

**In the Matter of**

**BASILIO PIATKOFF, Natalia Piatkoff, and Northwest Resources, Inc.**

**Case No. 20-06**

**Final Order of Commissioner Dan Gardner**

**Issued February 9, 2007**

**SYNOPSIS**

The Commissioner found that Respondents Natalia Piatkoff ("N. Piatkoff") and Northwest Resources, Inc. ("Northwest") failed to provide three workers with written statements of their rights and remedies or to execute written agreements with them, committing three violations each of ORS 658.440(1)(f) and ORS 658.440(1)(g); that Respondents N. Piatkoff and Northwest violated ORS 658.440(1)(d) by subcontracting a tree planting contract to Basilio Piatkoff ("B. Piatkoff") in which subcontracting was a violation of an express provision of that contract; that Respondents N. Piatkoff and Northwest acted as a farm labor contractor without a license, in violation of ORS 658.410; that Respondents violated ORS 658.440(3)(b) by falsely misrepresenting to persons the conditions of a contract; and that N. Piatkoff and B. Piatkoff engaged in a course of misconduct, as defined in OAR 839-015-0520(m) with persons with whom they conducted business. The Commissioner assessed \$2,000 each for the six violations of ORS 658.440(1)(f) & (g); \$4,000 for two violations of ORS 658.440(3)(b); and \$1,000 for the violation of ORS 658.440(1)(d), for a total of \$17,000. The Commissioner further found that the evidence did not support the Agency's allegations that Respondents violated OAR 839-015-0520(3)(o) by failing to promptly satisfy levied judgments; that Respondents engaged in a sham or subterfuge in their license application as defined in OAR 839-015-0142; or that B. Piatkoff had an ownership interest in Northwest. The Commissioner found that Respondents lacked the requisite character, competence and reliability to be farm labor contractors and denied their license application. ORS 658.405, ORS 658.410, ORS 658.415, ORS 658.417, ORS 658.420, ORS 658.425, ORS 658.435, ORS 658.440, ORS 658.445, ORS 658.453; OAR 839-015-0004, OAR 839-015-0125, OAR 839-015-0135, OAR 839-015-0140 through OAR 839-015-0155, OAR 839-015-0165, OAR 839-015-0310, OAR 839-015-0350, OAR 839-015-0360, OAR 839-015-0505 through OAR 839-015-0520.

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The above-entitled case came on regularly for hearing before Alan McCullough, designated as Administrative Law Judge ("ALJ") by Dan Gardner, Commissioner of the Bureau of Labor and Industries for the State of Oregon. The hearing was held on September 25 and 26, 2006, at BOLI's office located at 3865 Wolverine St. NE, E-1,

Salem, Oregon. On October 5, 2006, the ALJ reconvened the hearing by telephone for the sole purpose of allowing the Agency to redeliver rebuttal to Respondent's closing argument after the ALJ determined that the Agency's original rebuttal argument had not been recorded.

The Bureau of Labor and Industries ("BOLI" or "the Agency") was represented by case presenter Jeffrey C. Burgess, an employee of the Agency. Respondents Basilio and Natalia Piatkoff were both present throughout the hearing. Respondents Basilio and Natalia Piatkoff and Respondent Northwest Resources, Inc. were represented by Mary Kim Wood, attorney at law.

The Agency called the following witnesses: Ed Sifuentez, a compliance officer with the U. S. Department of Labor (telephonic); Jim Carr, chief forester for Menasha Forest Products (telephonic); Keith Cunningham, former attorney at the Oregon Law Center (telephonic); Stan Wojtyla, BOLI compliance specialist; Basilio and Natalia Piatkoff, Respondents; Javier Garrido Martinez, former Respondent employee; and Salomon Velasco Mendoza, another former Respondent employee. Terry Rogers, an Oregon Certified Court Interpreter, translated the testimony of Javier Garrido Martinez and Salomon Velasco Mendoza, both Spanish-speaking witnesses.

Respondent called the following witnesses: Basilio and Natalia Piatkoff, Respondents; David Hernandez, a former employee of Basilio Piatkoff; and Jorge Garcia, another former employee of Basilio Piatkoff.

The forum received into evidence:

- a) Administrative exhibits X-1 through X-6 (submitted or generated prior to hearing) and X-7 (created after hearing);
- b) Agency exhibits A-1 through A-30 (submitted prior to hearing), with the exception of pages 13-19 of A-7, and A-31 (submitted at hearing);

- c) Respondent exhibits R-1 through R-9 (submitted prior to hearing); and
- d) Exhibits Z-1 and Z-2 (created after hearing).

Having fully considered the entire record in this matter, I, Dan Gardner, Commissioner of the Bureau of Labor and Industries, hereby make the following Findings of Fact (Procedural and on the Merits), Ultimate Findings of Fact, Conclusions of Law, Opinion, and Order.

### **FINDINGS OF FACT – PROCEDURAL**

1) On February 23, 2006, the Agency issued a Notice of Intent to Deny Applications and Refuse to Renew Farm/Forest Labor Contractor Licenses and to Assess Civil Penalties in which the Commissioner proposed to deny the applications and refuse to renew Respondents' Farm/Forest Labor Contractor licenses and indorsements for which Respondents submitted applications and to assess civil penalties in the amount of \$22,000, based on the following allegations:

“(1) The Agency has conducted an investigation of Respondents' character, competence and reliability, and determined that Respondents are ineligible for farm/forest labor contractor and employee indorsements pursuant to ORS 658.420 and OAR 839-015-0140(1) and 839-015-0520, and determined further that Respondents are to be assessed civil penalties as set forth below pursuant to ORS 653.256 and 658.453 and OAR 839-015-0505 through 839-015-0512 and 839-020-1010 for the following reasons:

“(a) Respondents failed to furnish workers with statements of worker's rights and remedies (forms WH-151) in violation of ORS 658.440(1)(f) and OAR 839-015-0310, 839-015-0508 and 839-015-0520. 3 Violations. Civil Penalties of \$6,000.00;

“(b) Respondents failed to execute written agreements with workers (forms WH-153) in violation of ORS 658.440(1)(g) and OAR 839-015-0360, 839-015-0508 and 839-015-0520. 3 Violations. Civil Penalties of \$6,000.00.

“(c) Respondents willfully made or caused to be made false, fraudulent or misleading representations, or published or circulated false, fraudulent or misleading information concerning the terms, conditions or existence of employment, including but not limited to submitting false, fraudulent or misleading forms WH-151 and WH-153 to the Agency in

violation of ORS 658.440(3)(b) and OAR 839-015-0508 and 839-015-0520. 2 Violations. Civil Penalties of \$4,000.00.

“(d) Respondents failed to comply with the terms and provisions of legal and valid agreements or contracts entered into in Respondents’ capacity as farm/forest labor contractors in violation of ORS 658.440(1)(d) OAR 839-015-0508(1)(f) and 839-015-0520, specifically by subcontracting work to BP Reforestation, Inc. in violation of a contract with Menasha Forest Products Corporation. One Violation. Civil Penalty of \$2,000.00.

“(e) Respondents acted as farm or forest labor contractors without a license in violation of ORS 658.410, 658.440 and 658.445 and OAR 839-015-0125 and OAR 839-0520(1)(i), specifically by bidding or submitting a contract offer to Menasha Forest Products Corporation on or about November 22, 2004, activity for which an Oregon farm/forest labor contractor license is required;

“(f) Respondents failed to provide workers with adequate rest breaks in violation of ORS 653.256 and 653.261 and OAR 839-020-0050 and OAR 839-020-1010. 4 Violations. Civil Penalties of \$4,000.00.

“(g) Upon information and belief, Respondent Basilio Piatkoff and/or Respondent Natalia Piatkoff have an ownership and/or management interest in Respondent Northwest Resources, Inc.

“(h) Respondents’ actions as alleged above demonstrate a course of misconduct in relations with workers and others with whom Respondents conduct business. OAR 839-015-0520(3)(m).

“(i) Respondent Basilio Piatkoff has used his wife, Natalia Piatkoff and Northwest Resources, Inc. as his agents and to perpetrate a sham or subterfuge in anticipation of the inability of BP Reforestation, Inc. to renew its farm/forest labor contractor license, within the meaning of OAR 839-015-0142, in violation of ORS 658.440(3)(a).

“(k) Respondent Basilio Piatkoff has failed to pay all debts owed including debts to the Oregon Department of Revenue, and, therefore, Respondents’ applications for farm/forest labor contractor licenses should be denied and the Commissioner should refuse to renew Respondents’ current licenses as provided in ORS 658.420 and OAR 839-015-0520(3)(o).

“(2) Each violation set forth above is attended by one or more of the following aggravating circumstances, which have been considered in determining whether to grant or deny Respondents’ application to renew farm/forest labor contractor licenses and indorsements: Respondents took insufficient measures to prevent or correct the violations. The violations are serious and of great magnitude. Respondents knew or should have known of the violations.

2) The Notice of Intent instructed Respondents that they were required to make a written request for a contested case hearing within 20 days of the date on which they received the Notice if Respondents wished to exercise their rights to a hearing.

3) Respondents, through counsel, filed an answer and request for hearing on March 27, 2006.

4) The Agency filed a request for hearing with the Hearings Unit on July 24, 2006.

5) On July 25, 2006, the Hearings Unit served Respondents with: a) a Notice of Hearing that set the hearing for September 26, 2006; b) a Summary of Contested Case Rights and Procedures containing the information required by ORS 183.413; c) a complete copy of the Agency's administrative rules regarding the contested case hearing process; and d) a copy of the Notice of Intent.

6) At the outset of the hearing, pursuant to ORS 183.415(7), the ALJ verbally advised the Agency and counsel for Respondent of the issues to be addressed, the matters to be proved, and the procedures governing the conduct of the hearing.

7) At the close of the evidentiary part of the hearing, and prior to closing arguments, the Agency moved to amend its charges to delete paragraph (1)(f) and to change paragraph (1)(i) to read: "(i) Respondents Basilio Piatkoff and Natalia Piatkoff have used Northwest Resources, Inc. as their agent to perpetrate a sham or subterfuge within the meaning of OAR 839-015-0142, in violation of ORS 658.440(3)(a)." Respondents did not object and the ALJ **GRANTED** the Agency's motion.

8) At hearing, the Agency moved to substitute substituted two-sided copies of exhibits A-23, A-24, A-25, and A-26 for the Agency's original exhibits submitted with

its case summary because the back page had not been copied on the original exhibits. Respondent did not object and the Agency's motion was **GRANTED**.

9) The ALJ issued a proposed order on November 17, 2006, that notified the participants they were entitled to file exceptions to the proposed order within ten days of its issuance. The Agency filed exceptions on November 27, 2006. Those exceptions are discussed in the Opinion section of this Final Order.

### **FINDINGS OF FACT – THE MERITS**

1) Respondent Basilio Piatkoff ("B. Piatkoff") was licensed with BOLI as a farm/forest labor contractor as a sole proprietor with the business name of "BP Reforestation" from July 20, 1994, through December 31, 2004.

2) At some point in 2004, B. Piatkoff decided to stop doing business as BP Reforestation and to focus on running a construction business. His wife, Natalia Piatkoff ("N. Piatkoff"), decided to go into the reforestation business. B. Piatkoff, who speaks Spanish and English, agreed to help her in running the new business.

