U.S. Department of Labor

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

In the Matter of:

Dispute concerning the payment of prevailing wage rates and overtime pay by:

JAMEK ENGINEERING SERVICES, INC., Subcontrator,

PETITIONER,

and

Proposed debarment for labor standards violations by:

JAMEK ENGINEERING SERVICES, INC., Subcontractor; and JAMES EKHATOR, an individual and owner.

With respect to laborers employed on Contract Nos. CFDA 14-239 and 14-2369, for painting and related work of Hamline Station Apartments Project, located in St. Paul, Minnesota.

ARB CASE NO. 2020-0043

ALJ CASE NO. 2017-DBA-00021

DATE: June 23, 2021

Appearances:

For the Prosecuting Party, Administrator, Wage and Hour Division:
Kate S. O'Scannlain, Esq., Jennifer S. Brand, Esq., Sarah K. Marcus, Esq., Jonathan T. Rees, Esq., and Daniel Colbert, Esq.; *Office of the Solicitor, U.S. Department of Labor*; Washington, District of Columbia

For the Petitioner:
Aaron A. Dean, Esq. and Devlan Sheahan, Esq.; *Moss & Barnett*; Minneapolis, Minnesota

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

DECISION AND ORDER AFFIRMING IN PART, REVERSING IN PART AND VACATING AND REMANDING

PER CURIAM. This matter is before the Administrative Review Board (Board) pursuant to the provisions of the Davis-Bacon Act (DBA) and "Related Acts" (DBRA), 40 U.S.C. § 3141 et seq. (2006), and the applicable implementing regulations at 29 C.F.R. Parts 3 and 5 (2020). The DBRA applies the DBA's various wage requirements to contracts for certain federally assisted construction projects, such as the project at issue here. After an investigation, the Regional Administrator of the U.S. Department of Labor's Wage and Hour Division (Administrator) issued findings that Jamek Engineering Services, Inc. and its owner James Ekhator (collectively, "Petitioner") had violated DBRA labor standards for painting work performed on a federally funded construction project. Petitioner contested the findings and requested a hearing. After a hearing, an Administrative Law Judge (ALJ) found that Petitioner had violated the labor standards of the DBA and DBRA and debarred Petitioner from federal contract work for three years.

BACKGROUND

On September 18, 2014, Anderson Companies (Anderson) contracted to construct two buildings for the Hamline Station Apartments Project in St. Paul, Minnesota.[1] Anderson subcontracted with Petitioner, which is solely owned by James Ekhator, to paint the buildings.[2] The labor standards requirements of the DBRA, including the Copeland Act, 40 U.S.C. § 3145 (2002), and Cranston-Gonzalez National Affordable Housing Act of 1990, 42 U.S.C. § 12701 et seq. (1990), applied to the prime contract and the contract with Petitioner because the U.S. Department of Housing and Urban Development funded the project.[3]

Petitioner signed a letter of assent agreeing to be bound by the Project Labor Agreement (PLA) between Anderson and the Saint Paul Building and Construction

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[1] Decision and Order (D. & O.) at 4. Anderson contracted with Hamline Station Family Housing Limited Partnership and Hamline Station Limited Partnership. *Id.*

[2] *Id.* at 4, 28.

[3] *Id.* at 1. The full list of "Related Acts" are catalogued in 29 C.F.R. § 5.1(a).

Trades Council.[4] The PLA incorporates a collective bargaining agreement (CBA).[5] Under the CBA, contractors may employ journeymen, who are experienced tradesmen, and apprentices, who are less experienced workers.[6] On a job, the CBA allowed employers to use one apprentice for every three journeymen.[7] The applicable regulations required Petitioner to pay any apprentice working on a job site who exceeded that ratio the same rate as journeymen.[8] Under the DBA, the prevailing wage rate for painters on the project was $31.89 in base rates and $17.41 in fringe benefits for journeymen, and $15.95 in base rates and $13.06 in fringe benefits for apprentices.[9]

Petitioner hired four apprentices to work with five journeymen on the project.[10] On September 30, 2015, Petitioner began working on the project until Anderson terminated the contract on November 20, 2015.[11] Petitioner complied with the 3:1 journeymen to apprentice ratio for only one of the eight weeks of its work.[12] After City of St. Paul employee Alexander Dumke, who served as a point of contact for DBRA-related matters, notified Petitioner of its failure to use the required ratio in November, Petitioner issued restitution payments to apprentices based on the calculations provided by Dumke.[13]

Petitioner maintained certified payroll records and an internal payroll journal to document the workers' pay during the project.[14] For the last four weeks of the contract, Petitioner's certified payrolls stated that journeymen were paid $30.52 and apprentices were paid $14.01 an hour.[15] The journal, however, stated that

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4 D. & O. at 5.

