

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 17 November 2021

CASE NO.: 2019-SCA-00002

In the Matter of:

PETRILLO TRUCKING INC.
d/b/a PETRILLO TRUCKING,
PETRILLO TRANSPORT INC.

and

LUISA PETRILLO,
Individually, and as Officer and/or Owner,
Respondents.

DECISION AND ORDER APPROVING CONSENT FINDINGS

These proceedings arise under the McNamara-O’Hara Service Contract Act of 1965, as amended, 41 U.S.C. Section 6701, *et seq.* (“SCA” or “the Act”), in an enforcement action filed by the Administrator, Wage and Hour Division, U.S. Department of Labor, (“Administrator”) against Petrillo Trucking, Inc. and Luisa Petrillo.

On November 5, 2021, the parties filed Consent Findings and Order (“Agreement”). Upon review of the Agreement and the nature of the case, the terms are found to be fair and reasonable and in substantial compliance with 20 C.F.R. § 18.71. The amount of the assessed penalty in the settlement is adequate and the settlement was not procured under duress or coercion. Therefore, the Agreement and proposed settlement are approved. The Agreement is hereby incorporated into this decision.

Based on the Agreement, this tribunal finds:

1. Respondent, Petrillo Trucking, Inc. d/b/a Petrillo Trucking (“Petrillo Trucking”), is a corporation with a principal place of business located at 224 Union Street, Lodi, NJ.
2. Respondent, Petrillo Transport LLC (“Petrillo Transport”), is a limited liability corporation with a principal place of business located at 224 Union Street, Lodi, NJ.
3. Respondent, Luisa Petrillo, is and has been at all relevant times the owner or partial owner of Petrillo Trucking and Petrillo Transport. At all relevant times, including currently, Respondent, Luisa Petrillo, has exercise control and supervision of the

operation of Petrillo Trucking and Petrillo Transport and is responsible for the companies' employment practices and management policies.

4. The United States Postal Service ("USPS") awarded Petrillo Trucking contract numbers 114L2, 070U1, 07050, 07631, 07632, 07633, 07635 and 07636 and Luisa Petrillo contract number 07629 to provide mail hauling services along several routes in New Jersey and New York ("the Contracts"). Petrillo Trucking and Luisa Petrillo have held the Contracts, including any renewals, for about 45 years, including the time period from at least February 10, 2014, through at least October 1, 2017. Each of the Contracts were for an amount in excess of \$2,500.00.
5. The Contracts were subject to the Act and the regulations issued thereunder (29 C.F.R. Part 4) as they were to be performed in the United States through the use of service employees, as defined by Section 8(b) of the Act (41 U.S.C. § 6702(a)) and were for an amount in excess of \$2,500.00.
6. The Administrator found that during the period from at least February 10, 2014, through at least October 1, 2017, Respondents failed to pay and refrained from paying many of their service employees employed in the performance of the Contracts the minimum fringe benefits required by Section 2(a)(2) of the Act, 41 U.S.C. § 6703(2) and 29 C.F.R. §§ 4.3 and 4.6(b).
7. The Administrator found that during the period from at least February 10, 2014, through at least October 1, 2017, Respondents failed to pay and refrained from paying many of their service employees employed in the performance of the Contracts the minimum fringe benefits required by Section 2(a)(1) of the Act, 41 U.S.C. § 6703(1), and 29 C.F.R. §§ 4.3 and 4.6(b).
8. The Administrator found that during the period from at least February 10, 2014, through at least October 1, 2017, Respondents failed to make and maintain adequate and accurate records for their service employees employed in performance of the Contracts showing, among other things, the number of daily and weekly hours worked by employees and work classification(s) as required by 29 C.F.R. §§ 4.6(g) and 4.170(a).
9. The Administrator found that 46 service employees who were employed in the performance of the Contracts and who are listed on Exhibit A (the "Employees"), attached to the Agreement, are owed back wages and fringe benefits totaling \$730,754.46.
10. Respondents have neither admitted nor denied the allegations in the Complaint.
11. USPS is currently withholding funds in the amount of \$730,754.46 from the Contracts pursuant to 29 C.F.R. § 4.187(a) (the "Withheld Funds"); Respondents have authorized USPS to release to the U.S. Department of Labor, Wage and Hour Division the settlement amount as determined in the Agreement.