3) On November 18, 2004, Northwest Resources, Inc. ("Northwest") registered as a corporation with the Corporations Division of the Oregon Secretary of State. Northwest listed "Natalia Piatkoff" as its president and registered agent and "Basiho Piatkoff" as its secretary. "Basiho" Piatkoff and Respondent B Piatkoff are the same person.

4) Sometime prior to November 22, 2004, B. Piatkoff, acting on behalf of N. Piatkoff and Northwest, bid on a tree planting contract with Menasha Forest Products Corporation ("Menasha"). B. Piatkoff and BP Reforestation had been awarded tree planting contracts with Menasha in prior years. On November 22, 2004, N. Piatkoff and Northwest entered into "Tree Planting Contract B-2005." The terms of the contract included the following:<sup>i</sup>

"DATE: November 22, 2004

"MFPC: MENASHA FOREST PRODUCTS CORPORATION  
a Delaware Corporation  
PO Box 588, North Bend, Oregon 97459  
"CONTRACTOR: NORTHWEST RESOURCES, INC.  
8135 River Road Northeast, Keizer, OR 97303

"\* \* \* \* \*

"D. Contractor agrees to begin work hereunder on or immediately after **December 15, 2004** (weather permitting, and provided seedlings are delivered to Menasha Forest Products Corporation), and carry on said work in a diligent and workmanlike manner, and complete such work on or before **April 1, 2005**.

"\* \* \* \* \*

"K. This agreement shall not be assignable in whole or in part, by operation of law or otherwise, except upon written consent of MFPC. Any attempted assignment or subcontract without written approval by MFPC shall void this agreement.

**"8. FINAL AGREEMENT**

"This document is the entire and complete agreement of the parties. It supersedes and replaces all prior written and oral representations and agreements made or existing between the parties regarding this Agreement. No modification or supplement to this Agreement shall be binding unless it is in writing and signed by MFPC and Contractor.

"**IN WITNESS WHEREOF**, the parties hereto have executed this agreement as of the day and year first above written.

**"Menasha Forest Products Corporation**

By: Jim Carr  
Its: Chief Forester

**"Northwest Resources, Inc.**

By: B. Piatkoff N. Piatkoff  
Its: Contractor Rep Contractor

"Contractor Foreman:  
#1 Jorge Garcia"

5) On December 7, 2004, N. Piatkoff filed her initial application with BOLI for a farm/forest labor contractor's license. She listed 8135 River Rd NE, Keizer, OR 97303 as her home address. She stated that her "business entity" was "Northwest Resources, Inc.," a corporation, that she owned "100%" of Northwest, and that no other persons had a financial interest in Northwest. Question number 26 on the application

asked “Will you be using vehicles in the operation of this farm/forest labor contracting business?” The question gave the applicant the option of checking “YES” or “NO” and stated “(If yes, you must complete and submit the enclosed Vehicle Information Sheet with this application.)” N. Piatkoff checked “Yes.” Included with her application was BOLI’s “Farm Labor Contractor’s Vehicle Information Sheet,” which asks applicants to list information concerning “vehicles [that] will be used in the operation of the contractor’s business or to transport workers.” N. Piatkoff listed one vehicle, a 2002 Ford “Econ E350 SUPR,” and stated that Northwest was its registered owner and that it would be used to transport workers.

6) On December 7, 2004, B. Piatkoff filed an application with BOLI for a farm/forest labor employee indorsement. He listed his home address as 8135 River Rd N, Keizer, OR 97303. He checked “corporation” as the type of “business entity,” and wrote “Northwest Resources, Inc.” as the “business name,” stating that Natalia Piatkoff, address 8135 River Rd N, Keizer, OR 97303, was the only person with a financial interest in Northwest Resources, Inc. With his application, he included a “Sponsorship Statement For Employee Of F/FLC Contractor” that was signed by Natalia Piatkoff on November 19, 2004.

7) On December 7, 2004, BOLI issued a farm/forest labor contractor temporary permit to N. Piatkoff and a farm/forest labor contractor temporary permit with employee indorsement to B. Piatkoff. Both permits expired on February 6, 2005. On February 4, 2005, BOLI issued farm/forest labor contractor license #9717 to N. Piatkoff and Northwest Resources, Inc. with an expiration date of 12/31/05. The same day, BOLI issued farm/forest labor contractor license #9718 with employee indorsement to B. Piatkoff, with an expiration date of 12/31/05.

8) Through December 31, 2004, B. Piatkoff was not under investigation by BOLI for any violations of any statutes or administrative rules enforced by BOLI.

9) In 2004, B. Piatkoff applied for a compliance letter with the Oregon Department of Revenue ("DOR"). DOR issued a Certificate of Compliance on November 23, 2004, contingent on a payment plan. B. Piatkoff submitted a DOR Certificate of Compliance with his December 7, 2004, application to BOLI. B. Piatkoff sent in one payment after the issuance of the Certificate of Compliance, but made no additional payments through September 26, 2005. As of September 26, 2005, he had not been in compliance with his DOR payment plan since April 15, 2005, and DOR would not have issued a Certificate of Compliance to B. Piatkoff, he had applied at that time, unless he made payments that brought him into compliance. That debt was subsequently paid in full.

10) On December 15, 2004, N. Piatkoff, for Northwest Resources, Inc., and B. Piatkoff, for BP Reforestation, signed an agreement that contained the following language:<sup>ii</sup>

**"Sub-Contract Agreement**

"This contract made between Northwest Resources, Inc. (general contractor) and BP Reforestation (sub-contractor) on this day of *12-15-04* applies to the following terms.

"1. Sub-contractor will finish job in timely manner as issued by Northwest Resources, Inc. unless it is not possible because of uncontrollable situations by the subcontractor.

"2. If the job is not finished in a timely manner Northwest Resources, Inc. can and will hire other sub-contractors to finish the job resulting in a back charge to the sub-contractor.

"3. Sub-contractor does not have the right to hire other sub-contractors to complete work unless authorized by North Resources, Inc.

"4. Sub contractor will pay insurance coverage/payroll taxes for all its employees.

"5. Sub-contractor is liable for all insurance coverage to the date they work.

"6. This is a master contract and voids all other contracts between Northwest Resources, Inc. and sub contractor.

"7. Work is to be performed at the following location(s):

*"Menasha Land as Instructed by Menasha  
Total Trees to plant about 120,000 tree seedlings.  
17¢ per tree seedling.*

"9. Amount for the value of the work will be: \_\_\_\_\_  
\_\_\_\_\_ Dollars and \_\_\_\_\_ cents.

"10. Work shall be started on 12-17-04 and completed by 12-31-04."

11) Menasha never consented to Northwest entering into a subcontract with BP Reforestation to perform work on Northwest's contract to plant trees for Menasha.

12) On January 3, 2005, the 2002 Ford van listed in N. Piatkoff's application for a farm/forest labor contractor license was driven from Salem towards Coos Bay by Leobarto Velazquez. The van had the words "BP Reforestation" painted on the driver's door. The van had seven passengers – Salomon Velasco Mendoza, Francisco Rios Sanchez, Juan Carlos Rios, Manual Perez, Javier Garrido Martinez, Roberto Alanis Alvarez, and Bejarno Valintin. All occupants of the van had been dispatched to plant trees on Tree Planting Contract B-2005 as employees of Northwest. Francisco Rios Sanchez, Juan Carlos Rios, Manual Perez, and Javier Garrido Martinez had never before worked for BP Reforestation or Northwest Resources, Inc.

13) About 6 a.m., the van went off the road seven miles east of Reedsport. Leobarto Velazquez and Juan Carlos Rios were killed and the other six passengers were taken to Lower Umpqua Hospital.

14) When N. Piatkoff submitted her application for a farm labor contractor license and at the time of the accident, the 2002 van was registered to B. Piatkoff.

15) At all times material herein, Respondents B. Piatkoff and N. Piatkoff had an office next to the house in which they lived. They used that office to conduct business for BP Reforestation and Northwest Resources, Inc.

16) Northwest performed work on the Menasha contract through March 2005. While working on the Menasha contract, Northwest employed at least five workers – Jorge Garcia, Jose Bazan, Salomon Velasco Mendoza, Leobardo Velasquez, and Valintin Bejarno – who had worked on the same contract in December 2004 as employees of BP Reforestation.

17) In January 2005, Ed Sifuentez, a compliance officer for the U.S. Department of Labor (“USDOL”), interviewed B. Piatkoff regarding the van accident. At that time, B. Piatkoff gave him copies of WH-151S forms and WH-153S forms that purportedly had been furnished to and signed by Juan Carlos Rios, Valentin Bejarano, Manuel Perez R., Leobardo Velazquez, Roberto Alaniz A., Salomon Velasco, Javier Martinez, and Francisco Sanchez Rios.

18) During the interview, B. Piatkoff told Sifuentez that Northwest Resources, Inc. bid on and was awarded the Menasha contract.

19) A WH-151 is a two page, 8½” x 11” form published by BOLI pursuant to ORS 658.440(1)(f)(I), ORS 658.440(1)(g) and OAR 839-015-0310, which require a farm labor contractor to furnish workers with a written statement of rights and remedies in the English language and any other language used by the farm labor contractor to communicate with the workers. BOLI also publishes form WH-151S, which is a Spanish translation of form WH-151. A farm labor contractor’s use of form WH-151 or WH-151S (if Spanish is the language used by the farm labor contractor to communicate with the workers), properly executed, satisfies a contractor’s obligation under ORS 658.440(1)(f)(I) and OAR 839-015-0310. Both forms contain lines for an “Employee signature,” a “Printed Name,” and “Date Received.”

20) A WH-153 is a two page, 8½” x 11” form published by BOLI pursuant to ORS 658.440(1)(f)(A)-(H), ORS 658.440(1)(g), and OAR 839-015-0360, which require a

farm labor contractor to furnish workers with a written statement of the terms and conditions of employment and to execute a written agreement between the worker and the farm labor contractor. BOLI also publishes form WH-153S, which is a Spanish translation of form WH-153. A farm labor contractor's use of form WH-153 or WH-153S (if Spanish is the language used by the farm labor contractor to communicate with the workers), properly executed, satisfies a contractor's obligations under ORS 658.440(1)(f)(A)-(H), ORS 658.440(1)(g), and OAR 839-015-0360. Both forms contain lines for an "Employee" signature, "Printed Name of Employee," an "Employer" signature, and a "Date."

21) Form WH-153 contains the following language: <sup>iii</sup>

**"Agreement Between Contractor and Worker**  
(TO BE EXECUTED BY BOTH PARTIES)

The EMPLOYER and the WORKER mutually agree as follows:

**Rate of Pay** – This job will be paid at the following rate (rate per hour or piece-work rate).

\_\_\_\_\_  
Hourly rate

\_\_\_\_\_  
Piece-work rate

**Bonus** -  There will be no bonuses.

Bonuses will be given under the following conditions: \_\_\_\_\_

**Personal Loans** -  No personal loans will be given.

Personal loans will be made under the following conditions: \_\_\_\_\_

**Housing, Health and Day Care Services** -  Housing, health and day care services are not provided.

Housing, health and/or day care services are provided under the following conditions. (Only the fair market value of housing may be deducted from wages.)  
\_\_\_\_\_

**Employment Conditions**

Your employment under this agreement will begin on this date: \_\_\_\_\_

Your working hours and days are as follows: \_\_\_\_\_

Special conditions, if any: \_\_\_\_\_

**Equipment and Clothing** -  Necessary equipment and clothing must be provided by each worker. Housing, health and day care services are not provided. Necessary equipment and clothing for this job is: \_\_\_\_\_

Necessary equipment and clothing may be purchased or borrowed from the employer. The prices and/or conditions for obtaining equipment and clothing are as follows:  
\_\_\_\_\_

**Labor Dispute** -  There is no labor dispute at the work site.

There is a labor dispute at the work site.

