts Act, which requires payment of minimum wage rates and overtime pay on contracts to provide goods to the Federal Government;
- (3) the Service Contract Act, which requires payment of prevailing wage rates and fringe benefits on contracts to provide services to the Federal Government;
- (4) the Contract Work Hours and Safety Standards Act, which sets overtime standards for service and construction contracts;
- (5) the Migrant and Seasonal Agricultural Worker Protection Act, which protects farm workers by imposing certain requirements on agricultural employers and associations and requires the registration of crewleaders who must also provide the same worker protections;
- (6) the Wage Garnishment Law, which limits the amount of an individual's income that may be legally garnished and prohibits firing an employee whose pay is garnished for payment of a single debt;
- (7) the Employee Polygraph Protection Act, which prohibits most private employers from using any type of lie detector test either for pre-employ-

ment screening of job applicants or for testing current employees during the course of employment;

- (8) the Family and Medical Leave Act, which entitles eligible employees of covered employers to take up to 12 weeks of unpaid job-protected leave each year, with maintenance of group health insurance, for the birth and care of a child, for the placement of a child for adoption or foster care, for the care of a child, spouse, or parent with a serious health condition, or for the employee's serious health condition; and
- (9) the Immigration and Nationality Act, as amended, which:
- under the H-2A provisions, provides for the enforcement of contractual obligations of job offers which have been certified to by employers of temporary alien nonimmigrant agricultural workers;
 - under the H-1C provisions, provides for the enforcement of employment conditions attested to by employers in disadvantaged areas employing H-1C temporary alien non-immigrant registered nurses;
 - under the D-1 provisions, provides for the enforcement of employment conditions attested to by employers seeking to employ alien crewmembers to perform specified longshore activity at U.S. ports; and
 - under the H-1B provisions, provides for the enforcement of labor condition applications filed by employers wishing to employ aliens in specialty occupations and as fashion models of distinguished merit and ability.

More detailed information on FLSA and other laws administered by Wage-Hour is available by calling

our toll-free help line 1-866-4US-WAGE (1-866-487-9243). For those who have access to the Internet, further information may also be obtained on the Wage and Hour Division Internet Home Page which can be located at the following address: www.wagehour.dol.gov.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

In accordance with the provisions of the SBREFA, the Small Business Administration established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small entities about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small entities. Small entities wishing to comment on Wage and Hour Division enforcement activities may call 1-888-REG-FAIR (1-888-734-3247), or write the Office of the National Ombudsman, U.S. Small Business Administration, 409 3rd Street, SW, MC2120, Washington, DC 20416-0005, or visit the Ombudsman's internet website, <http://www.sba.gov/ombudsman/>.

The right to file a comment with the Ombudsman is in addition to any other rights a small entity may have, including the right to contest the assessment of a civil money penalty. Filing a comment with the Ombudsman neither extends the maximum time period for contesting the assessment of a penalty, nor takes the place of filing the response required to secure an administrative hearing on a penalty. The Wage and Hour Division does not consider filing of a comment with the Ombudsman as a factor in determining how to resolve issues raised during a compliance action.

Equal Pay Provisions

The equal pay provisions of FLSA prohibit sex-based wage differentials between men and women employed in the same establishment who perform jobs that require equal skill, effort, and responsibility and which are performed under similar working conditions. These provisions, as well as other statutes prohibiting discrimination in employment, are enforced by the Equal Employment Opportunity Commission. More detailed information is available from its offices which are listed in most telephone directories under U.S. Government.

FOR MORE INFORMATION

Call the Wage and Hour Division at
1-866-487-9243 (toll free) or visit our
website at www.wagehour.dol.gov.