5 *Id.*

6 *Id.* at 5.

7 *Id.*

8 29 C.F.R. § 5.5(a)(4)(i).

9 D. & O. at 5. Prevailing wage and fringe benefits rates are determined by the Secretary of Labor based on the rates for corresponding classes of laborers employed on similar projects in the state in which the work is performed. 40 U.S.C. § 3142(b) (2019).

10 D. & O. at 6.

11 *Id.* at 5.

12 *Id.* at 34-35.

13 *Id.* at 6, 21-22, 25-26.

14 *Id.* at 7-8.

15 *Id.* at 41.

journeymen were paid $32.57 and apprentices were paid $15.29.[16] The DBRA required Petitioner to submit accurate certified payrolls each week to the City of St. Paul.[17] Petitioner filed all but two of the certified payrolls late and left two of its employees off the payrolls for certain weeks.[18]

The PLA required Petitioner to provide the fringe benefits to the Painters Union Benefits Fund, which the DBRA allows contractors to pay quarterly, rather than weekly.[19] Petitioner represented on each of its certified payrolls that it had made or was to make the required payments to the fund.[20] However, Petitioner had only made one timely fringe benefit payment for the project work, and did not pay all required contributions to the fund until January 11, 2017. Further this was only after Anderson had agreed to pay the remaining amount from money it was withholding from Petitioner for its work on the contract.[21]

The CBA required employers to deduct "checkoff" union dues from employee paychecks.[22] Ekhator also paid the union initiation fees for six of the employees and deducted the amount from their paychecks.[23] Ekhator claimed that these deductions were part of a separate loan agreement between employer and employee.[24]

After receiving complaints that Petitioner had engaged in multiple DBRA violations, the Wage and Hour Division (WHD) began an investigation of Petitioner's labor standards compliance in November 2015.[25] The WHD had investigated Ekhator two years before for failure to pay fringe benefits and

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16 *Id.* at 42.

17 29 C.F.R. §§ 3.3(b), 3.5(a); D. & O. at 20.

18 D. & O. at 47.

19 *Id.* at 18, 45; 29 C.F.R. § 5.5(a)(1)(i).

20 D. & O. at 47. In the Statement of Compliance for the certified payrolls, Petitioner's accountant checked a box stating that "payments of fringe benefits as listed in the contract have been or will be made to the appropriate programs." Government's Exhibits (GX) 21.

21 D. & O. at 11, 30, 45.

22 *Id.* at 18. Checkoff dues are a percentage of an employee's pay submitted to the union to cover costs for negotiating, facilitating contracts, etc. *Id.*

23 *Id.* at 30.

24 *Id.* at 50.

25 *Id.* at 6.

counseled him on DBA requirements at the end of that investigation.[26] On August 16, 2016, the Administrator issued findings that Petitioner had violated the DBRA by failing to pay prevailing wages and fringe benefits, failing to adhere to the 3:1 ratio, and taking improper deductions.[27] Petitioner contested the findings and requested a formal hearing.[28] An ALJ held a four-day hearing on the matter.[29]

The ALJ found that Petitioner violated the DBRA by failing to pay its painters the required prevailing wage rate for the last four weeks of the project.[30] The ALJ based his finding on the certified payrolls submitted by Petitioner, rather than the internal payroll journal, which had rates that were $2.05 higher for journeymen and $1.28 higher for apprentices.[31] The ALJ found that the certified payrolls reflected the actual rate Petitioner paid the employees because the tax withholdings on both documents were based on the certified payroll rates.[32] The rates on the certified payrolls, unlike the rates in the journal, were below the prevailing wage rates.

The ALJ further found that Petitioner failed to maintain the CBA's required 3:1 ratio during seven of the eight weeks it worked on the contract, and failed to pay the journeymen-prevailing-wage rate to the apprentices who were entitled to that rate.[33] The ALJ noted that the restitution payments made to the apprentices by Petitioner did not cover all of the hours the ALJ found to be out of ratio.[34] The ALJ determined Petitioner owed a total of $3,110.13 in back wages to its employees.[35]

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26 *Id.* at 45.

