U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

In the Matter of:

ADMINISTRATOR, WAGE AND, HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR,	**ARB CASE NO. 2022-0009**
	ALJ CASE NO. 2019-LCA-00013
PROSECUTING PARTY,	**DATE: April 29, 2022**

v.

BROADGATE, INC.,

RESPONDENT.

Appearances:

For the Prosecuting Party:
Seema Nanda, Esq., Jennifer S. Brand, Esq., Megan E. Guenther, Esq., Rachel Goldberg, Esq.; Jesse Z. Grauman, Esq.; *Office of the Solicitor, U.S. Department of Labor*; Washington, District of Columbia

For the Respondent:
Michael E. Piston, Esq.; *Law Office of Michael E. Piston*; Flushing, New York

Before: James D. McGinley, *Chief Administrative Appeals Judge*, Thomas H. Burrell and Randel K. Johnson, *Administrative Appeals Judges*

DECISION AND ORDER

PER CURIAM. This case arises under the H-1B visa program provisions of the Immigration and Nationality Act (INA or Act), as amended, and its implementing

regulations.[1] On August 7, 2019, a U.S. Department of Labor (DOL) Administrative Law Judge (ALJ) issued a Decision and Order affirming, in part, and reversing, in part, the Wage and Hour Division's (WHD) Administrator's Determination that Broadgate, Inc. (Broadgate or Respondent) violated the INA.[2] The WHD's Administrator (Administrator) petitioned the Administrative Review Board (ARB or the Board) for review of the D. & O. The Board reversed, in part, and remanded, in part, the D. & O. on April 20, 2021.[3]

On October 18, 2021, the ALJ issued a Decision and Order on Remand.[4] Respondent petitioned the Board for review. As discussed below, we affirm the ALJ's D. & O. on Remand.

BACKGROUND

A nonimmigrant H-1B visa worker filed a complaint with the WHD alleging that he was underpaid wages during his employment with Respondent.[5] The wage complaint was investigated by the WHD, and on or about December 28, 2018, the District Director of the Detroit Wage and Hour office (Detroit District Director) issued a determination entitled in part "Administrator's Determination Pursuant to 20 C.F.R. Part 655 H-1B Specialty Occupations" (Administrator's Determination).[6] The District Director found that Respondent had violated the Act and Regulations,[7] and imposed a two-year period of debarment, ordered Respondent to pay back

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[1] 8 U.S.C. § 1101(a)(15)(H)(i)(b) (2014) and 8 U.S.C. § 1182(n) (2013). The H-1B visa program's implementing regulations are found at 20 C.F.R. Part 655, subparts H and I (2016).

[2] *Adm'r, Wage and Hour Div., U.S. Dep't of Labor, v. Broadgate, Inc.*, ALJ No. 2019-LCA-00013 (ALJ Aug. 7, 2019) (D. & O.) (*ALJ Broadgate I*).

[3] *Adm'r, Wage and Hour Div., U.S. Dep't of Labor v. Broadgate, Inc.*, ARB Nos. 2019-0079, -0083, ALJ No. 2019-LCA-00013 (ARB Apr. 20, 2021) (*ARB Broadgate I*).

[4] *Adm'r, Wage and Hour Div., U.S. Dep't of Labor, v. Broadgate, Inc.*, ALJ No. 2019-LCA-00013 (ALJ Oct. 18, 2021) (D. & O. on Remand).

[5] *ALJ Broadgate I* at 2.

[6] *Id*. at 2-3; Joint Exhibit (JX) 16.

[7] The Administrator's Determination listed the following charges: (1) Respondent failed to pay wages as required in violation of 20 C.F.R. § 655.731; (2) Respondent willfully and substantially failed to provide notice of the filing of LCA(s) in violation of 20 C.F.R. § 655.734; (3) Respondent failed to make available for public examination the LCA and necessary documents at the employer's principal place of business or worksite in violation of 20 C.F.R. § 655.760(a); and (4) Respondent failed to maintain documents, as required by 20 C.F.R. §§ 655.731(b), 738(e), 655.739(i), and/or 655.760(c). JX 16.

wages to the H-1B worker, and assessed civil money penalties for several of the charged violations.[8]