**Owner of Operations** – For this job, the owner of the land or operation is:

Name and address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The parties agree that worker rights and remedies enumerated on Form WH-151, Rights of Workers, are incorporated in this agreement by reference, and a copy thereof is attached hereto.

Other working conditions: \_\_\_\_\_

The parties further agree that this contract includes the provisions of the Service Contract Act (41 U.S.C. § 351-401), if applicable.

Signatures of parties:

_____	_____
<b>Employer</b>	<b>Employee</b>
_____	_____
<b>Date</b>	<b>Printed Name of Employee</b>

22) The WH-153S contains the following language under the paragraph entitled "Employment Conditions:

**"Condiciones de empleo**

Bajo este contrato el trabajo comenar á el (fecha) \_\_\_\_\_ y terminará aproximadamente el (fecha): \_\_\_\_\_

Sus horas y días de trabajo son: \_\_\_\_\_

Condiciones especiales (si las hay): \_\_\_\_\_"

This language is translated as:

**"Conditions of Employment**

Under this contract the job will begin on (date) \_\_\_\_\_ and will end on about (date): \_\_\_\_\_

Your work days and hours are: \_\_\_\_\_

Special conditions (if any): \_\_\_\_\_"

23) The WH-151S and WH-153 forms that B. Piatkoff gave to Sifuentez were reduced so that all four pages of the two forms were printed on one side of an 8½" x 11" sheet of paper.

24) On February 8, 2005, Enrique Hidalgo, a public service representative employed in BOLI's Wage and Hour Division, visited the office of BP Reforestation and

Northwest Resources, Inc. and spoke with N. Piatkoff. Hidalgo asked her to provide copies of Northwest Resources, Inc.'s contracts with Menasha, as well as the WH-151 and WH-153 forms for all employees who worked or were currently working on the contract.

25) On February 10, 2005, B. Piatkoff and N. Piatkoff visited Hidalgo at BOLI's Salem office. The Piatkoffs brought a copy of a subcontract between Northwest Resources, Inc. and BP Reforestation, but N. Piatkoff told Hidalgo that she forgot a copy of the contract with Menasha. The Piatkoffs gave Hidalgo copies of WH-151S and WH-153S forms that had been purportedly furnished to and signed by Heraclio Miranda Perez, Martin Ochoat, Jorge Garcia, Jaime Garcia, Valentin Bejarano, Manuel Perez R., Francisco Sanchez Rios, Javier Gonzalez, Juan C. Saldana, Leobardo Velazquez, Salomon Velasco, Hector Alvarez, David Arreguin Mereno, Gonzalo Garcia, Efren Garcia, Marton Garcia, Eugenio Gonzalez, Raul Perez R., Juventino Gonzales Reyes, and Javier Martinez.

26) The WH-151S and WH-153S forms that the Piatkoffs gave to Hidalgo were reduced so that all four pages of the two forms were printed on one side of an 8½" x 11" sheet of paper.

27) On August 11, 2005, Wojtyla sent a letter to N. Piatkoff and Northwest Resources, Inc., that stated:

"Pursuant to ORS 651.050, 651.120, and 658.407 the Bureau of Labor and Industries has the authority to investigate compliance of wage and hour and farm labor contractor laws.

"Please send the original WH-151's (Rights of Workers) and WH-153's (Agreement between Contractor and Worker) for Javier Garrido Martinez and Roberto Alaniz Alvarez. Both men were involved in the vehicle accident on 01-03-05.

"If you wish you can physically bring in the original and get a receipt or simply send by mail the original forms.

“Also, please send a copy of the contract your company had with Menasha Corporation during the time of the accident.

“Thank you for your cooperation.

“If you have any questions, please feel free to call me.”

28) In response to Wojtyla’s request, Respondents provided copies of WH-151S forms and WH-153S forms that had been purportedly furnished to and signed by Juan Carlos Rios, Valentin Bejarano, Manuel Perez R., Leobardo Velazquez, Roberto Alaniz A., Salomon Velasco, Javier Martinez, and Francisco Sanchez Rios. The WH-151S and WH-153 forms that Respondents gave to Wojtyla were reduced so that all four pages of the two forms were printed on one side of an 8½” x 11” sheet of paper.

29) Wojtyla never received any original WH-151 or WH-153 forms from Respondents in response to his August 11, 2005, request, and Respondents did not provide Wojtyla with a copy of the contract with Menasha.

30) On August 12, 2005, Wojtyla sent a second letter to Northwest Resources, Inc., to N. Piatkoff’s attention, that stated:

“When you and Basilio Paitkoff [sic] met with Enrique Hidalgo on 02-08-05 you left with him some WH-151’s [sic] (Worker Rights) and WH-153’s [sic] (Agreement between Contractor and Worker). He understood these to be the remainder of the crew that worked on or around 01-03-05.

“In reviewing the records I am unable to find the afore mentioned [sic] forms for the following individuals: Martin Maldonado, Hector Olivera, Ezequiel Gonzalez, Ruben Gonzalez, Jorge Villasenor Medrano, Miguel Lopez Martinez, Manuel Mejia Eusebio, Olayo Rojas Martin, Eloy Sandoval Lascares, and Jorge Villa.

“Please submit, by 08-26-05, the WH-151’s [sic] and WH-153’s [sic] for the above mentioned individuals.

“The names mentioned are identical to how they are identified in your 01-01-05 to 01-31-05 certified payroll report.

“If you have any questions, please feel free to call me.”

31) In response, Respondents sent 12 WH-151S and WH-153S forms to Wojtyla that had been purportedly furnished to and signed by Martin Maldonado, Ezquiel Gonzalez, Ruben Gonzalez, Jorge Villasenor, Miguel Lopez Martinez, Manuel

Mejia, Martin Olayo Rojas, Sundoval Luscarez Eloy, Jorge Villa R., Hector Alvarez, Roberto Alaniz, and Javier Martinez. The WH-151S and WH-153S forms that Respondents provided were reduced so that all four pages of the two forms were printed on one side of an 8½” x 11” sheet of paper.

32) The reduced size print on the WH-151S and WH-153S forms Respondents gave to Sifuentez, Hidalgo, and Wojtyla is difficult to read without a magnifying glass and substantial portions of the print are completely illegible.

33) In December 2004 and January 2005, Respondents furnished WH-151S and WH-153S forms to workers in the same “four on one” reduced format.

34) None of the WH-153S forms provided by Respondents provided the name and address of Menasha, the owner of the operations where Respondents’ workers would be working. Instead, Respondent wrote either (1) “BP Reforestation, 8135 River Rd N., Keizer, OR 97303, fax (503)390-1587, (503)580-8302,” (2) “NWR,” (3) “NWR, 8135 River Rd N., Keizer, OR 97303, fax (503)390-1587, (503)580-8302,” (4) “NWR, 8135 River Rd, Keizer, OR 97303,” or (5) “Northwest Resources, Inc., 8135 River Rd N., Keizer, OR 97303, fax (503)390-1587, (503)580-8302” in the section of the WH-153S that asked for the name and address of the owner of the land or operation for the job to be performed.”

35) None of the WH-153S forms that Respondents gave to Sifuentez and Hidalgo state the date that the recipient worker’s employment would begin.

36) Many of the WH-153S forms provided by Respondents are missing an employer’s signature and the employee’s printed name. Many of the WH-151S forms provided by Respondents are missing the employee’s printed name and are undated.

37) The WH-151S and WH-153S forms that B. Piatkoff gave to Sifuentez that were purportedly furnished to and signed by Juan Carlos Rios were actually signed, at

B. Piatkoff's direction, by family members of Juan Carlos Rios after he died in the van accident.

38) Javier Martinez had never met B. Piatkoff before the afternoon of January 3, 2005, when B. Piatkoff drove to Coos Bay after the accident, picked up Martinez, Salomon Velasco, and one or two other workers and drove them back to Salem.

39) Respondents provided three different "four on one" WH-151S and WH-153S forms with Javier Martinez's name on them. The first, given to Sifuentez in January 2005, has nothing written in the section of the WH-153S entitled "Condiciones de empleo;" has the name "BP Reforestation" handwritten under the section entitled "Dueño de la propiedad;" bears B. Piatkoff's signature; and has a handwritten date of "1-2-05." The second, given to Hidalgo in February 2005, has "Plantor Penos" handwritten in the section entitled "Condiciones de empleo;" the name "BP Reforestation" handwritten under the section entitled "Dueño de la propiedad;" bears B. Piatkoff's signature; and has a handwritten date of "12-29-04." The third, given to Wojtyla in August 2005, has handwritten dates of "1-2-05" and "3-20-05" but nothing else handwritten in the section entitled "Condiciones de empleo;" has the name "NWR" handwritten under the section entitled "Dueño de la propiedad;" bears N. Piatkoff's signature; and is dated "1-2-05."

40) Javier Martinez's signature does not match the signature of "Javier Martinez" on any of the three WH-151S's and WH-153S's provided by Respondents.

41) Javier Martinez signed some employment related forms for Respondents after the van accident on January 3, 2005. Respondents did not give a WH-151S or WH-153S to Martinez and Martinez did not sign the any of the WH-151S or WH-153S forms given to the Agency or the USDOL by Respondents.

42) Respondents provided three different “four on one” WH-151S and WH-153S forms with the name of “Roberto Alaniz A” on them. The first, given to Sifuentez in January 2005, has nothing written in the section of the WH-153S entitled “Condiciones de empleo;” the name “BP Reforestation” handwritten under the section entitled “Dueño de la propiedad;” bears B. Piatkoff’s signature and the signature “Roberto Alaniz A;” and has a handwritten date that appears to be “12-17-04” and looks as though it was handwritten over another date. There is no writing on the WH-151S or WH-153S in the places provided for the employee to print his name. The second, given to Hidalgo in February 2005, has a handwritten date of “12-31-04” handwritten in the section entitled “Condiciones de empleo;” the name “BP Reforestation” handwritten under the section entitled “Dueño de la propiedad;” bears B. Piatkoff’s signature and the signature “Roberto Alaniz A;” and has a handwritten date that appears to be “12-17-04” that has been handwritten over another date. The third, given to Wojtyla in August 2005, has handwritten dates of “1-2-05” and “3-20-05” but nothing else handwritten in the section entitled “Condiciones de empleo;” the name “NWR” handwritten under the section entitled “Dueño de la propiedad;” bears N. Piatkoff’s signature; and has the handwritten date of “1-2-05.”

43) Roberto Alanis’s signature does not match the signature of “Roberto Alaniz A” on any of the three WH-151S’s and WH-153S’s provided by Respondents. He spells and signs “Alanis” with an “s,” not a “z.”