27 *Id.* at 2.

28 *Id.*

29 *Id.*

30 *Id.* at 43.

31 *Id.* at 42-43. The journal showed journeymen were paid $32.57 an hour, while the certified payroll showed they were paid $30.52 an hour. *Id.* at 42. The journal showed that apprentices were paid $15.29 an hour, while the certified payroll showed they were paid $14.01 an hour. *Id.* at 43.

32 *Id.*

33 *Id.* at 43-44.

34 *Id.* at 44. The ALJ subtracted the amount Petitioner paid in restitution. *Id.* at 44-45.

35 *Id.* at 44-45.

The ALJ found that Petitioner violated the DBRA by failing to make timely contributions to the fringe benefits fund.[36] Though Petitioner eventually paid the amount owed, Petitioner still unlawfully failed to make the quarterly contributions on time.[37] The ALJ noted that the WHD had previously investigated Ekhator for failing to make fringe benefit payments and was therefore aware of the requirement.[38] The ALJ also found that Petitioner had violated the Copeland Act and DBA's requirement to file timely and accurate certified payrolls by representing that it had paid the fringe benefits, filing all but two weekly certified payrolls late, and omitting two employees from some payrolls.[39]

The ALJ found that Petitioner had violated the Copeland Act by deducting union initiation fees from its employees' paychecks because the CBA did not permit the deductions and they did not fall within any of the regulatory exceptions that permit certain loan agreements between employer and employee.[40] The ALJ, however, determined that Petitioner did not need to repay the deductions to the employees because the fees were still ultimately the employees' responsibility.[41]

Last, the ALJ ordered that Petitioner and Ekhator be debarred from federal contracting for three years.[42] The ALJ found that Petitioner purposefully, knowingly, and willfully falsified its certified payroll records and took unlawful deductions from employees' pay, which justified a three-year debarment under the DBRA.[43] The ALJ also found that Petitioner disregarded its obligations to its employees under the DBA by failing to pay the required wage and fringe benefit contributions and submitting false payrolls, which warranted a three-year debarment to run concurrently with the DBRA debarment.[44] Petitioner appealed the ALJ's decision to the Board thereafter.

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36 *Id.* at 45.

37 *Id.*

38 *Id.*

39 *Id.* at 46-47.

40 *Id.* at 48-50.

41 *Id.* at 50.

42 *Id.* at 54.

43 *Id.* at 52.

44 *Id.* at 53.

JURISDICTION AND STANDARD OF REVIEW

The Board has jurisdiction to hear appeals concerning questions of law or fact from decisions of ALJs in DBRA cases.[45] In reviewing an ALJ's decision in a DBRA case, the Board "shall act as the authorized representative of the Secretary of Labor" and "as fully and finally as might the Secretary of Labor concerning such matters."[46]

The Board's review of the ALJ's decision "is in the nature of an appellate proceeding," and the Board "will not hear [factual] matters de novo except upon a showing of extraordinary circumstances."[47] Under this standard of review, the Board "will assess the ruling to determine whether it is consistent with the applicable statute and regulations, and is a reasonable exercise of the discretion delegated to the Administrator to implement and enforce the DBA and DBRA."[48] The Board "may remand under appropriate instructions any case for the taking of additional evidence and the making of new or modified findings by reason of the additional evidence."[49]

DISCUSSION

Petitioner appeals several aspects of the ALJ's decision. First, Petitioner argues that the ALJ incorrectly found that the certified payrolls represented the wages its nine workers were paid. Second, Petitioner contests the ALJ's finding that it unlawfully submitted untimely and inaccurate certified payrolls. Third, Petitioner claims that the deductions for the workers' union initiation fees were lawful. Last, Petitioner contends that the ALJ's debarment order was inappropriate. We shall address each argument in turn.

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45 Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 85 Fed. Reg. 13186 (Mar. 6, 2020); 29 C.F.R. § 7.1(b).

46 29 C.F.R. § 7.1(d).

47 *Terrebonne Par. Juv. Just. Ctr. Complex*, ARB No. 2017-0056, slip op. at 3 (ARB Sept. 4, 2020) (quoting § 7.1(e)).

