

SOL:JM
(16)00501

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
CHERRY HILL, NJ

IN THE MATTER OF:

:

:

DENNIS K. WALKER TRUCKING CO. INC.
D/B/A WALKER TRUCKING CO., MARY B. : Case No. 2016-SCA-00014
WALKER, individually and as owner and officer,
DENNIS K. WALKER, JR., individually and as :
manager, and D&M LEASING CORPORATION,

:

Respondents.

CONSENT FINDINGS AND ORDER

The parties, the Administrator, U.S. Department of Labor, Wage and Hour Division ("Administrator" or "Complainant") and Respondents Dennis K. Walker Trucking Co. Inc. d/b/a Walker Trucking Co., Mary B. Walker, individually and as owner and officer, Dennis K. Walker, Jr., individually and as manager, and D&M Leasing Corporation represent that they have reached an accord to resolve this matter which arises under the McNamara O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. §§ 6701-6707 ("the Act"), and the applicable regulations at 29 C.F.R. Part 4, and to this end stipulate and agree to the following findings and order:

1. Respondent DENNIS K. WALKER TRUCKING CO. INC. D/B/A WALKER TRUCKING CO. ("DENNIS K. WALKER TRUCKING") is a corporation with a mailing address of P.O. Box 787, Andover, NJ 07821.
2. Respondent D&M LEASING CORPORATION is a corporation with a mailing address of P.O. Box 787, Andover, NJ 07821.

3. Respondent MARY B. WALKER is and has been at all relevant times an owner and Secretary and/or Vice President of DENNIS K. WALKER TRUCKING. At all relevant times including currently, Respondent Mary B. Walker has exercised control and supervision of the operation of DENNIS K. WALKER TRUCKING and is responsible for the company's employment practices and management policies.

4. Respondent DENNIS K. WALKER, JR. is and has been at all relevant times a manager of DENNIS K. WALKER TRUCKING. At all relevant times including currently, Respondent Dennis K. Walker, Jr. exercises control and supervision of the operation of DENNIS K. WALKER TRUCKING.

5. Respondents DENNIS K. WALKER TRUCKING and/or MARY B. WALKER have a substantial interest in D&M LEASING CORPORATION. Mary B. Walker is and has been at all relevant times an owner of D&M Leasing Corporation and D&M Leasing Corporation pays some of the service employees of Respondent Dennis K. Walker Trucking for their work on United States Postal Service ("USPS") Contract(s) that the USPS awarded to DENNIS K. WALKER TRUCKING.

6. The USPS awarded Respondent DENNIS K. WALKER TRUCKING the contracts listed in the attached Exhibit A ("the Contracts").

7. Respondents DENNIS K. WALKER TRUCKING, MARY B. WALKER and DENNIS K. WALKER, JR. have provided mail hauling services under the Contracts with the USPS.

8. The Contracts were awarded and/or renewed on or after July 1, 2011 and several were renewed one or more times. The Contracts were each for an amount in excess of \$2,500.00 and called for the furnishing of labor and equipment to perform the duties of providing mail hauling services for the USPS, said services to be provided at various locations in New Jersey 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)). Therefore, the Contracts were subject to the Act 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 each for an amount in excess of \$2,500.00.

9. During the period from at least June 27, 2013 through June 26, 2015, Respondents DENNIS K. WALKER TRUCKING, MARY B. WALKER, AND DENNIS K. WALKER, JR. failed to pay and refrained from paying a number of the service employees employed in the performance of the Contracts the minimum hourly rate required by sections 2(a)(1) of the Act, 41 U.S.C. § 6703(1), and by 29 CFR §§ 4.3 and 4.6(b).

10. During the period from at least June 27, 2013 through June 26, 2015, Respondents DENNIS K. WALKER TRUCKING, MARY B. WALKER, AND DENNIS K. WALKER, JR. 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).

11. During the period from at least June 27, 2013 through June 26, 2015, Respondents DENNIS K. WALKER TRUCKING, MARY B. WALKER, AND DENNIS K. WALKER, JR. failed to make and maintain adequate and accurate records for many of their service employees employed in performance of the Contracts, showing, among other things, the number of daily and weekly hours worked by employees, rates of monetary wages paid and fringe benefits provided, total daily and weekly compensation, and work classification(s) as required by 29 C.F.R. §§ 4.6(g) and 4.170(a).