12. The Administrator does not seek any amount of damages beyond the Settlement Amount in connection to this matter or the underlying Wage and Hour Investigation (investigation no. 1783174).
13. The parties have waived any further procedural steps before this or the Administrative Review Board regarding this matter in accordance with 29 C.F.R. §§ 6.18(b)(3), 18.71(b)(3). The parties have also waived any right to challenge or contest the validity of the findings and Order entered into in accordance with the Agreement in accordance with 29 C.F.R. §§ 6.18(b)(4), 18.71(b)(4).

In accordance, then, with the terms of the Agreement, it is hereby **ORDERED**:

1. Respondents shall pay a total of \$549,208.62 (the “Settlement Amount”) to the Administrator to be distributed to the Employees in accordance with a determination made solely by the Administrator;
2. USPS shall release to the U.S. Department of Labor, Wage and Hour Division (“WHD”) the Settlement Amount of \$549,208.62 on the date that this Order is issued;
3. The Administrator shall release any claim to any balance of the Withheld Funds beyond the Settlement Amount;
4. Within 120 days of the WHD’s receipt from USPS of the Settlement Amount, WHD will request that USPS release any amount in excess of the Settlement Amount withheld by USPS to the applicable Respondents in accordance with applicable law and the contract documents;
5. WHD shall distribute the Settlement Amount, less the appropriate deductions for social security and withholding taxes, to the Employees, or to their legal representatives, in amounts to be determined solely by the Administrator. Any such amounts which remain undistributed for three years because of the parties’ inability to locate the Employee or representative shall be deposited with the U.S. Department of the Treasury;
6. Within 20 days of the issuance of this Order, Respondents shall provide WHD the social security number, if such is available, last known address, home and cellular telephone numbers and email address of each employee named on Exhibit A, attached to the Agreement. This information shall be emailed to Linda Helmer, Assistant District Director, WHD Northern New Jersey District Office, at Helmer.Linda@dol.gov;
7. Respondents, Petrillo Trucking, Petrillo Transport and Luisa Petrillo, shall be debarred from receiving further Federal contracts for a period of three years, pursuant to 29 C.F.R. § 4.188 and as specified in Section 5 of the Act, 41 U.S.C. § 6706. The three-year period shall run from the date of publication on www.sam.gov of a list of persons or firms declared ineligible from receiving Federal contracts, which includes the names of Respondents. Pursuant to this debarment, Respondents, and any firm, corporation, partnership, or association in which any of Respondents has a substantial interest, may

not be awarded any contract or subcontract of the United States or the District of Columbia. Nothing in this Order is intended to alter or in any way modify the provisions of 29 C.F.R. § 4.188, 41 U.S.C. § 6706, or any law applicable to any provision thereunder;

8. Respondents shall not discharge, blacklist, intimidate, or in any other manner discriminate or retaliate against any Employee, including but not limited to soliciting the repayment of compensation paid to an Employee pursuant to this Order, because the Employee engages, has engaged, or is believed to be engaged in any of the following activities:
 - a. Discloses, protests, or threatens to disclose or protest, 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 Act or a rule or regulation promulgated pursuant to the Act;
 - b. Provides information to, or testifies before, any public agency or entity conducting an investigation, hearing, or inquiry into any alleged violation of the Act or a rule or regulation promulgated pursuant to the Act, by the employer or another employer with whom there is or was a business relationship; or
 - c. Objects to, or refuses to participate in any activity, policy, or practice which the Employee reasonably believes is in violation of the Act, or a rule or regulation promulgated pursuant to the Act;
9. Respondents shall remain in compliance with the Act and applicable regulations at 29 C.F.R. Part 4; and
10. This Order shall have the same force and effect as an order made after a full hearing, pursuant to 29 C.F.R. § 4.189 and in accordance with 29 C.F.R. §§ 6.18(b)(1), 18.71(b)(1). The entire record on which this Order is based consists solely of the Complaint and the Agreement in accordance with 29 C.F.R. §§ 618(b)(2), 18.71(b)(2).

SO ORDERED.



Digitally signed by Jerry R. DeMaio
DN: CN=Jerry R. DeMaio,
OU=ADMINISTRATIVE LAW JUDGE,
O=US DOL Office of Administrative Law
Judges, L=Boston, S=MA, C=US
Location: Boston MA

JERRY R. DeMAIO
Administrative Law Judge

Boston, Massachusetts