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NORTHERN MARIANA ISLANDS
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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN THE MATTER OF:)	Civil Action No. 93-1073
)	Labor Case No. 205-91
)	
ZOSIMO BITOY AND MAGDALENA BITOY,)	
Complainants,)	
)	
v.)	DECISION AND ORDER GRANTING COMPLAINANTS' MOTION TO DISMISS
)	
GREGORIO AND ANGELINA RODEO)	
DBA MEI'S KITCHENETTE,)	
)	
Respondents.)	
_____)	

Gregorio and Angelina Rodeo (hereinafter the Respondents) filed a Petition for Judicial Review of the decision of the Director of Commerce and Labor issued on September 15, 1993. Zosimo and Magdalena Bitoy (hereinafter the Complainants) have moved to dismiss the petition on the basis that the Director's decision is not final, and thus not ripe for judicial review.

FOR PUBLICATION

1 **I. FACTS**

2 On October 23, 1992, The Department of Commerce and Labor
3 (hereinafter the Department) held a hearing concerning the
4 Complainants' allegations that the Respondents violated the
5 **Nonresident Workers Act of 1983**. On March 5, 1993, the Hearing
6 Officer issued his order. The Respondents appealed the **Hearing**
7 Officer's determination to the Director of Commerce and Labor
8 pursuant to 3 CMC §4445. The **Director** heard the appeal and
9 subsequently issued an *Appeal Decision* on September 15, 1993. The
10 Director's decision: (1) modified the Hearing officer's finding of
11 compensable daily work hours; (2) directed the **Hearing Officer** to
12 re-compute those hours; (3) awarded the **Complainants** with
13 liquidated damages pursuant to 3 CMC 4447(D), and attorney's fees
14 and costs in the amount of **\$3,454.00** for the first agency hearing;
15 (4) awarded the Complainants an undecided amount of **attorney's**
16 fees incurred during the appeal to the Director. The **Director**
17 further ordered that the amount of attorney's fees for the appeal
18 would be based on an Affidavit of Attorney's Fees and Costs yet to
19 be submitted by the Complainants and any opposition filed by the
20 Respondents.

21 On September 30, 1993, the respondents filed their *Petition*
22 *for Judicial Review of the Final Order of the Department of*
23 *Commerce and Labor*. On November, 10, 1993, the Court heard the
24 **Complainants'** Motion to Dismiss the Respondents' Petition based on
25 the Complainants' contention that the Director's decision did not
26 constitute a final order. Due to the Commonwealth's lack of
27 statutory law or case law on the question of what constitutes a
final administrative order for purposes of judicial review, the

1 Court took the matter under advisement and requested both parties
2 and the Office of the Attorney General to submit briefs on the
3 matter.

4
5 **II. ISSUE**

6 For purposes of Judicial Review, when should an
7 administrative decision from the Director of the Department of
8 Commerce and Labor be considered a final action?

9
10 **III. ANALYSIS**

11 The Administrative Procedures Act (APA) grants parties
12 adversely affected by agency action the right to judicial review
13 of the action. 1 CMC 9112(b). Although Section 9112(d) directs
14 that final agency action is subject to judicial review, the APA
15 does not offer any insight on when an administrative agency's
16 action is "final", and thus ripe for judicial review. Section
17 4445(c) of the Nonresident Workers Act provides very little
18 clarification on this subject by stating that "the Director's
19 decision shall constitute final action for purposes of review." 3
20 CMC §4445(c). Thus, the question remains: When should a reviewing
21 court consider a Director's decision final for purposes of
22 judicial review?

23 In an administrative setting, agency action should be
24 considered "final"ⁿ when the agency has spoken decisively on the
25 issue and when judicial involvement in the dispute will settle it.

26 2 CHARLES H. KOCH, ADMINISTRATIVE LAW AND PRACTICE 510.31 (1992)
27 (hereinafter KOCH). Thus, not only must the Agency resolve the
28 principal issues in a dispute, but the case must have arrived at

1 its "administrative conclusion" so that any judicial involvement
2 will be decisive. KOCH at §10.31. "It has [...] been the firm and
3 unvarying practice of constitutional Courts to render no judgments
4 [...] that are subject to later review or alteration by
5 administrative action." Chicago & Southern Air Lines v. *Waterman*
6 S. S. Corp., 68 S.Ct. 431, 437 (1948).

7 The Respondents contend that this labor dispute is ripe for
8 judicial review because the Director has reached a final decision
9 concerning the compensable working hours of the Complainants. The
10 Respondents categorize the Director's remand "for re-computation
11 [of overtime wages] by the Hearing Officer" as a mere ministerial
12 task. The Respondents also label the Director's request for
13 additional filings on the matter of attorney's fees as a
14 "corollary order" which does not disrupt the finality of
15 Director's decision in its entirety.

16 Clearly, the Director's Appeal Decision resolves a major
17 portion of the dispute between these parties. However, it is
18 equally clear that Labor Case No. 205-91 has not reached its
19 "administrative conclusion." If the Court were to review the
20 Director's decision in its current form, the Court's decision
21 would be subject to further proceedings before the Department
22 involving appeal-related attorney's fees.^{1/} In this respect, the
23 Court's actions would be subject to later review or alteration by
24 administrative action. This result would disrupt the Court's
25 authoritative role over administrative decisions and increase the
26

27 ^{1/} The Court accepts the Respondents' position that the
28 Director's order for wage re-computation should not stand in the
way of a judicial review provided that the Director has
effectively fixed the re-computation of overtime wages.

1 chances that previously decided administrative disputes will
2 reappear on the doorstep of this Court at a later date. For these
3 reasons, the Respondents petition for judicial review is
4 dismissed.

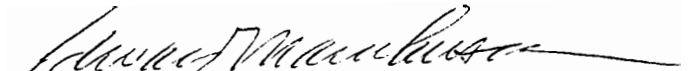
5 Nevertheless, the Court would be remiss not to impress upon
6 the Department its responsibility to resolve the remaining
7 portions of this controversy expeditiously. This matter has
8 already exceeded the spirit if not the letter of the time
9 constraints placed on the Department by the Nonresident Workers
10 Act. See 3 CMC §4444.

11 Upon the issuance of this decision, the Department will have
12 the opportunity to complete its obligation to both parties by re-
13 computing overtime hours and deciding the remaining matter of
14 appeal-related **attorney's** fees. The Court urges the Department to
15 act swiftly so that the parties will suffer no further delays.

16
17 **IV. CONCLUSION**

18 In light of the foregoing discussion, the **Complainant's**
19 Motion to Dismiss the Respondents' petition for Judicial Review is
20 GRANTED.

21
22 So ORDERED this 5 day of May, 1994.

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25 EDWARD MANIBUSAN, Associate Judge
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