

VOGEL D. NEWSOME

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September 23, 2004

[RESPONSE REQUESTED]

BY PRIORITY MAIL –Confirmation

Office of the Solicitor General
c/o Honorable Paul D. Clement
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

***BY PRIORITY MAIL –Confirmation**

Madonna Cynthia Douglass, Chair
Administrative Review Board
Room S-4309
200 Constitution Avenue, N.W.
Washington, D.C. 20210

***BY PRIORITY MAIL – Confirmation**

Tammy D. McCutchen, Administrator
Alfred Robinson, Acting Administrator
Wage and Hour Division
U.S. Department of Labor/ESA
Room S-3502
200 Constitution Avenue, NW
Washington, D.C. 20210

*Sent in same Priority Mail envelope with names highlighted to be distributed to proper department/individual(s)

RE: *ARB Case No. 04-082*
Newsome v. Mitchell, McNutt & Sams, P.A.

Request for Review of March 19, 2004, Decision Rendered by the United States Department of Labor – Wage and Hour Division, Jackson, Mississippi Office

Request for Department of Justice's Intervention/Participation in this Case

Dear Mr. Clement:

I am in receipt of The Administrative Review Board's ("ARB") Final Decision and Order entered on or about September 14, 2004, in this case. Enclosed, for your review, is a copy of same.

I am requesting your Agency's intervention/participation in this matter, in that I find that based upon the evidence in the record, federal officials' with the Wage and Hour Division ("WHD") and ARB actions may be unlawful. Moreover, done to obstruct justice, hinder the proceeding before it and deprive me rights secured under the United States Constitution and other laws governing said matters. Therefore, your agency's intervention/participation in this

case is needed to insure that the proper laws are enforced and justice rendered to correct the wrongs and injustice complained of on this Appeal.

It is important to note that the ARB, first, attempted to assert that it did not have jurisdiction over matters requesting review of the United States Department of Labor – Wage and Hour Division, Jackson, Mississippi Office's decision entered on or about March 19, 2004. The ARB requested that I provide a response to its Order to Show Cause dated June 22, 2004, by July 6, 2004. I complied with said demands by the ARB and provided documentation to support the ARB's jurisdiction over this matter – in that the ARB attempted to mislead me and assert that under no circumstances did it have jurisdiction over this matter.

However, when such a frivolous argument by the ARB failed, on or about September 14, 2004, the ARB entered a Final Decision and Order advising the following:

“In this case, Newsome appeals a decision issued by the Department of Labor's Wage and Hour Division. The Secretary of Labor has delegated authority to the ARB to review final decisions of the Administrator of the Wage and Hour Division or an approved agent of the Administrator²”

fn. 2 states:

The Administrator of the Wage and Hour Division did not sign the letter of which Newsome seeks review, nor does the letter purport to be a final decision of the Administrator. Given our conclusion that the ARB does not have jurisdiction of this case in any event, it is not necessary for us to determine whether the letter was a final decision by an authorized agent of the Administrator.

Copy attached hereto at p. 2.

The conclusion of the ARB is vague and appears to lack substance to support it. So, I conclude, that the ARB is not exercising jurisdiction over this matter – based on a mere technicality (Administrator did not sign March 19, 2004, letter containing the WHD's decision). Neither does the ARB make it clear whether or not the District Director – Billy R. Jones of the WHD, Jackson Mississippi Office – is an approved agent of the Administrator. Even if such technicality had merits, the record evidence will support that the Administrator for the WHD – Tammy D. McCuthen (“McCuthen”) – was timely, properly and adequately placed on notice and/or informed of the WHD's handling of this matter. A courtesy copy of the Request for Review dated April 15, 2004, was submitted to McCuthen. Therefore, giving the Administrator/Acting Administrator of the WHD plenty of time to intervene and/or respond to this Appeal because **no** final decision has been entered. Thus, it is safe to conclude the **March 19, 2004, decision by the WHD is amendable.** Rather than create a trail of *bread crumbs* leading to this conclusion, all the ARB had to do was advise Newsome that the WHD has failed to comply with the laws governing said matters – when the WHD failed to enter a **Final Decision**

in compliance with the laws. Moreover, as requested by Newsome, all the ARB had to do was forward information onto the Administrator/Acting Administrator for the WHD as requested by Newsome in her April 15, 2004, letter submitting Request for Review.

