

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
DEPARTMENT OF LABOR  
ADMINISTRATIVE HEARING OFFICE**

In the Matter of:	)	CAC No. 13-022-12
Department of Labor Enforcement Section,	)	
	)	
Complainant,	)	<b>ADMINISTRATIVE ORDER</b>
	)	
<b>v.</b>	)	
	)	
KN Corporation, <i>dba</i> Sherwood,	)	
	)	
Respondent.	)	
	)	

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This Compliance Agency Case came on for hearing on January 22, 2014, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. The Department’s Enforcement Section was represented by investigator Frank Aguon; the Citizen Job Availability and Job Placement Section (hereinafter, “Citizen Job Placement Section”) was represented by James Ulloa. Respondent KN Corporation appeared through its President, Kim, Young Jin, and its agent/translator, Cho, Jin Koo. Hearing Officer Jerry Cody, presiding.

**After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:**

This case is based on a Determination and Notice of Hearing (“Determination”), filed by the Department’s Enforcement Section (“Enforcement”) in the Hearing Office on December 20, 2013. [A copy of the Determination was entered into evidence as Hearing Exhibit 1.]

Enforcement conducts on-site compliance inspection of businesses in the CNMI in order to ensure that employers are in compliance with the 30% requirement of 3 CMC § 4525, which mandates that a minimum of 30% of Employer’s workforce should consist of U.S. citizens, U.S. permanent residents or CNMI permanent residents. [Testimony of Frank Aguon and James Ulloa.]

On May 16, 2013, Enforcement conducted an on-site compliance inspection of Employer’s business and served Employer with a document request, entitled the

“Business Establishment Compliances and Monitoring Report,” dated 5/16/2013. [See Determination at paragraph 1; testimony of Mr. Ulloa.]

On May 30, 2013, Employer provided Enforcement with all of the requested documents, including documents that listed Employer’s total workforce. The workforce consisted of four employees: three electronic technicians and the President, who serves as manager and cashier of the business. None of these individuals is a U.S. citizen, U.S. permanent resident or CNMI permanent resident. [Testimony of Messrs. Ulloa, Aguon and Kim.]

On June 6, 2013, Enforcement served Employer with a Notice of Warning (Hearing Exhibit 2), informing Employer that it was not in compliance with the 30% requirement of 3 CMC § 4525. The Notice of Warning instructed the Employer to contact the Citizen Job Placement Section for assistance in (1) obtaining referrals of U.S. citizen applicants or (2) making other arrangements to meet the 30% U.S. workforce requirement. *Id.*

On June 14, 2013, Employer’s President, accompanied by his agent/translator, Cho, Jin Koo, met with Manny Iguel of the Citizen Job Placement Section. During the meeting, President Kim stated that he was thinking of hiring a U.S. citizen whose name he could not recall. Mr. Iguel instructed the Employer to notify him of the name once he hired the citizen. Mr. Iguel also told Mr. Kim that if he decided not to hire that citizen, he should contact the Placement Section so that it could refer other citizen applicants for hire. [Testimony of Messrs. Kim and Cho.]

After the June 14<sup>th</sup> meeting, the Employer never hired the unnamed U.S. citizen. The Employer never contacted the Citizen Job Placement Section to receive other referrals. Furthermore, the Employer never posted any of its job openings on the Department’s website.

In December 2013, the Citizen Job Placement Section, noting that it had not received any information from Employer, notified Enforcement and asked that a compliance Agency Case be opened for non-compliance with the 30% requirement. Hearing Exhibit 3 (Memorandum from James Ulloa to the Acting Director of Enforcement, dated 12/19/13. referring the Employer).

Enforcement examined the matter and concluded that Employer had been “uncooperative and non-compliant” with the labor laws, rules and regulations with respect to recruiting eligible U.S. workers and permanent residents. [Determination (Hearing Exhibit 1) at para. 6.] This hearing followed.

## DISCUSSION

Under Commonwealth law, every employer is required to make good faith efforts to recruit eligible U.S. workers and permanent residents in sufficient force to meet the targeted percentage of 30% of its total workforce. 3 CMC § 4525(a) and Regs. at § 80-30.3-440.

Among other things, Department Regulations require that “[a]n employer who intends to employ a foreign national worker...on a full-time basis...must post a job vacancy announcement on the Department’s website, [www.marianaslabor.net](http://www.marianaslabor.net).” *Id.* at § 80-30.3-205; see also § 80-30.3-300. “There are no waivers available with respect to the job vacancy announcement requirement.” *Id.* at § 80-30.3-230.