Respondent requested a hearing before the Office of Administrative Law Judges (OALJ) and disputed all violations alleged and remedies sought by the Administrator.[9] Prior to the hearing, the ALJ accepted the parties' joint stipulations concerning Violations #1, #3, and #4.[10] The ALJ determined that Respondent's only challenge before him was #2, whether it had "willfully and substantially failed to provide notice of the filing of [labor condition applications (LCAs)] in violation of 20 C.F.R. § 655.734."[11]

The ALJ issued the D. & O. on August 7, 2019. As to Violation #2, the ALJ found that Respondent willfully failed to post LCA notices on at least fourteen occasions as required by 20 C.F.R. 655.734.[12] Although the ALJ found that Respondent willfully failed to post the LCA notices, the ALJ reversed the Administrator's Determination because he found that the Detroit District Director was not delegated or re-delegated the authority required to issue the Administrator's Determination.[13]

The Administrator appealed to the Board. On April 20, 2021, the Board reversed, in part, and remanded, in part, the D. & O. The ARB found that the Detroit District Director was delegated the authority to issue the Administrator's Determination and instructed the ALJ to make findings of fact and law as to the number of violations incurred by Respondent, and, if any violations were found, the nature and severity of the violation(s), the amount of civil money penalties (CMPs) assessed for such violation(s), and any other remedies applicable to the violation(s), including debarment.[14]

On October 18, 2021, the ALJ issued a D. & O. on Remand finding that: (1) Respondent violated 20 C.F.R. § 655.734 on fourteen occasions;[15] (2) Respondent's

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8 The Administrator's Determination required Broadgate to pay back wages in the amount of $31,696.80 to the H-1B worker for Violation #1, imposed $66,176.00 in civil money penalties and a period of debarment of "at least two years" for Violation #2, and imposed $1,848.00 in civil money penalties for Violation #4. JX 16.

9 *ALJ Broadgate I* at 4.

10 *Id*.; ALJ Exhibit (ALJ EX) 3-5.

11 *ALJ Broadgate I* at 4-5.

12 *Id*. at 13-17.

13 *Id*. at 34-37.

14 *ARB Broadgate I* at 19.

15 D. & O. on Remand at 4-5.

violations of 20 C.F.R. § 655.734 were willful;[16] and (3) the Administrator's assessment of $4,136 for each violation in CMPs was appropriate.[17, 18] On November 16, 2021, Respondent petitioned the ARB for review of the ALJ's D. & O. on Remand. The parties filed timely briefs before the Board.[19] For the reasons discussed below, we affirm the ALJ's D. & O. on Remand.

JURISDICTION AND STANDARD OF REVIEW

The ARB has jurisdiction to review the ALJ's decision pursuant to 20 C.F.R. § 655.845.[20] Under the Administrative Procedure Act (APA), ARB, as the Secretary of Labor's designee, acts with "all the powers [the Secretary] would have in making the initial decision . . . ."[21]

DISCUSSION

Employers seeking to employ nonimmigrants under the H-1B program must first file an LCA with the DOL.[22] The LCA contains representations made by the employer about the wages, benefits, and working conditions it will provide to the H-1B workers.[23] The LCA must be posted for a specified period in the workplace where the H-1B workers will be actually working.[24] Specifically, 20 C.F.R. § 655.734(a)(1) provides:

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16 *Id*. at 5.

17 *Id*. at 6-8. The ALJ ordered Respondent to pay $59,904 in CMPs. The ALJ's calculation appears to be incorrect. It should be $57,904 for fourteen violations at $4,136 per violation.

18 Respondent was also debarred from the visa program for two years pursuant to 20 C.F.R. §§ 655.810(d)(2) and 655.855. *Id*. at 7.

19 The Administrator filed a Motion to Dismiss in response to Respondent's Brief on December 29, 2021. The Board issued an Order denying the motion on February 8, 2022. *Adm'r, Wage and Hour Div., U.S. Dep't of Labor, v. Broadgate, Inc.*, ARB No. 2022-0009, ALJ No. 2019-LCA-00013 (ARB Feb. 8, 2022) (Order Denying Motion to Dismiss Appeal and Reestablishing Briefing Schedule). Following the Order, the Administrator requested an extension of time to file a response brief.

20 Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary's discretionary review of ARB decisions)), 85 Fed. Reg. 13186 (Mar. 6, 2020).