44) Roberto Alanis worked for BP Reforestation on the Menasha contract in December 2004. Toward the end of December 2004, after working several days on the Menasha contract, Leobardo Velasquez gave him some employment-related forms at the motel where BP Reforestation’s crew was staying while working on the Menasha contract. He was not given and did not sign a WH-151S or WH-153S related to his

work on that contract, either while he was employed by B. Piatkoff and BP Reforestation in December 2004 or in relationship to his prospective employment<sup>iv</sup> with N. Piatkoff and Northwest. He did not sign any of the WH-151S or WH-153S forms given to the Agency or the U.S. Department of Labor by Respondents.

45) On January 3, 2006, BOLI sent a letter to N. Piatkoff and B. Piatkoff stating:

“We are in receipt of your renewal applications for a farm labor license. However, because an investigation is currently being conducted relating to your farm labor contracting operations, a license is not being issued at this time.

“Pursuant to ORS 183.430(1), your renewal license will not be deemed to expire until the Bureau has issued a final order granting or denying the renewal.”

46) Sifuentes, Carr, Cunningham, Wojtyla, Garcia, and Hernandez were credible witnesses.

47) Javier Martinez testified that he never received or signed the WH-151S and WH-153 forms provided by Respondents and the forum believed his testimony for several reasons. First, he credibly testified that he never met B. Piatkoff until January 3, 2005. Second, Respondents provided three different sets of forms purporting to bear his signature, all dated prior to January 3, 2005. Third, his printed name on the forms does not match his handwriting exemplar. Fourth, the testimony of B. Piatkoff and N. Piatkoff regarding the creation of the WH-151S and WH-153S forms provided to the Agency was not reliable. The forum has credited Martinez’s testimony concerning the WH-151S and WH-153S forms purporting to contain his signature in its entirety.

48) Salomon Velasco Mendoza denied signing an affidavit that was provided to the Agency by his personal attorney and offered and accepted as evidence and denied that at least one of the statements in the affidavit was true. He did acknowledge signing an affidavit in English that was written by his attorney and was translated to him.

He further denied signing the WH-151S and WH-153S forms purporting to bear his signature. Because of the confusion regarding the affidavit, the forum has not relied on Mendoza's testimony.

49) Natalia Piatkoff was not a credible witness for several reasons. First, her testimony was evasive on the key issue of why she didn't provide the Agency with originals of WH-151S and WH-153S forms.<sup>v</sup> Second, her demeanor demonstrated a casual attitude towards the proceedings – during much of her testimony on direct examination by the Agency she was chewing bubble gum, blowing bubbles, and audibly popping them. Third, she answered some questions in a cute manner that seemed deliberately contrived in an attempt to deceive the forum. Fourth, she stated on her farm labor contractor application that the 2002 van that was subsequently wrecked was registered to Northwest, when it was in fact registered to B. Piatkoff. Given that N. Piatkoff was the corporate president of Northwest, a corporation she had created just prior to the time she filed her farm labor contractor application, the forum finds it unbelievable that she would not have been aware of Northwest's corporate assets at the time of filing her farm labor contractor application. The forum has only credited her testimony when it was uncontested or supported by other credible evidence in the record.

50) Basilio Piatkoff admitted that, after the death of Juan Carlos Rios, he had the Rios's family sign and date Rios's name to a WH-151S and WH-153S. In an attempt to complete the deception, B. Piatkoff himself then signed the WH-153S. Subsequently, Respondents Piatkoff attempted to pass these off to BOLI and the U.S. Department of Labor as documents bearing the actual signature of Juan Carlos Rios. Based on this intentional deception, with one exception, the forum has only credited B. Piatkoff's testimony when it was uncontested or supported by other credible evidence in

the record. That exception is B. Piatkoff's testimony that his debt to DOR was satisfied in early fall of 2005. The forum believes that testimony because the Agency presented no evidence that B. Piatkoff was out of compliance with DOR after September 26, 2005, and should have been able to do so, had B. Piatkoff been out of compliance after that date, by the same means – obtaining a statement from a DOR representative -- that it established that B. Piatkoff was out of compliance from April through September 26, 2005.

### **ULTIMATE FINDINGS OF FACT**

1) At all times material, B. Piatkoff and N. Piatkoff were husband and wife and lived in the same residence.

2) B. Piatkoff was licensed with BOLI as a farm/forest labor contractor as a sole proprietor with the business name of "BP Reforestation" from July 20, 1994, through December 31, 2004.

3) Prior to November 22, 2004, B. Piatkoff bid on a tree planting contract with Menasha Forest Products Corporation on behalf of Northwest Resources, Inc., a corporation whose president and sole owner was N. Piatkoff. On November 22, 2004, Northwest signed a tree planting contract with Menasha. The contract included a prohibition against subcontracting without the prior approval of Menasha.

4) On December 7, 2004, N. Piatkoff filed an application with BOLI for a new farm/forest labor contractor's license. Her application included statements that her "business entity" was "Northwest Resources, Inc.," a corporation, and that she owned "100%" of Northwest.

5) On December 7, 2004, B. Piatkoff filed an application with BOLI for a farm/forest labor employee indorsement.

6) On December 7, 2004, BOLI issued a farm/forest labor contractor temporary permit to N. Piatkoff and a farm/forest labor contractor temporary permit with

employee indorsement to B. Piatkoff. On February 4, 2005, BOLI issued farm/forest labor contractor licenses to N. Piatkoff and Northwest Resources, Inc. with an expiration date of 12/31/05, and a farm/forest labor contractor license with employee indorsement to B. Piatkoff, with an expiration date of 12/31/05.

7) Through December 31, 2004, B. Piatkoff was not under investigation by BOLI for any violations of any statutes or administrative rules enforced by BOLI and was in compliance with the Oregon Department of Revenue, contingent on meeting a payment plan. B. Piatkoff was not in compliance with the payment plan for approximately five months in 2005.

8) On December 15, 2004, Northwest and B. Piatkoff entered into a subcontract for BP Reforestation to perform tree planting work for Northwest between 12-17-04 and 12-31-04 on the Menasha contract.

9) Menasha did not consent to Northwest entering into a subcontract with BP Reforestation to perform work on Northwest's contract to plant trees for Menasha.

10) At all times material herein, Respondents B. Piatkoff and N. Piatkoff conducted business out of the same office next to the house in which they lived.

11) At all times material, N. Piatkoff owned 100% of Northwest and relied on B. Piatkoff to help her manage Northwest's reforestation activities.

12) Juan Carlos Rios, Robert Alanis Alvarez, and Javier Garrido Martinez were all hired by Northwest to plant trees on the Menasha contract. Respondents did not give WH-151S or WH-153S forms to them.

13) B. Piatkoff and N. Piatkoff gave a number of WH-151S and WH-153 forms to Ed Sifuentez, USDOL compliance officer, and Enrique Hidalgo and Stan Wojtyla, BOLI compliance specialists, in response to their requests for those documents. These forms included forms purportedly given to and signed by Juan Carlos Rios, Robert

Alanis Alvarez, and Javier Garrido Martinez. Juan Carlos Rios, Robert Alanis Alvarez, and Javier Garrido Martinez did not sign or receive the forms.

14) The WH-151S and WH-153S forms that Respondents provided to their workers were reduced in size so as to be entirely illegible or only legible with the aid of a magnifying glass.

15) All of the WH-153S forms provided by Respondents stated that Respondents owned the land or operation where Respondents' workers would be planting trees.

### **CONCLUSIONS OF LAW**

1) The Commissioner of the Oregon Bureau of Labor and Industries has jurisdiction over the subject matter and of the Respondents herein. ORS 658.405 to 658.503 and ORS 653.305 to 653.370.

2) N. Piatkoff and Northwest Resources, Inc. ("Northwest") violated ORS 658.410 and OAR 839-015-0125 by bidding on a reforestation contract with Menasha Forest Products Corporation, through B. Piatkoff, prior to December 7, 2004.

3) Respondents N. Piatkoff and Northwest committed three violations of ORS 658.440(1)(f) and OAR 839-015-0310 by failing to furnish statements of worker's rights and remedies to Juan Carlos Rios, Robert Alanis Alvarez, and Javier Garrido Martinez. Respondent B. Piatkoff committed one violation of ORS 658.440(1)(f) and OAR 839-015-0310 by failing to furnish statements of worker's rights and remedies to Robert Alanis Alvarez.

4) Respondents N. Piatkoff and Northwest committed three violations of ORS 658.440(1)(g) and OAR 839-015-0360 by failing to execute written agreements with Juan Carlos Rios, Robert Alanis Alvarez, and Javier Garrido Martinez. Respondent B. Piatkoff committed one violation of ORS 658.440(1)(g) and OAR 839-015-0360 by failing to execute a written agreement with Robert Alanis Alvarez.

5) Respondents N. Piatkoff and Northwest violated ORS 658.440(3)(b) by falsely representing to their workers and USDOL and Agency representatives that Respondents owned the land or operation where Respondents' workers would be planting trees.

6) Respondents N. Piatkoff and Northwest violated ORS 658.440(1)(b) by subcontracting work to BP Reforestation in violation of a legal and valid contract with Menasha Forest Products Corporation that was entered into in their capacity as a farm labor contractor.

7) Under the facts and circumstances of this record, and according to the applicable law, the Commissioner of the Bureau of Labor and Industries is authorized to assess civil penalties against Respondents. ORS 658.453(1)(c) and (e).

8) Northwest's and N. Piatkoff's violations of ORS 658.410, 658.440(1)(f), ORS 658.440(1)(g), OAR 839-015-125, OAR 839-015-310, and OAR 839-015-360, their misconduct under OAR 839-015-0520(3)(o), and willful violation of the subcontracting provision of the Menasha contract demonstrate that their character, competence, and reliability makes them unfit to act as farm labor contractors. B. Piatkoff's violations of ORS 658.440(1)(f), ORS 658.440(1)(g), OAR 839-015-0310, and OAR 839-015-0360, his misconduct under OAR 839-015-0520(3)(o), his willful violation of the subcontracting provision of the Menasha contract, and his untimeliness in paying his debt to DOR, demonstrate that his character, competence, and reliability makes him unfit to act as farm labor contractor.

## **OPINION**

## **RESPONDENTS FAILED TO PROVIDE WRITTEN STATEMENTS OF WORKER'S RIGHTS AND REMEDIES (WH-151S) AND TO EXECUTE WRITTEN AGREEMENTS (WH-153S)**

The Agency alleged that "Respondents" committed three violations of ORS 658.440(1)(f) and OAR 839-015-0310 by failing to provide a written statement of the worker's rights and remedies to three workers -- Juan Carlos Rios, Robert Alanis Alvarez, and Javier Garrido Martinez. The Agency further alleged that Respondents failed to execute written agreements with the same three workers in violation of ORS 658.440(1)(g) and OAR 839-015-0360.

ORS 658.440(1)(f) and (g) provide:

"(1) Each person acting as a farm labor contractor shall:

"(f) Furnish to each worker, at the time of hiring, recruiting, soliciting or supplying, whichever occurs first, a written statement in the English language and any other language used by the farm labor contractor to communicate with the workers that contains a description of:

"(A) The method of computing the rate of compensation.

