

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

In the Matter of:)	CAC No. 13-023-12
Department of Labor Enforcement Section,)	
Complainant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
Juan A. Gacayan,)	
<i>dba</i> JAG Construction,)	
Respondent.)	
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This Compliance Agency Case came on for hearing on January 22, 2014, at 9:30 a.m. 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 Jeff Camacho; the Citizen Job Availability and Job Placement Section (hereinafter, “Citizen Job Placement Section”) was represented by James Ulloa. Respondent Juan A. Gacayan (dba JAG Construction) appeared together with translator Jimmy Blanca. 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 January 7, 2014. [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 Jeff Camacho and James Ulloa.]

On December 16, 2013, Employer filed a request for good standing from the CNMI Department of Labor. Employer provided a list of his total workforce to the Citizen Job Placement Section in support of his request. [A copy of the so-called

“Total Workforce Listing” was entered into evidence as Hearing Exhibit 2.] This document listed that Employer employed eight part-time employees, none of whom were U.S. citizens, U.S. permanent residents or CNMI permanent residents.

On December 19, 2013, James Ulloa of the Citizen Job Placement Section met with Employer. Mr. Ulloa advised the Employer that he needed to hire two U.S. citizens or permanent residents, or at least submit a “workforce plan” to hire such persons, in order to come into compliance with CNMI law [3 CMC § 4525], and in order to obtain the letter of good standing. At that point, Employer stated that he was unable to hire additional workers and that he would withdraw his attempt to obtain a letter of good standing. [Testimony of Mr. Ulloa and Mr. Gacayan.]

Subsequently, Enforcement concluded that Employer was not making any attempt to meet its obligations to comply with the 30% requirement of 3 CMC § 4525. Accordingly, Enforcement filed this Determination for such non-compliance. Enforcement requested that Employer be sanctioned \$2,000 for his conduct in making no effort to comply with the 30% requirement of 3 CMC § 4525.

At Hearing, Employer testified that his business, JAG Construction, builds and repairs houses. He holds licenses in building construction and commercial cleaning services. Under questioning, Employer admitted that his Total Workforce Listing, which he had signed under penalty of perjury, was incorrect. The document listed that he employed 8 part-time workers. In fact, Mr. Gacayan testified that he employs five full-time CW workers (two masons, one carpenter, and two commercial cleaners) and three part-time CW workers (all commercial cleaners). [Testimony of Mr. Gacayan.]

When asked why his Total Workforce Listing (Hearing Ex. 2) had failed to note any full-time workers, Employer blamed his accountant for incorrectly preparing the form. *Id.*

As to his efforts to find U.S. citizens for the positions held by his “CW” workers, Employer noted that he had placed an advertisement on a local radio station for a total of three days in May 2013. Hearing Exhibit 4 (letter from Program Director of KWAU-FM to U.S. Citizen and Immigration Services (“USCIS”)), dated 5/09/13).¹ Employer testified that his petition to hire five full-time CW workers was approved by USCIS in October 2013. [Testimony of Mr. Gacayan.]

¹ The letter (Hearing Exhibit 4), entitled “Job Vacancy Announcement Certification,” certifies that JAG Construction placed a job vacancy for 4 carpenters, 4 masons, 6 commercial cleaners and one electrician, and that the matter was announced on the radio for 3 consecutive days from May 6, 2013 to May 8, 2013.

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.” *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 in an effort to obtain a letter of good standing. However, when he was told that the Department expected him to take steps to hire U.S. citizens by receiving and interviewing job applicants referred by the Department, he immediately sought to withdraw his request for a good standing letter and made no attempt at further communication with the Department. [Testimony of Messrs. Ulloa and Gacayan.]

After the meeting with the Citizen Job Placement Section in mid-December 2013, Employer failed to contact the Placement Section for further referrals of job applicants. Moreover, Employer never posted his available construction and commercial cleaning jobs on the Department’s website in 2013, as required by CNMI Department of Labor Regulations. *Id.*; Regs. at § 80-30.3-205.

The above findings raise two issues: sanctions and corrective action.

Sanctions: Enforcement asked in its Determination that Employer be assessed the maximum fine of \$2,000 for its conduct. [Testimony of Jeff Camacho.]

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 \$1,000, together with corrective action, is the appropriate sanction to be assessed 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); 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 Juan J. Gacayan is FINED one thousand dollars (\$1,000) for his 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 21, 2014 and April 21, 2014, respectively. Payments shall be made to the CNMI Treasury; and a payment receipt shall be delivered to the Hearing Office on or before each payment deadline.

2. **Cooperation with Citizen Job Placement Section:** Respondent Juan J. Gacayan 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 is ORDERED to post all job vacancies and renewals in the future on the Department website (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, he shall be subject to further monetary 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



Jerry Cody
Hearing Officer