21 5 U.S.C. § 557(b); *Lubary v. El Floridita*, ARB No. 2010-0137, ALJ No. 2010-LCA-00020, slip op. at 4-5 (ARB Apr. 30, 2012).

22 20 C.F.R. § 655.700 *et seq*. (Subpart H); 8 U.S.C. § 1182(n)(1).

23 20 C.F.R. § 655.705; 8 U.S.C. § 1182(n)(1)(A)-(F).

24 20 C.F.R. § 655.734.

> (A) Hard copy notice, by posting a notice in at least two conspicuous locations at each place of employment where any H-1B nonimmigrant will be employed (whether such place of employment is owned or operated by the employer or by some other person or entity).
> (1) The notice shall be of sufficient size and visibility, and shall be posted in two or more conspicuous places so that workers in the occupational classification at the place(s) of employment can easily see and read the posted notice(s).
> (2) Appropriate locations for posting the notices include, but are not limited to, locations in the immediate proximity of wage and hour notices required by 29 CFR 516.4 or occupational safety and health notices required by 29 CFR 1903.2(a).
> (3) The notices shall be posted on or within 30 days before the date the labor condition application is filed and shall remain posted for a total of 10 days.[25]

The Administrator may conduct investigations of an employer's compliance with the representations made on the LCA.[26]

1. Respondent willfully failed to post notices at employee worksites

The ALJ found that the Administrator proved "by a preponderance of evidence that Respondent willfully and substantially failed to provide notice of the filing of LCAs in violation of 20 C.F.R. § 655.734 on [fourteen] occasions."[27] In finding that Respondent willfully and substantially failed to provide notice, the ALJ relied upon: (1) the testimony from a WHD investigator;[28] (2) a letter from Respondent's attorney advising Respondent to post LCA notices at locations where H-1B workers will be actually located, even if the location is not under Respondent's control;[29] (3) a memorandum from Respondent's attorney advising Respondent to post a notice in two conspicuous locations at each H-1B worker's worksite prior to the date the LCA is filed;[30] and (4) testimony from Respondent's executive acknowledging that he was aware of the LCA notice posting requirements.[31]

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[25] 20 C.F.R. § 655.734(a)(1)(ii)(A).

[26] 20 C.F.R. § 655.800(a).

[27] D. & O. on Remand at 5 (incorporating analysis of prior decision); *ALJ Broadgate I* at 13-14.

[28] D. & O. on Remand at 4-5; *ALJ Broadgate I* at 14-16.

[29] D. & O. on Remand at 7; *ALJ Broadgate I* at 16.

[30] D. & O. on Remand at 7; *ALJ Broadgate I* at 16-17.

[31] D. & O. on Remand at 5; *ALJ Broadgate I* at 17.

In addition to finding that Respondent willfully and substantially failed to provide notice, the ALJ acknowledged Respondent's impossibility defense argument.[32] Specifically, Respondent argued that it was not always able to post the LCA notices because Respondent did not have physical control of the workplaces where H-1B workers were located.[33] The ALJ determined that Respondent did not meet its burden in proving "impossibility" and instead, described a set of circumstances that made posting the LCA notices inconvenient.[34] The ALJ also noted that even if Respondent had met its burden, the unambiguous language of 20 C.F.R. § 655.734(a)(1)(A) prohibits recognizing an impossibility caused by a lack of control over the workplace as a defense to failing to post LCAs.[35]

Respondent argues on appeal that the ALJ erred in finding that it willfully failed to post notices at employee worksites because the Administrator did not meet her burden in proving Respondent's state of mind in failing to comply with the regulation.[36] Rather, Respondent claims that it was impossible for it to comply with the regulation and therefore, it could not willfully fail to comply.[37] Conversely, the Administrator claims that Respondent's arguments are neither legally cognizable nor supported by the record because the undisputed facts show that Respondent knew of the actual-worksite posting requirement and violated it anyway.[38]

Regulation 20 C.F.R. § 655.805(c) defines "willful failure" as "knowing failure or a reckless disregard with respect to whether the conduct was contrary to sections 212(n)(1)(A)(i) or (ii), or 212(t)(1)(A)(i) or (ii) of the INA, or §§ 655.731 or 655.732."[39, 40] After examining the regulation, the cases, and the record, we agree

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32 D. & O. on Remand at 7; *ALJ Broadgate I* at 18-19.