"(B) The terms and conditions of any bonus offered, including the manner of determining when the bonus is earned.

"(C) The terms and conditions of any loan made to the worker.

"(D) The conditions of any housing, health and child care services to be provided.

"(E) The terms and conditions of employment, including the approximate length of season or period of employment and the approximate starting and ending dates thereof.

"(F) The terms and conditions under which the worker is furnished clothing or equipment.

"(G) The name and address of the owner of all operations where the worker will be working as a result of being recruited, solicited, supplied or employed by the farm labor contractor.

"(H) The existence of a labor dispute at the worksite.

"(I) The worker's rights and remedies under ORS chapters 654 and 656, ORS 658.405 to 658.503, the Service Contract Act (41 U.S.C. 351-401) and any other such law specified by the Commissioner of the Bureau of Labor and Industries, in plain and simple language in a form specified by the commissioner."

“(g) At the time of hiring and prior to the worker performing any work for the farm labor contractor, execute a written agreement between the worker and the farm labor contractor containing the terms and conditions described in paragraph (f)(A) to (I) of this subsection. The written agreement shall be in the English language and any other language used by the farm labor contractor to communicate with the workers.”

OAR 839-015-0310 provides:

“(1) Every Farm and Forest Labor Contractor must furnish each worker with a written statement of the worker's rights and remedies under the Worker's Compensation Law, the Farm and Forest Labor Contractor Law, and Federal Service Contracts Act, The Federal and Oregon Minimum Wage Laws, Oregon Wage Collection Laws, Unemployment Compensation Laws, and Civil Rights laws. The form must be written in English and in the language used by the contractor to communicate with the workers.

“(2) The form must be given to the workers at the time they are hired, recruited or solicited by the contractor or at the time they are supplied to another by the contractor, whichever occurs first.

“(3) The Commissioner has prepared Form WH-151 for use by contractors in complying with this rule. The form is in English and Spanish and is available at any office of the Bureau of Labor and Industries.”

OAR 839-015-0360 provides:

“(1) Farm and forest labor contractors are required to file information relating to work agreements between the farm and forest labor contractors and their workers with the bureau.

“(2) The commissioner has developed Form WH-153 that, in conjunction with Form WH-151, Statement of Workers Rights and Remedies, may be used to comply with this rule. Farm and forest labor contractors may use any form for filing the information so long as it contains all the elements of Form WH-153 and Form WH-151.

“(3) Farm and forest labor contractors must file the form or forms used to comply with this rule with the bureau at the same time that the contractors apply for a license renewal.

“(4) Farm and forest labor contractors are required to furnish their workers with a written statement disclosing the terms and conditions of employment, including all the elements contained in Form WH-151 and if they employ workers, to execute a written agreement with their workers prior to the starting of work. The written agreement must provide for all the elements contained in Form WH-153. A copy of the agreement and the disclosure statement must be furnished to the workers in English and in any other language used to communicate with the workers. The disclosing statement must be provided to the workers at the time they are hired,

recruited or solicited or at the time they are supplied to another by that contractor, whichever occurs first. A copy of the agreement must be furnished to workers prior to the workers starting work.

There is no dispute that the three workers were hired by Respondent Northwest to work on the Menasha contract, that Alvarez was employed by B. Piatkoff on the same contract before he became Northwest's employee, and that Rios, Martinez, and Alvarez spoke only Spanish. Consequently, Respondents were respectively obligated to provide Rios, Martinez, and Alvarez with WH-151S and WH-153S forms<sup>vi</sup> at the time they were hired, recruited, or solicited.

In response to the Agency's request for original WH-151 and WH-153 forms, Respondents gave the Agency copies of a number of reduced WH-151S and WH-153S forms that were purportedly given to the workers named on the forms.

One of the forms bears the names of "Juan Carlos R" and "Jauan Carlos" and is signed by B. Piatkoff. At hearing, B. Piatkoff admitted that he asked Rios's family to sign Rios's name to the forms after Rios's death. The forum infers from this admission that Rios, who died on the way to his first day of work for Northwest, was never given a WH-151S or WH-153S.

Three of the forms have Javier Martinez's name and purported signature on them. One is dated December 29, 2004, and the other two are dated January 2, 2005. One of the two dated January 2, 2005, is signed by N. Piatkoff, and the other is signed by the signature of B. Piatkoff; one has the name of "BP Reforestation" written on it and other has "NWR" written on it. The information written on the three WH-153S forms in the section entitled "Condiciones de empleo" also differs in each form – one has nothing written on it, the second bears the date "12-31-04" and the words "Plantor Penos," and the third contains the dates "1-2-05" and "3-20-05," but nothing else.

Another three forms bear the name of "Robert Alaniz." B. Piatkoff employed Alanis on the Menasha contract from December 17-31, 2004, and Northwest employed

Alanis on the Menasha contract beginning January 3, 2005. The first form has the name "BP Reforestation" handwritten on it with B. Piatkoff's signature; the signature "Roberto Alaniz A;" and a handwritten date that appears to be "12-17-04" and looks as though it was handwritten over another date. The second also has the name "BP Reforestation" handwritten on it with B. Piatkoff's signature, the signature "Roberto Alaniz A;" and a handwritten date of that appears to be "12-17-04" that has been handwritten over another date. The third has the name "NWR" handwritten on it and is signed by N. Piatkoff and dated "1-2-05."

The Agency provided credible testimony by Martinez that he never met B. Piatkoff before January 3, 2005, that Respondents never gave him WH-151S or WH-153S forms, and that he did not sign the forms provided by Respondents. The Agency provided credible testimony by Wojtyla that included a handwriting exemplar from Roberto Alanis Alvarez and established that Alvarez signed his name as "Alanis," not "Alaniz." This evidence is not overcome by the fact that Alanis's Oregon Identification Card spells his name as "Alaniz" for the reason that Alanis did not print the card and the information that Alanis presumably provided to obtain his card is not in the record to show how Alanis wrote his name. The Agency also provided an uncontested affidavit from Alanis stating that he worked for B. Piatkoff on the Menasha contract in December 2004 and that he did not sign any of the WH-151S or WH-153S forms provided to the Agency by Respondents. The Agency also established that it twice requested the **original** WH-151s and WH-153s and Respondents failed to provide them, a failure that Respondents did not explain at hearing.

In conclusion, the forum concludes that Respondents Northwest and N. Piatkoff never provided WH-151S or WH-153S forms to Juan Carlos Rios, Robert Alanis Alvarez, and Javier Garrido Martinez, constituting three violations of ORS 658.440(1)(f)

and three violations of ORS 658.440(1)(g), and Respondent B. Piatkoff never provided WH-151S or WH-153S forms to Robert Alanis Alvarez while Alvarez worked for B. Piatkoff on the Menasha contract in December 2004, constituting one violation of ORS 658.440(1)(f) and one violation of ORS 658.440(1)(g).

## **CIVIL PENALTIES**

ORS 658.453 and OAR 839-015-0508(g) & (h) authorize the Commissioner to assess civil penalties of up to \$2,000 for each violation of ORS 658.440(1)(f) & (1)(g). In determining appropriate civil penalties, the forum considers aggravating and mitigating circumstances. *In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration*, 25 BOLI 12, 51 (2003), *affirmed without opinion, Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, (2004). Aggravating and mitigating circumstances include:

- “(a) The history of the contractor or other person in taking all necessary measures to prevent or correct violations of statutes or rules;
- “(b) Prior violations, if any, of statutes or rules;
- “(c) The magnitude and seriousness of the violation;
- “(d) Whether the contractor or other person knew or should have known of the violation.”

OAR 839-015-0510(1); *In the Matter of Tomas Benitez*, 19 BOLI 142, 159 (2000). It is the responsibility of the contractor or other person to provide the commissioner any mitigating evidence concerning the amount of the civil penalty to be imposed. OAR 839-015-0510(2). In calculating a civil penalty, the commissioner must also consider “the amount of money or valuables, if any, taken from employees or subcontractors by the contractor or other person in violation of any statute or rule.” OAR 839-015-0510(3).

There is no evidence that Respondents took any actions to ensure their workers were provided WH-151S and WH-153S forms with the required information required by ORS 658.440(1)(f) & (g). Although Respondents provided the Agency with a number of

forms, at least three had signatures that were not those of the workers. Respondents' failed attempt to deceive the Agency, together with Respondents' unwillingness to provide original documents and alterations and inconsistencies in the forms provided by Respondents, makes the forum question whether other WH-151S and WH-153S forms provided by Respondent also contained worker's signatures that were not genuine. To compound matters, even if the forum assumes that Respondents provided WH-151S and WH-153S forms to all its other workers, Respondents reduced the forms to one quarter of their original size **before** providing them to their workers. As a result, the print on all those forms is either illegible or nearly microscopic. Furthermore, not a single WH-153S states Menasha's name and address, which is required by ORS 658.440(1)(f)(G). In summary, there is no credible evidence that Respondents took any steps to prevent violations of ORS 658.440(1)(f) & (g). In fact, they appear to have done just the opposite.

There is no evidence of any prior violations by Respondents.

Violations of ORS 658.440(1)(f) & (g) are serious matters that "go to the heart of farm labor contractor statutes" because they deny workers the ability to protect themselves in the event of a dispute. *In the Matter of Paul Washburn*, 17 BOLI 212, 225 (1998). The magnitude of Respondents' violations is enhanced because of the fabricated signatures on Respondents' documents, Respondents' deliberate attempt to deceive the agency, Respondents' failure to provide all the information regarding terms and conditions of employment required by statute to any of its workers, and by Respondents' failure to provide its workers with a WH-151S or WH-153S that was legible.

Finally, there is no question that Respondents knew of the violations. Respondents deliberately shrunk the forms, and both N. Piatkoff and B. Piatkoff signed

documents on which the workers' signatures were forged. B. Piatkoff further admitted that he directed the family of Juan Carlos Rios to sign Rios's name to a WH-151S and a WH-153S **after** Rios's death.

The only mitigating factor is a lack of evidence showing that Respondents' violations caused any person to suffer a monetary loss.<sup>vii</sup>

Under these circumstances, \$2,000 is an appropriate civil penalty for each violation. The Agency alleged six violations, and the forum has concluded there were eight violations, six by N. Piatkoff and Northwest (Rios, Martinez, and Alvarez), and two by B. Piatkoff (Alvarez). However, the civil penalties assessed cannot exceed those alleged in the Notice of Intent. Although the Notice uses the general term "Respondents" in alleging the subject violations, the forum finds that the main thrust of the Agency's allegations with regard to the Menasha contract is directed at Respondents N. Piatkoff and Northwest. Consequently, the forum assesses \$12,000 in civil penalties (\$2,000 x six violations) based on the six violations committed by N. Piatkoff and Northwest. Respondents N. Piatkoff and Northwest are jointly and severally liable for those civil penalties. OAR 839-015-0135(1)(c).

### **RESPONDENTS VIOLATED ORS 658.440(3)(B)**

The Agency alleges that "Respondents willfully made or caused to be made false, fraudulent or misleading representations, or published or circulated false, fraudulent or misleading representation concerning the terms, conditions or existence of employment, including but not limited to submitting false, fraudulent or misleading forms WH-151 and WH-153 to the Agency in violation of ORS 658.440(3)(b)[.]"