48 *Interstate Rock Prods., Inc.*, ARB No. 2015-0025, ALJ No. 2013-DBA-00010, slip op. at 9 (ARB Sept. 27, 2016).

49 29 C.F.R. § 7.1(e).

1. The Employees' Wages

Petitioner first contests the ALJ's finding that the certified payrolls, rather than the internal payroll journal, represented the wages its employees received. Petitioner claims this finding caused the ALJ to erroneously find that it paid the journeymen and the apprentices below the prevailing wage for the project's last four weeks. The DBRA incorporates the DBA's requirement that contractors pay their employees no less than the prevailing wage rate.[50] Under the DBA, the WHD determines the prevailing wages based on the rates prevailing in the area where the work is performed or from rates under CBAs.[51] The project's prevailing wage rate for journeymen was $31.89.[52]

Petitioner's internal payroll journal provided that journeymen were paid $32.57 an hour for the last four weeks, while the certified payrolls represented that they were paid below the prevailing wage rate at $30.52 an hour. Petitioner claims that the ALJ erred in finding that certified payrolls reflected the actual wage for purposes of calculating prevailing wage. Petitioner notes that the difference in gross pay between the two records for journeymen amounts to $2.05 an hour, which is the exact amount that it deducted for the union dues, and that the net pay in both records is the same. The certified payroll shows these permissible deductions for purposes of actual pay but the internal payroll includes $2.05 for purposes of showing an actual wage paid. Petitioner explains that the tax withholding amounts were the same in both records because the union fee deductions were tax-deductible and were not used in calculating the tax withholdings. Therefore, the journeymen received a wage above the prevailing rate during the last four weeks of the project and are not owed back wages.

The Administrator on appeal agrees that the ALJ erred in its finding that the certified payrolls represented employees' wage and should have relied on the internal payroll journal. Indeed, the evidence in the record demonstrates that Petitioner paid its workers the rate in the journal. The $2.05 discrepancy is consistently shown for all eight weeks of the project and for each journeyman's pay.

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[50] *Pythagoras Gen. Contracting Corp.*, ARB Nos. 2008-0107, 2009-0007, ALJ No. 2005-DBA-00014, slip op. at 4 (ARB Mar. 1, 2011) (citing 40 U.S.C. § 3142(a); 29 C.F.R. §§ 5.2(h), 5.5(a)(1)).

[51] *Pythagoras Gen. Contracting Corp.*, ARB Nos. 2008-0107, 2009-0007, slip op. at 4 (citing 40 U.S.C. § 3142(b); 29 C.F.R. § 1.3).

[52] D. & O. at 37.

Further, the CBA required Petitioner to deduct $2.05 per hour in "Check-off Dues" from the journeymen's pay, which the journal listed as "Union Dues."[53] We therefore reverse the ALJ's finding that the certified payroll records reflected the actual wage rate Petitioner paid its journeymen and vacate and remand the ALJ's award of back wages to the journeymen. On remand, the ALJ should calculate the wages paid to the journeymen based on the internal payroll journal.

Though the parties agree that the ALJ erred in relying on the certified payrolls, they disagree as to the back wages owed to the apprentices. Petitioner claims it only owes the apprentices $35.85 in back wages because it had already paid restitution for the underpayments for the out-of-ratio work and only slightly underpaid the apprentices for in-ratio work during the last four weeks. The Administrator contends that Petitioner did not fully compensate the apprentices with the restitution payments and still owes a minimum of $2,423.85.

We decline to address these arguments, however, because the ALJ also erroneously calculated back wages for the apprentices based on the certified payrolls. As was the case for the journeymen, the difference between the journal and certified payrolls for the hourly pay for the apprentices while in-ratio was $1.28, which is equal to the checkoff dues listed for apprentices in the CBA.[54] We therefore also vacate and remand the back wages award regarding the apprentices. On remand, the ALJ may consider the parties' arguments concerning the amount owed to the apprentices while correctly calculating the amount Petitioner paid the apprentices using the rates provided in the internal payroll journal.

2. Certified Payroll Deficiencies

Petitioner contests the ALJ's finding that it violated the DBRA by submitting late and inaccurate payrolls. The DBRA requires that contractors submit weekly payrolls that certify that (1) the payrolls contain all required information and that such information is correct and complete;[55] (2) each employee has been paid their

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53 GX-14, 15.