12. Complainant and Respondents stipulate and agree that, as a result of the violations described in paragraphs 9, 10, and 11 above, service employees who worked on the Contracts are owed a total

of \$245,000.00 for the period June 27, 2013 through June 26, 2015.

13. In recognition of the aforesaid violations, Respondents agree to pay a total of \$245,000.00 ("the Settlement Amount") to the Administrator to be distributed to service employees who worked on the Contracts in accordance with a determination made solely by the U.S. Department of Labor.

14. Respondent DENNIS K. WALKER TRUCKING has already paid \$75,195.05 of the Settlement Amount to certain service employees of Respondents who were employed in the performance of the Contracts as shown in Exhibit B.

15. Upon information and belief, the USPS is currently withholding funds in the amount of \$138,514.98 from the Contracts pursuant to 29 C.F.R. § 4.187(a) (the "withheld funds").

16. Respondents authorize the USPS to release to the U.S. Department of Labor the sum of \$138,514.98 currently withheld in back wages on the Contracts. Respondents also authorize such amounts to be distributed to service employees who worked on the Contracts, including but not limited to the employees listed on Exhibit C, in accordance with a determination made solely by the U.S. Department of Labor.

17. In addition to the \$138,514.98 in withheld funds (see paragraphs 15 and 16), Respondents shall pay the sum of \$31,289.97 to the Administrator to be distributed to service employees who worked on the Contracts, including but not limited to the employees listed on Exhibit C, in accordance with a determination made solely by the U.S. Department of Labor. Payment of the \$31,289.97 shall be paid within 30 days of the date that an Administrative Law Judge approves this Order by delivering a certified check in the amount of \$31,289.97 to the Administrator for payment to employees for their work on the Contracts. The check shall be made payable to "Wage and Hour-Labor" with the notation "Case No. 1743061" and be sent to:

United States Department of Labor, Wage and Hour Division
The Curtis Center, Suite 850 West

170 S. Independence Mall West
Philadelphia, PA 19106-3317
Attention: Linda Estacio

18. Respondents agree that the Wage and Hour Division shall distribute any back wages released by the USPS or paid by any of the Respondents, less the appropriate deductions for social security and withholding taxes, to the employees, or their legal representatives, in amounts to be determined solely by the Administrator. Any such amounts which remain undistributed for three (3) years because of the parties' inability to locate the employee or representative shall be deposited with the Treasurer of the United States.

19. Within one hundred twenty (120) days of WHD's receipt from USPS of \$138,514.98 of withheld funds and WHD's receipt from Respondents of \$31,289.97, WHD will request that USPS release any amount in excess of \$138,514.98 withheld by USPS in accordance with applicable law and the contract documents.

20. Respondents DENNIS K. WALKER TRUCKING CO. INC. D/B/A WALKER TRUCKING CO., MARY B. WALKER, and D&M LEASING CORPORATION ("the Debarred Parties") agree to be debarred from receiving Federal Contracts for a period of three years for the violations indicated in paragraphs 9, 10, and 11 above pursuant to 29 C.F.R. § 4.188 and as specified in § 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 to be ineligible from receiving Federal Contracts which includes the names of the Debarred Parties. Pursuant to this debarment, the Debarred Parties, and any firm, corporation, partnership, or association in which any of the Debarred Parties has a substantial interest, may not be awarded any contract or subcontract of the United States or the District of Columbia.

21. Respondents agree that April 2010 is Richard Bowen's date of hire for SCA vacation and

length of service calculation purposes, see, e.g., 29 C.F.R. § 4.173.

22. Respondents will 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 have 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.

23. Respondents represent that they are currently in compliance with the Act and applicable regulations at 29 C.F.R. Part 4, and that they will remain in compliance.

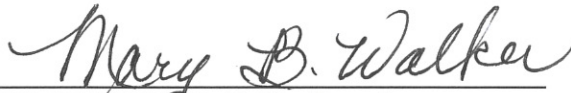
24. The parties, the Administrator and Respondents, agree that an Order disposing of this proceeding in accordance with these Consent Findings and Order shall have the same force and effect as an order made after full hearing pursuant to 29 C.F.R. § 4.189 and in accordance with 29 C.F.R. §§ 6.18(b)(1), 18.71(b)(1).