ORS 658.440(3)(b) provides:

"(3) A person acting as a farm labor contractor, or applying for a license to act as a farm labor contractor, may not:

"\* \* \* \* \*

“(b) Willfully make or cause to be made to any person any false, fraudulent or misleading representation, or publish or circulate any false, fraudulent or misleading information concerning the terms, condition or existence of employment at any place or by any person.”

For the purposes of ORS 658.440(3)(b), “false” generally means that the questioned representation is untrue. *In the Matter of Leonard Williams*, 8 BOLI 57, 74 (1989) (interpreting former ORS 658.440(2)(b), which has since been renumbered as ORS 658.440(3)(b)). “Willfully” means “action undertaken with actual knowledge of a thing to be done” or “action undertaken by a person who should have known the thing to be done or omitted.” OAR 839-015-0505(1). In this case, one of the terms and conditions of employment included the identity and address of the owner/operator of the property where Respondents’ workers would be planting trees. On the Agency’s WH-153S forms, Respondent was required to provide the name and address of the owner of the land or operation. Instead of stating the correct name and address, Respondents wrote in their own name and address on every WH-153S form that Respondents gave to the Agency,<sup>viii</sup> making a “false representation” on every form. Respondents’ violations were “willful” because Respondents knew the name and address of the owner of the land, but instead chose to write their own name and address. The forum infers that Respondents’ knew Menasha’s address, based on the fact that B. Piatkoff had performed other contracts for Menasha in prior years. Respondents made this false representation to all of their workers except for Rios, Alvarez, and Martinez, who were never given WH-153S forms. Respondents also circulated “false information” to Sifuentez, Hidalgo, and Wojtyla by providing them with copies of the WH-153S forms containing the false representation made to its workers. Respondents’ workers, Sifuentez, Hidalgo, and Wojtyla all fit within the meaning of the phrase “any person.” In summary, Respondents committed at least 20 separate violations with respect to their workers and three violations with respect to Sifuentez, Hidalgo, and Wojtyla.

## **CIVIL PENALTIES**

Respondents' violations are aggravated by the fact that there is no evidence they made any attempt to comply with the statute. There is no evidence of any prior violations. The seriousness is low because there is no evidence that any workers were unaware of or misunderstood where they would be working, that they would be working on land owned by someone other than Respondents, that any worker suffered any loss as a result of Respondents' false representation, or that Respondents intended to deceive USDOL or the Agency as to the identity and address of Menasha. However, the magnitude is high because of the sheer number of violations. Respondents also knew of the violations. The pertinent question on the WH-153S is clearly phrased, and B. Piatkoff, who signed many of the WH-153S forms and presumably filled them out, testified that he speaks Spanish. There are no mitigating circumstances. The Agency alleged two violations and sought a \$2,000 civil penalty for each. The forum finds that figure to be appropriate and assesses \$4,000 in civil penalties for two violations of ORS 658.440(3)(b).

### **RESPONDENTS N. PIATKOFF AND NORTHWEST VIOLATED ORS 658.440(1)(D) BY SUBCONTRACTING THE MENASHA CONTRACT TO BP REFORESTATION**

ORS 658.440(1)(d) requires "each person acting as a farm labor contractor" to "[c]omply with the terms and provisions of all legal and valid agreements or contracts entered into in the contractor's capacity as a farm labor contractor."

The Agency alleged that "Respondents" violated ORS 658.440(1)(d) by subcontracting work to BP Reforestation, Inc. The following relevant facts are undisputed:

- (1) N. Piatkoff and Northwest entered into a contract with Menasha to plant trees and B. Piatkoff signed the contract in the capacity of "contractor rep."

- (2) N. Piatkoff and Northwest Resources, Inc. entered into a subcontract with B. Piatkoff and "BP Reforestation" for BP Reforestation to plant "about 120,000 tree seedlings" on the Menasha contract;
- (3) The subcontract specified that work would start on December 17, 2004, and was to be "completed by" December 31, 2004;
- (4) B. Piatkoff and BP Reforestation performed the work specified in the subcontract.

To prove its allegation, the Agency also needed to establish, by a preponderance of the evidence, that the contract between N. Piatkoff and Northwest Resources, Inc. and Menasha prohibited subcontracting. Respondents disputed that the contract prohibited subcontracting. In the alternative, Respondents argued that, if subcontracting was prohibited without prior approval, Menasha had approved the subcontract.

Respondents acknowledged that the contract between Northwest and Menasha contained a provision (paragraph **6.K.**) prohibiting Northwest from assigning or subcontracting the work without Menasha's written consent. Respondents argued that this did not prove the contract prohibited subcontracting, reasoning that the Agency only offered pages 3 and 12 of the contract into evidence, and there might have been other provisions in the contract that qualified the subcontracting provision. Respondents' argument fails for the reason that it was in Respondents' power to produce the entire contract to prove their point, and Respondents did not do so, despite an earlier request for a copy of the contract from Wojtyla, and further knowing from the Agency's case summary that the Agency intended to offer only a portion of the contract into evidence. If Respondents intended to prove that the Menasha contract contained language that qualified paragraph **6.K.**, Respondent should have produced the entire contract. Respondent did not do so and the forum concludes that the Menasha contract prohibited Northwest and N. Piatkoff from subcontracting the work without written approval from Menasha.

Jim Carr, chief forester for Menasha and the person who signed the subject contract between N. Piatkoff, Northwest Resources, Inc., and Menasha, credibly testified that Menasha never approved the subcontract to BP Reforestation or any other entity. B. Piatkoff testified that Mark Olson, Menasha's "main contact" with Respondents, orally approved the subcontract. However, Respondents did not call Olson as a witness to corroborate B. Piatkoff's testimony and did not produce "written approval" of the subcontract from Menasha. Based on B. Piatkoff's lack of credibility and Carr's credible testimony, the forum concludes that Menasha did not approve the subcontract, and that Respondents N. Piatkoff and Northwest violated ORS 658.440(1)(d).

### **CIVIL PENALTIES**

This violation is aggravated by Respondents' deception of Menasha, in that Menasha was unaware that a different business entity than the one it contracted with was performing work on its tree planting contract in December 2004. However, the magnitude and seriousness of the violation are low because there is no evidence that the contract violation in any way affected the performance of the contract. N. Piatkoff and B. Piatkoff both signed the Menasha contract and their signatures appear page 12 of the contract, the same page as the paragraph prohibiting subcontracting. N. Piatkoff and B. Piatkoff also both signed the subcontract agreement. Accordingly, the forum must conclude that they both knew they were violating the Menasha contract. There is no evidence that Respondents previously violated ORS 658.440(1)(d) or that anyone suffered any monetary loss as a result of the contract violation.

The forum has found violations of ORS 658.440(1)(d) and issued civil penalties in three prior cases. In the first case, respondents entered into a consent order with the Agency in which respondents agreed to notify the Agency on a monthly basis whenever

respondents used a subcontractor on a forestation contract. Respondents failed on nine occasions to timely notify the Agency of its subcontracting and the commissioner imposed a civil penalty of \$500 for each violation but did not cite any aggravating or mitigating circumstances in the Final Order. *In the Matter of Robert Gonzalez*, 12 BOLI 181, 201 (1994). In the second case, respondent failed to comply with the terms and conditions of a contract with the USFS by failing to show up at prework meetings. Respondent failed to begin work on the contract, and the contract was terminated by default. The forum found the magnitude and seriousness of the violation to be moderate. Noting that the Agency had presented no other evidence of aggravating circumstances, the commissioner imposed a \$500 civil penalty. *In the Matter of Tolya Meneyev*, 14 BOLI 6, 14 (1995). In the most recent case, respondents' contract with the BLM was terminated because two respondents failed to complete work on the contract within the required 30 days and because they had not obtained an Oregon farm/forest labor contractor license. The forum found the violation was aggravated by the fact that work on the BLM contract was not completed, either by respondents or their subcontractors, and the fact that the subcontractor's work was substandard. The commissioner assessed a civil penalty of \$1,000 against each respondent. *In the Matter of Charles Hurt*, 18 BOLI 265, 276-77 (1999).

In its Notice of Intent, the Agency asked that a civil penalty of \$2,000 be assessed for Respondents' violation of ORS 658.440(1)(d). Considering the aggravating and mitigating circumstances and the three cases cited in the previous paragraph, the forum concludes that \$1,000 is an appropriate civil penalty. Respondents N. Piatkoff and Northwest are jointly and severally liable for those civil penalties. OAR 839-01500135(1)(c).

## **RESPONDENTS N. PIATKOFF & NORTHWEST ACTED AS FARM OR FARM LABOR CONTRACTORS WITHOUT A LICENSE IN VIOLATION OF ORS 658.410**

The forum has already concluded that B. Piatkoff bid on the Menasha tree planting contract while acting as an agent for N. Piatkoff and Northwest, and that the bid was made before N. Piatkoff and Northwest were licensed as farm labor contractors. ORS 658.410(1) prohibits any person from acting as a farm labor contractor “without a valid license in the person’s possession issued to the person by the Commissioner of the Bureau of Labor and Industries.” “Farm labor contractor” includes any person “who bids or submits prices on contract offers” on activities that include “the planting \* \* \* of trees and seedlings.” ORS 658.405(4). By using B. Piatkoff as its agent to bid on a contract while they were unlicensed, N. Piatkoff and Northwest violated ORS 658.410. No civil penalties are assessed because none were sought by the Agency.

## **RESPONDENT B. PIATKOFF HAS NOT TAKEN AN ACTION DESCRIBED IN OAR 839-015-0520(3)(o)**

The Agency alleged that B. Piatkoff “has failed to pay all debts owed including debts to the Oregon Department of Revenue, and, therefore, Respondents’ applications for farm/forest labor contractor licenses should be denied and the Commissioner should refuse to renew Respondents’ current licenses as provided in ORS 658.420 and OAR 839-015-0520(3)(o).” OAR 839-015-0520(3)(o) provides:

“(3) The following actions of a farm or forest labor contractor license applicant or licensee or an agent of the license applicant or licensee demonstrate that the applicant’s or the licensee’s character, reliability or competence make the applicant or licensee unfit to act as a farm or forest labor contractor:

“\* \* \* \* \*

“(o) Failure to promptly satisfy any or all judgments levied against the applicant/licensee[.]”

Undisputed evidence established that B. Piatkoff obtained a certificate of compliance from DOR, contingent on a payment plan for a debt owed to DOR, for the purpose of

obtaining his farm labor contractor license in December 2004. Undisputed evidence further established that B. Piatkoff was out of compliance with the payment plan from April 2005 through at least September 26, 2005. However, no evidence was presented that an actual judgment was entered on the debt. As no judgment was shown to exist, the forum cannot conclude that B. Piatkoff failed “to promptly satisfy any or all judgments levied against” him.