It is important to note that I submitted my *Request for Review of March 19, 2004, Decision Rendered by the United States Department of Labor – Wage and Hour Division, Jackson, Mississippi Office* (“Request for Review”), on or about **April 15, 2004**.

This matter has been before the United States Department of Labor since about **February 11, 2004**. *It is now September*, approximately *seven* months later, and neither the ARB or Wage and Hour Division’s Administrator, Tammy D. McCuthen, have addressed the issues raised in my Request for Review dated April 15, 2004. It has almost been **a year** that my employer, Mitchell, McNutt & Sams, P.A. has not paid me in compliance with the FLSA.

You will see from the record evidence in the ARB’s handling of this matter, that the following persons have been notified and/or are aware of this matter brought before the ARB by myself:

Steven J. Mandel, Esq.
Associate Solicitor
Division of Fair Labor Standards
U.S. Department of Labor
Room N-2716, FPB
200 Constitution Avenue, NW
Washington, DC 20210

Clyde Payne
U.S. Department of Labor
Occupational Safety & Health Administration
Jackson Area Office
3780 I-55 North, Suite 210
Jackson, MS 39211

Alfred Robinson
Acting Administrator
Wage and Hour Division
U.S. Department of Labor/ESA
200 Constitution Avenue, NW
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Billy R. Jones
District Director
Jackson Area Office
U.S. Department of Labor
ESA Wage & Hour Division
McCoy Federal Building
100 West Capitol Street, Suite 608
Jackson, MS 39269

Howard Radzely
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200 Constitution Avenue, NW
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yet, to date, neither have come forth on its own to correct the wrongs and unlawful practices of Mitchell, McNutt & Sams, P.A.

Therefore, I am requesting that your Agency/Department get involved in this matter, and am requesting that your Agency/Department require the Administrator – Tammy D. McCuthen or Acting Administrator, Alfred Robinson – provide written responses to the Request for Review, and the 26 Issues raised therein, submitted to their Agency's attention via copy in April, 2004.

Mr. Clement, because of the procrastination and needless delay by the WHD and ARB, I hope you will agree that requesting that the Administrator and/or Acting Administrator for the WHD produce written responses to the Issues raised in Request for Review and the Request for Review itself by October 12, 2004, is reasonable.

There are approximately 26 numbered Issues raised in the Request for Review. Therefore, as a matter of law, I am requesting the Administrator/Acting Administrator for the Wage and Hour Division provide me with written responses to the Issues raised in my Request for Review and all supporting evidence the Administrator/Acting Administrator relied upon to derive their decision(s)/conclusion(s) on each. A COPY OF THE REQUEST FOR REVIEW (Brief Only)¹ is attached hereto for your reference.

I hope and believe that you will find that based upon the evidence in the record of the WHD, said agency has failed to follow its own procedures governing said matters. Therefore, said failure may be challenged under the Administrative Procedure Act. – See pp. 39 thru 42 of the Request for Review attached hereto.

Should you have further questions or comments, please do not hesitate to contact me.

Sincerely,



Vogel Newsome
Post Office Box 31265
Jackson, Mississippi 39286
(601) 885-9536 or 362-4910

cc: Tammy D. McCuthen, Administrator - Wage and Hour Division (w/ encls.)
Billy R. Jones, District Director (w/ encls.)
Howard Radzely, Office of the Solicitor (w/o encls.)
Steven J. Mandel, Esq., Associate Solicitor (w/o encls.)
Clyde Payne (w/o encls.)
James T. Allen, COO, MMS (w/ encls.)

¹ If the Solicitor General's Office is requesting the exhibits as well, copies are in the record and possession of the ARB.