25. 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 C.F.R. §§ 6.18(b)(2), 18.71(b)(2).
26. The parties, the Administrator and Respondents, through agreement waive any further procedural steps before the Administrative Law Judge and Administrative Review Board regarding this matter in accordance with 29 C.F.R. §§ 6.18(b)(3), 18.71(b)(3).
27. The parties, the Administrator and Respondents, through agreement waive any right to challenge or contest the validity of the findings and order entered into in accordance with these Consent Findings and Order in accordance with 29 C.F.R. §§ 6.18(b)(4), 18.71(b)(4).
28. Within 30 days of the date that an Administrative Law Judge approves this Order, Respondents will provide the undersigned counsel for the Administrator with a list of the social security numbers and last known addresses and telephone numbers for each of the Employees listed on Exhibit C, and any other employees or former employees who performed work on any of the Contracts during the period June 27, 2013 through June 26, 2015.

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

DATED: December 9, 2016
Parsippany, New Jersey

DATED: December 14, 2016
New York, New York



MARY B. WALKER, Individually and as
SECRETARY and VICE PRESIDENT of DENNIS K.
WALKER TRUCKING CO. INC. D/B/A WALKER
TRUCKING CO. and as OWNER of D&M LEASING
CORPORATION



DENNIS K. WALKER, JR., Individually and as
MANAGER of DENNIS K. WALKER TRUCKING
CO. INC. D/B/A WALKER TRUCKING CO.



HOWARD A. VEX, ESQ.
Attorneys for Respondents DENNIS K. WALKER
TRUCKING CO. INC. D/B/A WALKER
TRUCKING CO., MARY B. WALKER, DENNIS K.
WALKER, JR., and D&M LEASING
CORPORATION


POST OFFICE ADDRESS:
Vex & Gage, LLC
Waterview Plaza
2001 Route 46, Suite 206
Parsippany, NJ 07054
Tel. (973) 402-5200

SO ORDERED:

Honorable Lystra A. Harris
Administrative Law Judge

JENNIFER S. BRAND
Associate Solicitor of Labor for
Fair Labor Standards

JEFFREY S. ROGOFF
Regional Solicitor

BY: 
JUDITH MARBLESTONE
Senior Trial Attorney

U.S. Department of Labor
Attorneys for
DR. DAVID WEIL
Administrator, Wage and Hour
Division
Complainant

POST OFFICE ADDRESS:
Jeffrey S. Rogoff
Regional Solicitor
U.S. Department of Labor
201 Varick Street, Room 983
New York, NY 10014
Tel. (646) 264-3678

Date

EXHIBIT A

USPS Contract #
074A0
07430
07433
07936
07938
07941

EXHIBIT B

Last Name	First Name	Total BW Paid
Bonham	Raymond	\$ 3,801.50
Bowen	Richard	\$ 5,550.40
Campoverde	Wilson	\$ 499.50
Ciarla	Nicola	\$ 4,242.00
Ginn	John	\$ 440.30
Hazely	Douglas	\$ 14,618.80
Horton	Art	\$ 806.90
Leiva	Dennis	\$ 110.54
Mendez-Galarza	Juan	\$ 3,078.40
Minier	Franklyn	\$ 9,073.20
Neira	Martin	\$ 2,833.80
Pineiro	Steve	\$ 16,104.00
Rodriguez	Steven	\$ 857.14
Smith	Kyron	\$ 9,825.37
Wilson	Michael	\$ 3,353.20
	TOTAL BWs PAID	\$ 75,195.05

EXHIBIT C

1. Jorge Bisano
2. Raymond Bonham
3. Richard Bowen
4. Wilson O. Campoverde
5. Albert Canty
6. Nicola Ciarla
7. Karriem Farrakhan
8. Donnell R. Ginn
9. John Ginn
10. Douglas Hazely
11. Dennis Hopkins
12. Arthur Horton
13. Carlyle Howard
14. Dennis Leiva
15. Henry Leiva
16. Juan Mendez-Galarza
17. Franklyn Minier
18. Martin R. Neira
19. Steven Pineiro
20. Steven Rodriguez
21. Donald Smith
22. Kyron O. Smith
23. Michael Wilson