The Department recognizes that it may take some employers time and effort to achieve the goal of employing 30% of their workforce as U.S. citizens and/or permanent residents. Nevertheless, Employers who are not in compliance with the 30% target are expected to cooperate with the Citizen Job Placement Section in order to demonstrate that they are making a good faith effort to hire U.S. citizens, U.S. permanent residents and CNMI permanent residents. [Testimony of James Ulloa.]

An employer who fails to cooperate with the Citizen Job Placement Section, after it is requested to do so, creates the impression that it is ignoring or evading its legal responsibilities under CNMI law. 3 CMC § 4525(a) and Regs. at § 80-30.3-440.

In this case, the Hearing Officer finds that Employer failed to operate in good faith with respect to its obligation to hire and employ U.S. citizens and permanent residents sufficient to meet the 30% requirement. *Id.* As stated above, Employer met with the Placement Section and stated he intended to hire a particular U.S. citizen, but then after not hiring that citizen, Employer failed to contact the Placement Section for further referrals of job applicants. For the next six months, Employer did not make any effort to recruit or hire U.S. citizens or permanent residents. [Testimony of Kim, Young Jin.] Furthermore, Employer never posted its job listings on the Department’s website in violation of CNMI Department of Labor Regulations *Id.*; Regs. at § 80-30.3-205.

The above finding raises two issues: sanctions and corrective action.

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**Sanctions:** Enforcement asked in its Determination that Employer be assessed the maximum fine of \$2,000 for its conduct. After hearing Employer's testimony, Enforcement reduced its request for sanctions to \$1,000. [Testimony of Mr. Aguon.]

Enforcement's examination of Employer's workforce was part of a Departmental investigation conducted under Chapter 2 of the Commonwealth Employment Act of 2007, as amended by Public Law 17-1. 3 CMC § 4527. In cases of violations under that chapter, the Hearing Officer is authorized to levy a fine not to exceed \$2,000 for each violation. 3 CMC § 4528(f)(2).

The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with general principle, stated in the Regulations, that "[t]he hearing officer is authorized to...[u]se the inherent powers of a hearing officer...to further the interests of justice and fairness in proceedings." Regs. at § 80- 50.4- 820(h) and (o). [Emphasis added.]

Applying the above standards to the facts of this case leads this Hearing Officer to conclude that a monetary sanction of one thousand dollars (\$1,000) is warranted against this Employer.

**Corrective Action:** This Employer shall be ordered: (1) to post all of its future job vacancies on the Department's website ([www.marianaslabor.net](http://www.marianaslabor.net)); and (2) to meet with the Citizen Job Placement Section to discuss long-range workforce plans to meet the 30% target.

**Good cause having been shown, IT IS HEREBY ORDERED:**

1. **Sanctions:** Respondent KN Corporation is FINED one thousand dollars (\$1,000) for its conduct in 2013, as described above. 3 CMC §§ 4528(f)(2) and 4947(11). Respondent is ORDERED to pay this fine in two monthly installments of \$500 each, due on or before March 18, 2014 and April 18, 2014, respectively. Payments shall be made to the CNMI Treasury; and a copy of each payment receipt shall be delivered to the Hearing Office on or before each payment deadline.

2. **Cooperation with Citizen Job Placement Section:** Respondent KN Corporation is ORDERED to contact James Ulloa of the Citizen Job Availability and Job Placement Section, within thirty (30) days of the date of this Order. The

purpose of the contact shall be to cooperate with the Department to devise a workforce plan to move towards meeting the so-called 30% requirement of 3 CMC § 4525(a). 3 CMC § 4947(11). To this end, respondent shall consider all referrals received from the Citizen Job Placement Section and hire such referrals when they are qualified and available to work.

3. **Posting on Website:** Respondent KN Corporation is ORDERED to post all job vacancies and job renewals in the future on the Department of Labor website ([www.marianaslabor.net](http://www.marianaslabor.net)), in accordance with Regulations at § 80 – 30.3-205.

4. **Further Sanctions:** If Respondent fails to comply with the terms of this Order, it shall be subject to further monetary sanctions in the amount of \$1,000, and other sanctions in an amount to be determined at a later hearing.

5. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: January 27, 2014

  
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Jerry Cody  
Hearing Officer