54 GX-15.

55 The required information includes "the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits . . .), daily and weekly number of hours worked, deductions made and actual wages paid." 29 C.F.R. § 5.5(a)(3)(i)-(ii).

full wages without any impermissible deductions; and (3) that each employee has been paid not less than the applicable wage rates and fringe benefits.[56] The DBRA requires contractors to submit the payrolls to the appropriate government agency within seven days after the regular payment date of the payroll period.[57]

Petitioner does not deny that it left employees off certain payrolls, submitted payrolls late several times, and stated that it was making the required fringe benefits contributions despite paying the contributions late. Petitioner claims the deficiencies were unintentional and provides several excuses including its accountant's inexperience with certified payrolls, and that Dumke's absence for several weeks prevented it from submitting timely payrolls because he needed to perform a certain action in the software used for submitting certified payrolls. These arguments are unpersuasive and lack any legal support.

Petitioner, however, further argues that its representations regarding fringe benefits contributions were not unlawful because Anderson withheld Petitioner's pay for the contract work after cancelling the contract, which prevented Petitioner from making the required contributions. On the certified payrolls' "Statement of Compliance," Petitioner's accountant checked a box to certify that "payments of fringe benefits as listed in the contract have been or will be made to the appropriate programs."[58] This reflects the DBRA's requirement that employers include in their payrolls the "rates of contributions or costs anticipated for bona fide fringe benefits" and submit a Statement of Compliance certifying that such information is accurate and being maintained.[59] Under the DBRA, employers must pay the fringe benefits contributions at least every quarter.[60] The Statement of Compliance for Petitioner's payrolls did not give an option to distinguish whether the contributions had been or would be paid to the fund.

In his decision, the ALJ found that Petitioner inaccurately stated that it had "paid fringe benefits on behalf of their employees," noting that Ekhator had testified

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56 § 5.5(a)(3)(ii)(B).

57 29 C.F.R. § 3.4(a).

58 GX-21.

59 29 C.F.R §§ 5.5(a)(3)(i), 5.5(3)(ii)(A)-(B).

60 § 5.5(a)(1)(i) ("[R]egular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) . . . are deemed to be constructively made or incurred during such weekly period.").

that he had only paid fringe benefits for work due for the third quarter of the year.[61] However, the ALJ never found whether Petitioner had "anticipated" that it was going to make the required contributions for the fourth quarter at the time it submitted the payrolls. If Petitioner had planned to make the contributions required for the fourth quarter at the time, its certified payrolls would be accurate because the contributions for that quarter were not yet due when Petitioner submitted the last seven of eight certified payrolls.[62] We therefore vacate the ALJ's finding that Petitioner's certified payroll statements regarding its fringe benefits contributions were inaccurate and remand for the ALJ to find whether Petitioner had anticipated that it would have the required contributions when it submitted the certified payrolls. We affirm all other aspects of the ALJ's finding that Petitioner failed to comply with the payroll submission requirements of the DBRA.

3. Union Initiation Fee Deductions

Petitioner claims that the union initiation fee deductions were lawful because the CBA allowed it to deduct administrative dues and did not prohibit providing loans for dues. However, the CBA's failure to prohibit the deductions does not make them permissible, because the DBRA requires for a CBA to "*provide for*" specific deductions.[63] The CBA here does not provide for such deductions. Rather, it permits deductions for "administrative dues . . . for each hour worked or paid for."[64] The union initiation fee was a flat fee that did not relate to the hours the employees worked. Conversely, administrative check off dues are tied to the amount an employee works.[65]

Petitioner also attempts to classify the deductions as a separate "loan agreement" between employee and employer, which it claims the CBA does not prohibit. Copeland Act regulations only permit certain loan agreements that deduct from employees' pay.[66] The regulations allow employee-authorized deductions "to

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61 D. & O. at 47. The contributions were for one day of work on September 30. *Id.* at 31.

62 Petitioner's last payroll was submitted on November 24, 2015. GX-21. The ALJ seemingly did not find that Petitioner's first certified payroll, which included work that occurred during the third quarter, was inaccurate.

63 *See* 29 C.F.R. § 3.5(i) (emphasis added) (alterations omitted).