33 *ALJ Broadgate I* at 18.

34 *Id*. at 19.

35 *Id*.

36 Respondent's Opening Brief (Res. Open. Br.) at 2. Respondent cites *Adm'r, Wage and Hour Div., U.S. Dep't of Labor, v. Pegasus Consulting Group, Inc.*, ARB No. 2005-0087, ALJ No. 2004-LCA-00021, slip op. at 8-9 (ARB Apr. 29, 2009) and *Pegasus Consulting Group v. Admin. Rev. Bd. for the Dep't of Labor*, Civil Action No. 05-5161 (FLW), 2008 WL 920072, at *18-19 (D. N.J.) for the position that the prosecuting party has the burden of proof in general, but also the burden of proving willfulness.

37 Res. Open. Br. at 2.

38 Administrator's Response (Administrator's Resp.) at 12.

39 20 C.F.R. § 655.805(c).

40 The ARB has applied the "knowing failure or reckless disregard" definition of willfulness in the H-1B context. *See, e.g.*, *Adm'r, Wage and Hour Div., U.S. Dep't of Labor,*

with the ALJ that Respondent willfully and substantially failed to provide notice of the filing of LCAs on fourteen occasions. Respondent was repeatedly warned by its attorneys that it was required to post notices at the actual worksites and its representative testified that Respondent was aware of the notice requirements even if it did not have physical control of the worksites. Ultimately, Respondent did not post the notices at the worksites.

Moreover, as the ALJ also determined, Respondent's impossibility argument—that it could not post because it did not have control over the work site—is explicitly recognized by the regulation. The regulation provides that LCA notices are required to be posted "in at least two conspicuous locations at each place of employment where any H-1B nonimmigrant will be employed (*whether such place of employment is owned or operated by the employer or by some other person or entity*)."[41] The emphasized language is clear and unambiguous that posting is required whether the employer owns or operates the worksite or not.[42] Therefore, we affirm the ALJ's finding and conclusion of law that Respondent willfully and substantially failed to provide notice of the filing of LCAs in violation of 20 C.F.R. § 655.734 on fourteen occasions.

2. The Administrator's findings that Respondent failed to post notices were within the permissible scope of the investigation

The Administrator's investigation in this case was initiated based on an H-1B worker's complaint pursuant to 8 U.S.C. § 1182(n)(2)(A), which provides:

> [T]he Secretary shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner's failure to meet a condition specified in an [LCA] or a petitioner's misrepresentation of material facts in such an application. Complainant may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively. The Secretary shall conduct an

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v. Sirsai, Inc., ARB No. 2012-0102, ALJ No. 2011-LCA-00001, slip op. at 3 (ARB Jan. 28, 2015).

41 20 C.F.R. § 655.734(a)(1)(ii)(A) (emphasis added).

42 The ALJ found and the record supports that Respondent described circumstances that made posting the LCA notices inconvenient not "impossible." *ALJ Broadgate I* at 18-19. Therefore, even if the regulation permitted an impossibility defense, Respondent did not meet its burden.

> investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.[43]

Investigations in response to an aggrieved party complaint, and in particular, the scope of these investigations, have been a focus of both the federal courts and the Board. Most recently, the Board addressed the scope of these investigations in *Adm'r, Wage and Hour Div. v. Volt Mgmt. Corp.*[44] In *Volt Mgmt. Corp.*, the Board examined the Eighth Circuit's ruling in *Adm'r, Wage and Hour Div. v. Greater Missouri Med. Providers, Inc.*[45] and the Southern District of New York's ruling in *Adm'r, Wage and Hour Div. v. Aleutian Capital Partners*[46] to illustrate the varying degrees courts have limited an Administrator's investigation.

