UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

April 25, 2013

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Re: Palermo Villa, Inc. and BG Staffing
(Joint employers)
Case 30-CA-082300

Dear Mr. Saks and Mr. Ginsburg:

Your appeal from the Regional Director's partial refusal to issue complaint has been carefully considered. The appeal is denied substantially for the reasons in the Regional Director's letter of November 29, 2012.

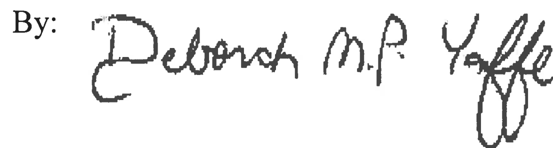
Contrary to your contention on appeal, the evidence established that the Employer would have taken the same action against those affected employees who did not re-verify their work authorization even in the absence of any protected concerted activity. Specifically with respect to your allegation that the Employer accelerated the time requirement from 28 days to 10 days for the employees to verify their work authorization, the evidence indicated that the Employer was acting on its good faith belief that the U.S. Department of Homeland Security, U.S Immigration and Customs Enforcement (ICE) had recently adopted a national policy that compliance within 10 days of receipt of the Notice of Suspect Documents (NSD) was presumed to be reasonably timely. There was insufficient evidence to establish that the Employer's motivation for changing the time frame from 28 days to 10 days was in retaliation for any protected concerted activity. Rather, the investigation disclosed the Employer believed that it was subject to serious criminal penalties for employing undocumented workers if it adhered to the 28-day time frame as it initially sought to do and that the Employer's acceding to the new ICE 10-day time frame protected against that risk. Finally, it is noted that there is no evidence that any employee in a position to satisfy the verification requirement was prevented from doing so by the adoption of the earlier deadline. Every employee who offered to supply appropriate evidence was retained and given ample opportunity to provide adequate verification.

Further, contrary to your contention on appeal, there is insufficient evidence that the stay issued by ICE on June 7, 2012 operated to limit the Employer's liability with respect to these underlying issues. In fact, the evidence indicated that the Employer unsuccessfully attempted to clarify the meaning of the stay in several communications with ICE. Under these circumstances, it was concluded that there was insufficient evidence to establish that the Employer would have taken a different action against employees listed on the NSD absent their protected concerted activity.

According further proceedings are unwarranted as to these allegations raised on appeal.

Sincerely,

Lafe E. Solomon
Acting General Counsel

By: 

Deborah M.P. Yaffe, Director
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