### **SHAM OR SUBTERFUGE**

The Agency alleged that Respondents Basilio Piatkoff and Natalia Piatkoff have used Northwest Resources, Inc. as their agent to perpetrate a sham or subterfuge within the meaning of OAR 839-015-0142, in violation of ORS 658.440(3)(a). This allegation goes to the Agency’s proposed license denial and refusal to renew the licenses of Respondents. The Agency has promulgated a rule related to licensing and evidence of sham or subterfuge. In pertinent part, OAR 839-015-0142 provides:

“(2) The Bureau may refuse to license or renew the license of any applicant where there is evidence of sham or subterfuge in the identity of the applying entity. The Bureau will regard as prima facie evidence of sham or subterfuge mere changes in business form in anticipation of or subsequent to denial, suspension, revocation or refusal to renew a license, where a relative by blood or marriage, or a person presently employed in an occupation, other than an occupation with a licensed farm or forest labor contractor, makes application, including a renewal application, for a license and one or more of the following factors are present:

“(a) A lack of adequate consideration or value given for the former business or its property;

“(b) The use of the same real property, fixtures or equipment or use of a business name similar to that of the former business;

“(c) A time period of less than one year elapsed between the former entity's receipt of notice of the Bureau's intent to deny, suspend, revoke or refuse to renew its license or application and the license application by the new business;

“(d) A person financially interested in any capacity in the former business has a financial interest in any capacity in the new business;

“(e) Assets or capital of the former business are commingled with assets or capital of the new business;

“(f) The amount of capitalization is inadequate to meet current obligations of the new business; or

“(g) The formalities of a partnership or a corporation are disregarded by the new business when such business is a partnership or corporation.”

“Sham” means to act intentionally so as to give a false impression.” *In the Matter of Manuel Galan, Jr.*, 17 BOLI 112, 137 (1998), *affirmed without opinion, Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), *rev den* 332 Or 137, 27 P3d 1043 (2001). “Subterfuge” means “deception by artifice or stratagem in order to conceal, escape, or evade.” *Id.* The purpose of the inquiry set out in the rule is to uncover mere changes in business form that indicate that the entity now making application is really the same entity that anticipated a negative licensing action or actually suffered a denied, suspended, revoked or refuse license while doing business in a different form. *Id.* Accordingly, the forum’s inquiry must focus on the time that Northwest first applied for a farm/forest labor contractor license. That was in December 2004, when N. Piatkoff and Northwest made their application and B. Piatkoff decided to let his BP Reforestation farm labor contractor license lapse and instead apply for a farm/forest labor contractor employee indorsement under the sponsorship of N. Piatkoff and Northwest. The evidence is undisputed that B. Piatkoff and N. Piatkoff have been married at all times material. However, at that point, the Agency’s case breaks down. Part of the Agency’s prima facie case is to show that N. Piatkoff and Northwest applied for their license “in anticipation of or subsequent to denial, suspension, revocation or refusal to renew [B. Piatkoff’s] license.” Although the Agency charged that N. Piatkoff went into business because B. Piatkoff was aware of factors that would cause him to lose his license, the record contains nothing more than speculation to support that charge. B. Piatkoff testified that he decided to get out of the farm labor contractor business and focus on construction, but agreed to help his wife Natalia when she decided she wanted to see if

she could successfully carry on a farm labor contractor business. B. Piatkoff further testified that he knew of no reason in December 2004 why his farm labor contractor license would not have been renewed. This testimony was supported by the unequivocal testimony by Wojtyla, the Agency compliance specialist assigned to the case that B. Piatkoff was not under investigation for any violations of Oregon's farm labor contractor statutes in December 2004, and the fact that B. Piatkoff's license was renewed, although in a different status. There is also no evidence of the amount of B. Piatkoff's debt to DOR or his personal financial status in 2004, other than the mere fact that an unpaid debt existed, to support the Agency's theory that B. Piatkoff's debt to DOR might have made him believe he would no longer be able to meet the Agency's licensing criteria. Since there is no evidence in support of an element of the Agency's prima facie case, the Agency's charge must fail and it is not necessary for the forum to determine whether there is evidence to support the existence of factors OAR 839-015-0142(2)(a) – (g).

#### **N. PIATKOFF WAS THE SOLE OWNER OF NORTHWEST & B. PIATKOFF ASSISTED IN THE MANAGEMENT OF NORTHWEST**

The Agency alleged that B. Piatkoff "and/or" N. Piatkoff had an ownership "and/or" management interest in Northwest, but did not cite a specific statute or rule that such interests, if they existed, would violate. However, if B. Piatkoff had an ownership interest in Northwest, this would affect N. Piatkoff's ability to be licensed, since N. Piatkoff represented herself as the "100%" owner of Northwest on her application<sup>ix</sup> and OAR 839-015-0520(3)(h) provides that "willful misrepresentation, false statement or concealment in the application for a license" is an action that "make[s] an applicant \* \* \* unfit to act as a farm or forest labor contractor."

The Agency established the following facts in support of its allegation: (1) B. Piatkoff agreed to and did assist N. Piatkoff in the management of Northwest by bidding

on the Menasha contract and transporting Northwest's workers from Coos Bay to Salem after the van wreck; (2) B. Piatkoff was the corporate secretary of Northwest; (3) B. Piatkoff and Northwest operate from a common office space, an office next to B. Piatkoff and N. Piatkoff's house; (4) The Menasha contract was one that B. Piatkoff had performed in previous years; (5) Northwest subcontracted the Menasha contract to B. Piatkoff for two weeks; and (6) Northwest used B. Piatkoff's van on January 3, 2005, to transport workers, and there was no evidence that Northwest paid B. Piatkoff any consideration for the use of the van that day.

On the other hand, Corporation Division records show that that Northwest was properly incorporated, and no other evidence was offered to show that B. Piatkoff had made an investment in Northwest or was entitled to a share of the profits. For example, N. Piatkoff testified that Northwest's workers used tools, but no testimony was solicited regarding the ownership of those tools.

Ownership is the "state, relation, or fact of being an owner: lawful claim or title." *Webster's Third New Int'l Dictionary 612 (unabridged ed 2002)*. "Owner" means "one that owns: one that has the legal or rightful title whether the possessor or not." *Id.* In this context, "own" means "to have or hold as property or appurtenance: have a rightful title to, whether legal or natural: POSSESS." *Id.* In this case, there is no evidence of what claim or title, if any, that Northwest's use of B. Piatkoff's van conferred on B. Piatkoff. Consequently, the forum concludes that the Agency has failed to prove, by a preponderance of the evidence, that B. Piatkoff had an ownership interest in Northwest.

## **RESPONDENTS N. PIATKOFF AND B. PIATKOFF ENGAGED IN A COURSE OF MISCONDUCT IN RELATIONS WITH WORKERS AND OTHERS WITH WHOM THEY CONDUCTED BUSINESS**

The Agency alleged that Respondents engaged in "[a] course of misconduct in relations with workers and others with whom Respondents conduct business" as set

forth in OAR 839-015-0520(3)(m), based on Respondents' actions alleged in paragraphs (1)(a) – (g) in the Agency's Notice of Intent. The Agency does not seek a civil penalty for this alleged violation. However, "a course of misconduct" as set forth in OAR 839-015-0520(3)(m) is grounds for denying a license. OAR 839-015-0520(3)(m) provides:

"(3) The following actions of a farm or forest labor contractor license applicant or licensee or an agent of the license applicant or licensee demonstrate that the applicant's or the licensee's character, reliability or competence make the applicant or licensee unfit to act as a farm or forest labor contractor:

"\* \* \* \* \*

"(m) A course of misconduct in relations with workers, farmers and others with whom the person conducts business[.]"

The forum must therefore determine if the actions alleged in paragraphs (1)(a) – (g) in the Agency's Notice of Intent fit within the definition of "misconduct."

In order to give effect to the intent of the Agency in enacting OAR 839-015-0520(3)(m), the forum must first determine the meaning of the word "misconduct." To do that, the forum uses the *PGE*<sup>x</sup> template for statutory interpretation. See *Abu-Adas v. Employment Department*, 325 Or 480, 485 (1997) (in determining the meaning of an administrative rule, court's role is the same as its role in determining the meaning of a statute).

Under *PGE*, the forum must attempt to discern the Agency's intent. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610 (1993). The forum's inquiry begins with an examination of the text and context of the rule. Context includes other provisions of the same rule, other related rules, the statute pursuant to which the rule was created, and other related statutes. *Abu-Adas* at 485. "Misconduct" is not defined in OAR 839-015-000 *et seq*, the Agency's rules interpreting those statutes, or in ORS chapter 658, the statutes regulating farm/forest labor contractors in Oregon. In addition,

it has not been defined in any of the commissioner's previous Final Orders. Furthermore, the Agency did not propound a specific definition for "misconduct" at hearing, other than to allege that the Respondents' alleged actions constituted misconduct. Because "misconduct" is not defined anywhere in the rule, related rules, or related statutes and it is a word of common usage, the forum relies on its plain, natural and ordinary meaning. *In the Matter of Elisha, Inc.*, 25 BOLI 125, 148-49 (2004), *aff'd without opinion, Elisha, Inc. v. Bureau of Labor and Industries*, 198 Or App 285 (2005), *citing Young v. State of Oregon*, 161 Or App 32, 36, *rev den* 329 Or 447 (1999). In determining that meaning, the forum turns once more to *Webster's*.

*Webster's* contains several definitions for "misconduct." They include:

"1 : mismanagement especially of governmental or military responsibilities ~ was charged with misconduct of the war> 2 : intentional wrongdoing : deliberate violation of a rule of law or standard of behavior especially by a government official : MALFEASANCE <one of his district judges has been removed from the bench . . . for official ~ H.H.Martin><indicted on two counts of bribe taking and three of ~ --*Time*> 3 a : bad conduct : improper behavior <was fined for misconduct on the field> b : sexual immorality; esp : ADULTERY <charged her husband with ~>"

*Webster's* at 1443. In the context of OAR 839-015-0520(3)(m), the forum concludes that the "plain, natural and ordinary meaning" of "misconduct" is "bad conduct, improper behavior." Relying on this definition, the forum also concludes that a farm labor contractor's violation of any Oregon farm labor contractor laws or BOLI's administrative rules interpreting those laws is *per se* misconduct within the meaning of OAR 839-015-0520(3)(m) so long as the violation involves relations with "workers, farmers and others" with whom the farm labor contractor conducts business. A "course of misconduct" is a series of acts, each of which constitute misconduct. *Webster's* at 522.

The forum has concluded that there is a preponderance of evidence to support four of the allegations contained in paragraphs (1)(a) – (g) in the Agency's Notice of Intent. Those allegations are: (1) failure to furnish three workers with statement of

workers rights and remedies (WH-151S) forms; (2) failure to execute written agreements with three workers (WH-153S); (3) acting as a farm labor contractor without a license; and (4) failure to comply with terms and provisions of a contract entered into in Respondents' capacity as farm/forest labor contractors. In total, Respondents committed eight distinct violations of Oregon's farm labor contractor laws. Each of these violations is related to Respondents' relations with workers or "others" with whom Respondents conducted business. Consequently, each violation constitutes *per se* misconduct. In turn, Respondents' eight distinct acts of misconduct constitute a series of acts and a "course of misconduct" within the meaning of OAR 839-015-0520(3)(m).

### **RESPONDENTS' CHARACTER, COMPETENCE, AND RELIABILITY MAKE THEM UNFIT TO ACT AS FARM/FOREST LABOR CONTRACTORS**

ORS 658.420 provides, in pertinent part:

"(1) The Commissioner of the Bureau of Labor and Industries shall conduct an investigation of each applicant's character, competence and reliability, and of any other matter relating to the manner and method by which the applicant proposes to conduct and has conducted operations as a farm labor contractor."

