

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

ADMINISTRATOR, WAGE & HOUR DIVISION,
United States Department of Labor,

Prosecuting Party,

v.

DAYCO, INC.,

Respondent.

Case No. 2021-TNE-00025

SETTLEMENT AGREEMENT AND CONSENT FINDINGS

Pursuant to 29 C.F.R. § 503.49, the Prosecuting Party, the Administrator, Wage and Hour Division, United States Department of Labor (“Administrator”) and Dayco, Inc. (“Respondent”), who shall be referred to collectively herein as the “Parties,” have negotiated and executed this Settlement Agreement and Consent Findings (the “Consent Findings”) and request that the Office of Administrative Law Judges issue a decision based upon the following findings that are agreed to by the Parties:

1. This action arises under the Immigration and Nationality Act as amended, 8 U.S.C. §§ 1101(a)(15)(H)(ii)(b), 1184(c)(14) (hereinafter “the Act”), and the implementing regulations, 20 C.F.R. Part 655, subpart A (2015), and 29 C.F.R. Part 503 (2015), for a hearing involving alleged violations of the provisions of section 1184(c) of the Act.
2. On March 24, 2021, the Administrator issued a determination letter identifying Respondent’s alleged violations of the H-2B provisions of the Act.
3. On April 22, 2021, Respondent made a timely request for a hearing challenging

the Administrator's determination.

4. The Parties subsequently entered into negotiations designed to resolve this matter without the need for further litigation. As a result of these negotiations, the Parties have agreed to resolve this matter as follows:

a. Respondent agrees to pay \$97,429.58, representing gross back wages owed to H-2B employees as set forth in Exhibit A in accordance with the payment schedule set forth in the attached Exhibit B, from which the Department will make payments to the H-2B employees in accordance with the payment schedule set forth in the attached Exhibit C, from which deductions for Respondent's employees' share of FICA and federal withholding taxes will be made by the United States Department of Labor with no deductions made by the United States Department of Labor for the employees' state withholding tax. Such gross back wage amounts shall be paid in the form of certified bank checks or money orders, and shall be made payable to "Wage and Hour Division – United States Department of Labor" with the Case Number 1914889 written on the face of the bank checks/money orders. Respondent agrees to deliver the aforementioned checks/money orders to U.S. Department of Labor, Wage and Hour Division, Northern New England District Office, 1155 Elm Street, Suite 501, Manchester, NH 03101 in accordance with the payment schedule located in Exhibit B.

b. On or before June 29, 2021, Respondent shall provide the Administrator with a statement showing the following: Respondent's Federal ID number, the name of each employee listed in Exhibit A, each employee's last known address and social security number (only if currently known by Respondent), and the amount of back wages due the employee as indicated in Exhibit A. All such statements should be sent to the U.S. Department of Labor, Wage and Hour Division, Northern New England District Office, 1155 Elm Street, Suite 501,

Manchester, NH 03101, Attn. Eduardo M. Mota, Assistant District Director, or by electronic transmission to Eduardo M. Mota at the Northern New England District Office.

c. The total civil money penalties relating to Case No. 2021-TNE-00025, Wage and Hour Reference Number 1914889, are reduced to \$28,156.02. Respondent agrees to deliver the civil money penalties to the Wage and Hour Division by September 22, 2021.

d. Respondent agrees to pay the civil money penalty online by ACH transfer, credit card, debit card, or digital wallet at <https://pay.gov/public/form/start/77734139> and forward payment confirmation to U.S. Department of Labor, Wage and Hour Division, Northern New England District Office, 1155 Elm Street, Suite 501, Manchester, NH 03101, Attn. Eduardo M. Mota, Assistant District Director, or, alternatively, to deliver the civil money penalty to the Wage and Hour Division at the Northern New England District Office address above in the form of certified bank checks or money orders made payable to “Wage and Hour Division – United States Department of Labor,” with the Case Number 1914889 written on the face of each bank check/money order.

e. Respondent agrees to comply in all respects with the Act and applicable regulations in the future. Respondent specifically agrees that it will comply with its wage obligations as agreed and attested to in all of its Applications for Temporary Employment Certification.

5. Respondent shall not, under any circumstances, accept and keep any amount that was paid and accepted by an employee owed back wages under these Consent Findings and then subsequently returned to Respondent. Any such amount shall be immediately paid to the Administrator in the manner described in Paragraph 4.a. above, with the Case Number 1914889 written on the face of each such payment, and Respondent shall have no further obligations with

respect to such returned monies.

6. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of these Consent Findings, is retained by the United States Department of Labor, Office of Administrative Law Judges.

7. Respondent neither admits nor denies the Administrator's allegations in this case.

8. The entire record upon which the Order issued by the Court is based shall consist of the Administrator's determination letter and attachments thereto and this agreement.

9. The Parties waive any further procedural steps before the Administrative Law Judge and waive any right to challenge or contest the validity of these Consent Findings and any Order issued in accordance with this agreement.

10. These Consent Findings shall fully and finally resolve all outstanding issues between the Parties that were raised in connection with the Administrator's determination letter of March 24, 2021.

11. These Consent Findings and the Order issued in this matter shall have the same force and effect as an order made after a full hearing.

12. Each party shall bear its own costs, attorney's fees and other expenses incurred by such party in connection with any stage of this proceeding including, but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended.

13. Nothing in these Consent Findings is binding on any governmental agency other than the United States Department of Labor, Wage and Hour Division.

14. The Order issued in accordance with this agreement shall constitute the Final Administrative Order in this case.

AGREED AND CONSENTED TO:

FOR THE PROSECUTING PARTY:

Elena Goldstein
Deputy Solicitor of Labor

Maia S. Fisher
Regional Solicitor

Mark A. Pedulla
Counsel for Wage & Hour

/s/

Sheila A. Gholkar, Esq.
Trial Attorney
U.S. Department of Labor
Office of the Solicitor
John F. Kennedy Federal Bldg.
Room E-375
Boston, MA 02203

Date: June 23, 2021

FOR THE RESPONDENT:

Dayco, Inc.:

/s/

Christopher J. Schulte, Esq.
CJ Lake LLC
525 Ninth Street, NW, Suite 800
Washington, D.C. 20004