

Posted on Fri, Jan. 11, 2008

philly.com

The Philadelphia Inquirer

Foreign seasonal workers score legal victory

INQUIRER STAFF WRITER

Advocates for guest workers today praised a Philadelphia federal judge's decision that they said will help alleviate some problems in the nation's guest worker program.

On Monday, U.S. District Judge Louis H. Pollak said that the Brickman Group Ltd, a landscaping company, must reimburse temporary seasonal foreign workers for visa costs, labor broker fees and transportation expenses from their country to the workplace.

"I think this is an incredibly important case," said Mary Bauer, director of the immigrant justice project for the Southern Poverty Law Center, a Montgomery, Alabama-based organization that advocates for migrant and guest workers.

"For guest workers, the cost of getting the job can exceed the value of the job," she said.

The case, which involves 100 workers in Pennsylvania, was filed in federal court in 2005 against the Brickman Group, a national landscaping firm based in Maryland. Alan Berkowitz, the company's attorney and a partner at Dechert LLP, declined to comment.

The total amount owed is uncertain, but could include damages.

Workers from Mexico and Guatemala were brought in under the federal government's H-2B program, which allows companies to bring in foreign temporary workers during their busy season, provided they pay them the prevailing U.S. wage.

Brickman generally paid proper wages, but after deducting visa fees, transportation costs and fees for labor brokers in the foreign countries - anywhere from \$450 to \$1,000 per worker - the workers ended up earning less than minimum wage in their first week's pay.

U.S. law allows deductions for these expenses, but only in the first week and only to the extent that they don't push wages below the minimum wage.

If deductions for fees do push wages below the minimum, and if the fees primarily are for the company's benefit, the company must make up the difference, the judge ruled.

Brickman had argued that employers should only cover expenses integral to the work, such as buying tools. Landscaping trade groups had filed friend-of-the-court briefs supporting Brickman's position.

Filing the case on behalf of the workers was Arthur N. Read, general counsel of Friends of Farmworkers Inc., an advocacy group based in Philadelphia.

Read said that the case covers the period from 2003 to 2005. Brickman may also have to pay damages, he said.

Read said that the case is important because some guest workers arrive and find the job is not what was promised. Or, as in the case of the lead plaintiff, they may get injured. But they can't return home or stop working because they owed money for fees and transportation.

Michael Glau, president of IPR International Personnel Resources Inc., a guest worker labor broker in West Chester with offices in Mexico City, said many companies already voluntarily pay these fees and he would encourage employers to follow the case's guidance as an industry best practice.

"The employer will have to understand that this is a cost of the program," he said, "and the employer will have to decide whether it is still worthwhile."

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