In *Greater Missouri*, the Eighth Circuit held that the plain language of the Act precluded the Administrator from conducting a "comprehensive" or "open-ended investigation of the employer and its general compliance without regard to the actual allegations in the aggrieved-party complaint . . . ."[47] However, the Eighth Circuit declined to "dictate the exact contours" of an investigation into an aggrieved party complaint.[48] Comparatively, in *Aleutian*, the Southern District of New York held that an expanded investigation was a permissible exercise of the Administrator's discretion to conduct investigations and to limit an investigation to the specific allegations of the complaint would be contrary to the plain language of the Act and its regulations.[49] Although the Southern District permitted investigations beyond "the four corners of a complaint," it emphasized that the Administrator's investigatory powers were not unlimited.[50] Specifically, the Southern District cautioned that "the investigation must remain 'tethered' to the

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43 8 U.S.C. § 1182(n)(2)(A).

44 *Adm'r, Wage and Hour Div. v. Volt Mgmt. Corp.*, ARB No. 2018-0075, ALJ No. 2012-LCA-00044 (ARB Aug. 27, 2020) (en banc).

45 *Greater Missouri Med. Pro-Care Providers, Inc. v. Perez*, 812 F.3d 1132 (8th Cir. 2015).

46 *Aleutian Capital Partners v. Hugler*, 16 Civ. 5149 (ER), 2017 WL 4358767 (S.D.N.Y. Sept. 28, 2017), *aff'd sub nom. Aleutian Capital Partners v. Scalia*, 975 F.3d 220, 234-236 (2d Cir. 2020).

47 *Greater Missouri Med. Pro-Care Providers, Inc.*, 812 F.3d at 1137-38 (internal quotes omitted).

48 *Id*. at 1140.

49 *Aleutian Capital Partners*, 2017 WL 4358767, at *9-10.

50 *Id*. at 10.

allegations of the complaint" because it would not condone an open-ended, general compliance investigation.[51] The Second Circuit affirmed the district court.[52]

While analyzing these cases along with statutory and regulatory language, the Board in *Volt Mgmt. Corp*. held that these provisions require an aggrieved-party investigation be "bounded in its purpose, nature, and scope" and "fashioned and conducted with regard to the content and context of the complaint."[53] However, it also recognized that these provisions vest DOL and WHD with "significant discretion with respect to defining and conducting an investigation," including "the power and authority to go beyond the four corners of the complaint, as may be appropriate."[54]

In the present case, Respondent claims that the Administrator exceeded the permissible scope of the investigation when the WHD investigator reviewed the public access files of other employees and then charged Respondent with the failure to post required notices at the places of employment.[55] Respondent argues that since the complaint that initiated the investigation was limited to the alleged failure to pay the wages promised to the H-1B visa worker, the WHD investigator should not have examined files of other employees and visited worksites not associated with the one H-1B visa worker.[56, 57] Conversely, the Administrator claims

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51 *Id*. at 9.

52 *Aleutian Capital Partners v. Scalia*, 975 F.3d 220, 234-236 (2d Cir. 2020).

53 *Volt Mgmt. Corp.*, ARB No. 2018-0075, slip op. at 12.

54 *Id*. at 13.

55 Res. Open. Br. at 3-4.

56 *Id*. at 4-5.

57 Respondent also claims that the Administrator failed to properly commence a new investigation when it learned of the LCA notice violations during the course of her investigation. Respondent's Reply to Acting Administrator's Response Brief (Res. Reply) at 5. According to Respondent, the Secretary or his delegate was required to "personally certify reasonable cause existed to commence the investigation into the LCA notice violations. *Id*. We disagree. Although 8 U.S.C. § 1182(n)(2)(G)(i) provides that "[t]he Secretary of Labor shall provide notice to an employer with respect to whom there is reasonable cause *to initiate* an investigation described in clauses (i) or (ii), prior to the commencement of an investigation . . .," the WHD already initiated an investigation into Respondent under 8 U.S.C. § 1182(n)(2)(A), an aggrieved party complaint. 8 U.S.C. § 1182(n)(2)(G)(i) (emphasis added). Respondent's argument would have merit if the WHD wanted to initiate an investigation into Respondent's LCA notice violations and no aggrieved party complaint existed. Our discussion concerning the holdings in *Volt Mgmt. Corp.*, *Greater Missouri Med. Pro-Care Providers, Inc.*, and *Aleutian Capital Partners*, highlights that an investigation may go beyond the four corners of the initial complaint, as

that public access files[58] were relevant to investigating the wage complaint.[59] The Administrator further avers that the regulations and caselaw permit WHD to expand an aggrieved-party complaint investigation beyond its initial scope if reasonable cause exists based on evidence it lawfully obtained during the investigation.[60]