64 D. & O. at 49.

65 *Id.*

66 DBA regulations include a list of deductions from employees' pay that "may be made without application to and approval of the Secretary of Labor." *See* 29 C.F.R. § 3.5.

enable [the employee] to repay loans to or to purchase shares in credit unions," to purchase "United States Defense Stamps and Bonds," or to make contributions to "to governmental or quasi-governmental agencies" or "charitable organizations."[67] The loan agreement for union initiation fees does not fall into any of these categories. The regulations also permit "deduction[s] of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest," which occurs only "when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds."[68] The loan agreements also do not fit into this category because Ekhator paid for the union initiation fees himself, rather than providing the cash to the employees to pay the fees.[69] Therefore, we affirm the ALJ's finding that Petitioner violated the Copeland Act by deducting the union initiation fees from the employees' paychecks.

4. Debarment

Petitioner contests the ALJ's decision to debar it from engaging in federal contracts for three years. The ALJ debarred Petitioner under the DBRA for "purposefully, knowingly, and willfully" falsifying its certified payrolls by stating that it was making fringe benefits contributions and took unlawful deductions from its employees. The ALJ further debarred Petitioner under the DBA for "disregard[ing] their obligations" to its employees by failing to pay the prevailing wage and fringe benefits and maintaining inaccurate payroll records. Petitioner argues that its payroll records deficiencies were accidental and cites its efforts to make restitution payments to the apprentices.

Because we vacate and remand the ALJ's finding that Petitioner submitted inaccurate payroll information regarding its fringe benefits contributions, we also vacate and remand the ALJ's decision to debar Petitioner under the DBRA, which relied on his finding that Petitioner submitted inaccurate payroll information.

Further, we vacate and remand the ALJ's decision to debar Petitioner under the DBA. The DBRA covers contracts for work on a government-funded construction

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67 29 C.F.R. § 3.5(e)-(h).

68 29 C.F.R. § 3.5(b).

69 D. & O. at 49-50.

project.[70] The DBA covers contracts for construction work on public buildings to which the U.S. Government is a party.[71] Each law has its own standard for ordering debarment from federal contracts.[72]

Here, the contract was for a construction project of a non-federal building that was funded by the U.S. Government but did not include the United States as a party. In two footnotes in their brief, the Administrator claims that debarment under the DBA was not warranted because the contracts at issue were not directly covered by the DBA.[73] The Administrator did not argue that the DBA applied to the ALJ, nor does it appear that either party had an opportunity to respond to the ALJ's decision to employ the DBA debarment standard. While the ALJ correctly considered the DBRA debarment standard in its analysis, the ALJ's concurrent consideration of the DBA standard compels us to vacate the three-year debarment and remand for further briefing to ensure the consequential enforcement tool is correctly applied.[74] On remand, the ALJ may request supplemental briefing as to whether the DBA's debarment standard also applies to the contract at issue.

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[70] 40 U.S.C. § 3145 (2002) ("The Secretary of Labor shall prescribe reasonable regulations for contractors and subcontractors engaged in constructing . . . public buildings . . . that at least partly are financed by . . . the Federal Government.").

[71] 40 U.S.C. § 3142(a) (2006) ("The advertised specifications for every contract . . . to which the Federal Government or the District of Columbia is a party, for construction, . . . of public buildings and public works of the Government . . . shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics.").

[72] *Compare* 29 C.F.R. § 5.12(a)(1) (providing that an ALJ can debar a contractor for up to three years for "aggravated or willful violations" of the DBRA), *with* § 5.12(a)(2) (providing that a contractor "shall" be debarred for three years for "disregard[ing] their obligations to employees" under the DBA).

[73] *See* Administrator's Brief at 16 n.3, 31 n.9.

[74] We further note that our decision to vacate the ALJ's findings that Petitioner failed to pay the prevailing wage and falsified its payroll records also justifies vacating and remanding the debarment under the DBA because the ALJ relied on those findings in ordering the debarment. *See* D. & O. at 52-53.

CONCLUSION

For the foregoing reasons, we **VACATE** and **REMAND** the ALJ's finding that Petitioner submitted inaccurate payroll information regarding fringe benefits contributions and the ALJ's debarment orders under the DBA and DBRA, **REVERSE**, **VACATE**, and **REMAND** the ALJ's back wages order, and **AFFIRM** all other aspects of the ALJ's decision. On remand, the ALJ may request supplemental evidence, briefings, and hearings and make additional findings as necessary.

SO ORDERED.