

Barbara McDowell and Gerald S. Harman Foundation North Carolina Justice Center's Final Grant Report

The North Carolina Justice Center received a grant from the Barbara McDowell and Gerald S. Harman Foundation to support our advocacy and litigation efforts targeting abusive practices of H-2A Labor Contractors. Over the past year we have engaged in several activities to try to reduce the harms suffered by workers employed by these labor contractors.

In December 2015 we filed a class action on behalf of a group of H-2A worker who were not paid correctly by the H-2A Labor Contractor they worked for in Florida and North Carolina in 2013 and 2014. The case, Jose Carmen Gallegos Gallegos, et al, v. Becerra Enterprises, Inc., and Luis Alfonso Becerra, was filed in the U.S. District Court for the Eastern District of North Carolina, Case No. 4:15-cv-00196. The primary allegation in the complaint was that Mr. Becerra did not pay his employees for all hours worked by failing to report some hours on their pay stubs. The complaint also included claims related to the employees having to bear the cost of their H-2A visas and transportation to the United States in violation of the Fair Labor Standards Act (FLSA). In our six month grant report, we reported that seven H-2A workers from the 2013-2014 season had joined the lawsuit as opt-in plaintiffs for the Fair Labor Standards Act claims and that we had met with the defendant and reviewed some of his pay and time records. When the employer found out that our client and the seven other workers had initiated the lawsuit he initially refused to allow them to return to work this year. With our intervention, the majority of them have returned to work for Mr. Becerra this year or intend to work for him next season. Despite our assurances to the workers that it was unlawful for an employer to retaliate against them for exercising their rights under labor laws, the workers, including the named plaintiff, were afraid to continue with the lawsuit and asked us to drop them from the case and discontinue the litigation. Although this is not the result we had hoped for, the lawsuit has resulted in Mr. Becerra complying with his obligations to pay visa and transportation expenses this year and, according to workers we have spoken to this year during two outreach trips to his migrant labor camps, he is now properly paying them for all hours worked. In addition, his attorney has been advising him of the need to comply in the future.

The grant allowed us to expand our efforts to address the broader issue involved. Throughout the summer we conducted outreach to workers employed by another much larger H-2A Labor Contractor as well. This contractor also operates in Florida and North Carolina and is certified for approximately 3,000 H-2A visas per year. Through advocacy with their employer we were able to help hundreds of workers get their social security cards so that they were not subject to backup withholding by the payroll company. We also filed a complaint with the NC Department of Labor about conditions at the labor camp. We also raised other issues with the contractor's attorney that were not clear legal violations, but were of great concern to the workers, including long waits in the hot sun to receive paychecks, an insufficient number of buses to transport workers to the fields, and uncomfortable transportation options for return travel to Mexico. We also continue to actively investigate another case involving an H-2A Labor Contractor and fixed site employer in which the non-H-2A workers are not receiving the adverse effect wage rate paid to the H-2A workers.

Our goal remains to hold these "deep pockets" liable for labor contractors' wage and hour violations and to expose the flaws of the H-2A labor contractor system. We will continue active outreach efforts to identify other situations where we can achieve this result.

The attorneys working on this effort are Clermont Ripley (clermont@ncjustice.org) and Carol Brooke (carol@ncjustice.org).