We agree with the Administrator. The record does not reflect that the WHD conducted a fishing expedition to uncover any and all violations Respondent committed. In this case, the H-1B visa complainant alleged that he was not paid the higher of the prevailing or "actual wage."[61, 62] The WHD investigator deemed that it was necessary to procure the public access files to analyze wage information for the H-1B visa worker and other comparable employees to determine whether any wages were owed.[63] The WHD investigator testified that, based on his experience, public access documents tend to reflect H-1B workers' worksites and wage rates more accurately than LCAs.[64] Moreover, these public access files were already available to the public and are typically used by DOL to facilitate a determination of an

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may be appropriate; this includes a wage complaint investigation expanding to find LCA notice violations depending on the specific facts of a case.

58 A public access file contains several types of records, including "a copy of the document(s) with which the employer has satisfied the . . . notification requirements of [20 C.F.R.] § 655.734," a copy of the LCA, documentation providing the wage rate to be paid, an explanation of the system used to set the actual wage rate, documentation used to establish the prevailing wage rate, a summary of benefits offered to U.S. workers in the same classifications as H-1B workers, documents regarding corporate structure, and additional documents for H-1B-dependent employers or previous willful violators. 20 C.F.R. § 655.760(a); Administrator's Resp. at 25.

59 Administrator's Resp. at 22-26.

60 *Id.* at 28.

61 The "actual wage" is "the wage rate paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question." 20 C.F.R. § 655.731(a)(1).

62 The record reflects that the H-1B visa worker alleged that Respondent failed to pay him "the higher of the prevailing or actual wage." JX 6 at 2. Specifically, the H-1B visa worker alleged that Respondent was "cheating" him out of the actual rate of pay because the parties agreed to pay on a commission basis where the H-1B visa worker would earn eighty percent of the hourly rate Respondent billed its clients. JX 6 at 3-4; s*ee also* Hearing Transcript (Tr.) at 29.

63 Administrator's Resp. at 25-26; Tr. at 26-31, 51-52, 54.

64 Administrator's Resp. at 26; The WHD investigator testified that public access files provide "a good baseline as to what is actually going on." Tr. at 52-53.

employer's compliance.[65] Thus, the WHD investigator's request for the public access files was reasonable and permissible.

While investigating the wage complaint, the WHD investigator also received e-mails and other records from the H-1B visa worker indicating that he worked at a secondary worksite.[66] The WHD investigator testified that it was "frequently common" for an employer not to provide notice in such cases where an employee worked at multiple worksites.[67] At the time of the investigation, the WHD investigator believed that Respondent may not have provided such notice at the secondary worksite.[68] The WHD investigator examined the public access files associated with the original H-1B visa worker and discovered that these files did not contain any copies of actual-worksite postings.[69] This discovery gave the WHD investigator reasonable cause to investigate further and confirm the full breadth of Respondent's notice violations.

As such, we find that the WHD's investigation was initially limited to the H-1B visa worker's complaint and then, based on reasonable cause, expanded to include notice violations. The WHD's investigator's process and scope of inquiry into Respondent's violations are consistent with the Board's holding in *Volt Mgmt. Corp*. Therefore, we affirm the ALJ's conclusions as supported by the record and in accordance with the law.

CONCLUSION

For the reasons stated above, we affirm the ALJ's conclusion that Respondent willfully failed to post the LCA notices at employees' worksites on fourteen occasions. Accordingly, we **AFFIRM** the ALJ's D. & O. on Remand.[70]

SO ORDERED.

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65 *See* 65 Fed. Reg. at 80,111 (stating that "[i]n the absence of such records, the Department is unable to ascertain whether an employer in fact is in compliance or the extent of the violations.").

66 Administrator's Resp. at 27; Tr. at 32-33.

67 Administrator's Resp. at 27; Tr. at 33.

68 Administrator's Resp. at 27; Tr. at 33.

69 Administrator's Resp. at 27; Tr. at 37-38, 41.

70 In any appeal of this Decision and Order that may be filed with the Courts of Appeals, we note that the appropriately named party is the Secretary, Department of Labor (not the Administrative Review Board).