ORS 658.445 provides, in pertinent part:

"The Commissioner of the Bureau of Labor and Industries may revoke, suspend or refuse to renew a license to act as a labor contractor\* \* \* if:

"(1) The licensee or agent has violated or failed to comply with any provision of ORS 658.405 to 658.503 and 658.991 (2) and (3); or

"\* \* \* \* \*

"(3) The licensee's character, reliability or competence makes the licensee unfit to act as a farm labor contractor."

The Agency has promulgated a rule that explains the meaning of the terms "character,"

"competence," and "reliability." OAR 839-015-0145 provides, in pertinent part:

"The character, competence and reliability contemplated by ORS 658.405 to 658.475 and these rules includes, but is not limited to, consideration of:

"(1) A person's record of conduct in relations with workers, farmers and others with whom the person conducts business.

“(2) A person's reliability in adhering to the terms and conditions of any contract or agreement between the person and those with whom the person conducts business.

“(3) A person's timeliness in paying all debts owed, including advances and wages.

“\* \* \* \* \*

“(7) Whether a person has violated any provision of ORS 658.405 to 658.503 or these rules.

“\* \* \* \* \*

“(13) Whether a person has made a willful misrepresentation, false statement or concealment in the application for a license.”

OAR 839-015-0520(1) describes the circumstances under which the Commissioner “may propose to deny or refuse to renew a license application or to suspend or revoke a license.” Those circumstances include:

“(a) Making a misrepresentation, false statement or certification or willfully concealing information on the license application;

“\* \* \* \* \*

“(d) Assisting an unlicensed person to act as a farm or forest labor contractor;

\* \* \* \* \*

”(i) Acting as a farm or forest labor contractor without a license.”

OAR 839-015-0520(3) describes actions by a farm labor contractor that “demonstrate that the applicant's or the licensee's character, reliability or competence make the applicant or licensee unfit to act as a farm or forest labor contractor.” Those actions include:

“(a) Violations of any section of ORS 658.405 to 658.485;

“\* \* \* \* \*

“(c) Willful violation of the terms and conditions of any work agreement or contract;

“\* \* \* \* \*

(h) Willful misrepresentation, false statement or concealment in the application for a license;

“\* \* \* \* \*

“(m) A course of misconduct in relations with workers, farmers and others with whom the person conducts business;

“(n) Failure to pay all debts owed, including advances and wages, in a timely manner[.]”

“Willfully” is defined in OAR 839-015-0505(1) to mean:

“action undertaken with actual knowledge of a thing to be done or omitted or action undertaken by a person who should have known the thing to be done or omitted. A person ‘should have known the thing to be done or omitted’ if the person has knowledge of facts or circumstances which, with reasonably diligent inquiry, would place the person on notice of the thing to be done or omitted to be done. A person acts knowingly or willfully if the person has the means to inform himself or herself but elects not to do so. For purposes of this rule, the farm labor contractor, forest labor contractor or any person acting as a farm or forest labor contractor is presumed to know the affairs of their business operations relating to farm or forest labor contracting.”

The forum relies on the aforementioned rules and statutes in determining whether Respondents should be denied a license to conduct business in Oregon as farm/forest labor contractors.

**A. Basilio Piatkoff.**

Four of the criteria in OAR 839-015-0145 relating to character, competence and reliability apply to B. Piatkoff and demonstrate that he is unfit to act as a farm labor contractor. First, he engaged in a course of misconduct by entering into a subcontract with N. Piatkoff and Northwest that he knew was in violation of the Menasha contract<sup>xi</sup> and by not giving WH-151S and WH-153S forms to Roberto Alanis Alvarez when Alvarez was employed by BP Reforestation. OAR 839-015-0145(1). Second, he demonstrated his unreliability in adhering to the terms and conditions of a contract between himself and someone with whom he conducted business by violating the subcontracting provision of the Menasha contract. OAR 839-015-0145(2). Third, although he eventually paid his debt to DOR, he was untimely in doing so. OAR 839-015-0145(3). Fourth, he violated ORS 658.440(1)(f) & (g) with regard to Roberto Alanis

Alvarez by not giving WH-151S and WH-153S forms to Alvarez when Alvarez was employed by BP Reforestation. OAR 839-015-0145(7).

Under OAR 839-015-0520(3), the same actions demonstrate that B. Piatkoff's character, competence and reliability make him unfit to act as a farm or forest labor contractor. OAR 839-015-0520(3)(a), (c), (m), and (n). Each one of those actions separately demonstrates that he is unfit to act as a farm labor contractor.

**B. N. Piatkoff and Northwest Resources, Inc.**

N. Piatkoff and Northwest are jointly licensed, so the status of Northwest's license hinges on the actions taken by N. Piatkoff on her own behalf or on behalf of Northwest. ORS 658.410(2)(d), OAR 839-015-0135(1)(c).

Three of the criteria in OAR 839-015-0145 relating to character, competence and reliability apply to N. Piatkoff and demonstrate that she and Northwest are unfit to act as farm labor contractors. First, she engaged in a course of misconduct by entering into a subcontract with N. Piatkoff and Northwest that she knew was in violation of the Menasha contract<sup>xii</sup> and by committing three violations of ORS 658.440(1)(f) and three violations of ORS 658.440(1)(g) OAR 839-015-0145(1). Second, N. Piatkoff and Northwest demonstrated unreliability in adhering to the terms and conditions of a contract between themselves and someone with whom they conducted business by violating the subcontracting provision of the Menasha contract. OAR 839-015-0145(2). Third, N. Piatkoff and Northwest committed three violations of ORS 658.440(1)(f), three violations of ORS 658.440(1)(g), one violation of ORS 658.410, and two violations of ORS 658.440(3)(b). OAR 839-015-0145(7).

Under OAR 839-015-0520(3), these same actions independently demonstrate that N. Piatkoff's and Northwest's character, competence and reliability make them unfit to act as a farm or forest labor contractor. OAR 839-015-0520(3)(a), (c), (f), and (m).

## THE AGENCY'S EXCEPTIONS

The Agency filed exceptions relating to the ALJ's proposed interpretation and application of OAR 839-015-0520(3)(m) to Respondents' actions and the ALJ's failure to incorporate Respondents' violation of ORS 658.440(3)(b) as a basis for evaluating Respondents' character, competence, and reliability. The Agency's exceptions are **GRANTED**. The forum has rewritten the Opinion in response to those exceptions.

## ORDER

NOW, THEREFORE, as authorized by ORS 658.453, and as payment of the penalties assessed for violations of ORS 658.440(1)(d), ORS 658.440(1)(f), ORS 658.440(1)(g), and ORS 658.440(3)(b), the Commissioner of the Bureau of Labor and Industries hereby orders **Natalia Piatkoff** and **Northwest Resources, Inc.** to deliver to the Fiscal Services Office of the Bureau of Labor and Industries, 1045 State Office Building, 800 NE Oregon Street, Portland, Oregon 97232-2180, a certified check payable to the Bureau of Labor and Industries in the amount of SEVENTEEN THOUSAND DOLLARS (\$17,000), plus any interest thereon that accrues at the legal rate between the date ten days after the issuance of the Final Order and the date Respondents comply with the Final Order.

FURTHERMORE, the Commissioner of the Bureau of Labor and Industries hereby denies **Natalia Piatkoff**, **Northwest Resources, Inc.**, and **Basilio Piatkoff** each a license to act as a farm labor contractor, effective on the date of the Final Order. **Natalia Piatkoff**, **Northwest Resources, Inc.**, and **Basilio Piatkoff** are each prevented from reapplying for a license for three years from the date of this denial, in accordance with ORS 658.445 and OAR 839-015-0520.

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<sup>i</sup> The italicized language represents handwritten signatures by Carr, B. Piatkoff, N. Piatkoff, and Jorge Garcia. The words "Chief Forester," "Contractor Rep," and "Contractor" are all handwritten.

<sup>ii</sup> Italicized words are handwritten.

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iii The format has been altered to fit in this order.

iv Although Alvarez was recruited and hired by Northwest, he was not able to actually perform any reforestation activities for Northwest, presumably because of the injuries he suffered in the January 3, 2005, van accident while he was on the way to his first day of work for Northwest, his new employer.

v The following testimony is an example of her evasiveness.

Q. "What happened to the originals? [WH-151s and WH-153s]

A. "Some might have been given to them; some I kept. There was a lot of confusion at that time about what I had is what I gave to, I forgot his name.

Q. "Enrique? Stan?"

A. "Yeah.

Q. "Stan or Enrique?"

A. "The last time I gave information was to Stan.

Q. "Okay.

A. "I remember his name. Enrique or Ramirez, I'm not sure which one; I remember him coming to the house but I can't remember which one he was.

\*\* \* \* \* \*

Q. "What happened to the full size copies or originals?"

A. "Well, that's what I was trying to explain. We took the full size copies and shrunk them down and that was the original because I didn't know you weren't able to do that. So I thought it would be fine to do that to save on paperwork.

\*\* \* \* \* \*

Q. "So are you saying that the originals are lost or destroyed?"

A. "I'm saying what you're looking at was the original ones. We didn't have any that were made on 8½ x 11.

Q. "The ones the employees signed were on this four on one?"

A. "Yes.

\*\* \* \* \* \*

Q. "If what you're saying is correct, there are originals someplace, right, that have the original signatures?"

A. "We should have them.

Q. "You should have them?"

A. "Yes.

Q. "Why have you not provided them in response to the request for originals?"

A. "I thought I did provide all the information they requested.

Q. "Mr. Wojtyla sent you a letter, it's been marked as Exhibit 14?"

A. "14?"

Q. "Did you receive a copy of this letter?"

A. "I remember something.

Q. "Okay. And this second paragraph says 'please send the original WH-151 and WH-153s?"

A. "Umhum.

Q. "But you didn't, did you?"

A. "I gave what I had on hand and, as far as I can remember, I thought I gave them everything. Whatever information was asked of me I either faxed or brought in.

Q. "So you're saying that you gave the originals to Mr. Wojtyla?"

A. "I don't remember, but if it was requested, I probably did. It's been a long time."

vi The WH-151S and WH-153S forms are the WH-151 and WH-153 forms translated into Spanish.

vii See *In the Matter of Tomas Benitez*, 19 BOLI 142, 160 (2000) (it is a mitigating factor that a respondent's violations of the farm labor contracting statutes did not cause any person to suffer a monetary loss).

viii See Finding of Fact -- The Merits 34, *supra*.

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<sup>ix</sup> Question 20 on the application directs applicants to “List full names, addresses, and telephone numbers of all persons financially interested, whether as partners, shareholders, profit-sharers, associates or members in the applicant’s proposed operations as a labor contractor, together with the amount or percentage of the respective interest of each.”

<sup>x</sup> *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-612 (1993).

<sup>xi</sup> The forum concludes that he had knowledge because he signed the Menasha contract containing the prohibition against subcontracting and shortly thereafter entered into the subcontract with his wife, Natalia.

<sup>xii</sup> OAR 839-015-0505, which defines “willfully,” creates a presumption that all farm labor contractors “know the affairs of their business operations relating to farm or forest labor contracting.”