



In the Matter of:

**INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS
LOCAL 90, AFL-CIO,**

ARB CASE NO: 07-048

DATE: November 24, 2009

**In re: Prevailing Wage For
Electricians Performing Building
Construction Work in New Haven
County, Connecticut, and
Surrounding Areas, GWD No. CT200330001**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For Petitioner:

**Thomas W. Meiklejohn, Esq., *Livingston, Adler, Pulda, Meiklejohn & Kelly, P.C.*,
Hartford, Connecticut**

For Administrator, Wage and Hour Division:

**Roger W. Wilkinson, Esq., Jonathan Rees, Esq., William C. Lesser, Esq.,
Deborah Greenfield, Esq., *U.S. Department of Labor*, Washington, D.C.**

ORDER DISMISSING APPEAL

The International Brotherhood of Electrical Workers Local 90, AFL-CIO, (IBEW) petitioned the Administrative Review Board to review the December 19, 2006 final determination of the Administrator of the Wage and Hour Division pursuant to the Davis-Bacon Act.¹ The Administrator's final determination upheld a modification to the

¹ 40 U.S.C.A. §§ 3141-3148 (West Supp. 2003). The regulations that implement the Act are found at 29 C.F.R. Parts 1 and 5 (2009).

above-referenced wage determination issued by the Department of Labor's Wage and Hour Division.²

The Board received the IBEW's Petition for Review on January 19, 2007. On February 12, 2007, the Board issued a Notice of Appeal and Order Establishing Briefing Schedule.³ The Board ordered that the Administrator, Wage and Hour Division, file the administrative record of this case and a brief in response to the Petition for Review on or before March 14, 2007, and permitted the IBEW and all other parties and interested persons to file a reply brief on or before April 13, 2007. Neither the Administrator nor the IBEW, or any other party or interested person, filed anything further in this case.

The Board has jurisdiction to hear and decide "in its discretion" appeals concerning questions of law and fact from final decisions regarding wage determinations issued under the Davis-Bacon Act.⁴ "The Board may decline review of any case whenever in its judgment a review would be inappropriate or because of . . . other reasons."⁵

A review of the published modifications to the above-referenced wage determination indicates that on December 8, 2006, the Administrator raised the pertinent wage rates and fringe benefits at issue above the amounts even the IBEW argued for in its original request for reconsideration to the Administrator and in its Petition for Review before the Board.⁶ Consequently, the Board issued an Order to Show Cause on November 3, 2009, ordering the IBEW and the Administrator to show cause why the Board should not dismiss this case because it appears that the issue the IBEW presented is now moot.

In response, the IBEW confirmed by letter dated November 10, 2009, that its appeal is now moot. The Administrator filed the Deputy Administrator's Response to Order to Show Cause on November 18, 2009. Similarly, the Administrator does not object to the dismissal of this case because the issue presented by the IBEW on appeal is now moot and, therefore, requests that the Board dismiss the case with prejudice. Specifically, the Administrator properly noted that the relief the IBEW requested in its Petition for Review, if granted, could only be made applicable to future projects, and

² IBEW's Petition for Review, Attachment C.

³ The Administrative Review Board has jurisdiction to decide appeals from the Administrator's final decisions concerning DBA wage determinations. 29 C.F.R. § 7.1(b). *See* Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002).

⁴ 29 C.F.R. § 7.1(b).

⁵ 29 C.F.R. § 7.8(a).

⁶ *See* GWD CT03001 Mod. 55, Revised 12/08/06.

related solicitations and contracts, after a modified wage determination is issued.⁷ Thus, because the Administrator's published modifications to the above-referenced wage determination raised the pertinent wage rates and fringe benefits at issue on December 8, 2006, which exceed those that even the IBEW requested in its Petition for Review, the issue the IBEW presented is moot.

Accordingly, because the issue the IBEW presented on appeal is moot, we DISMISS this appeal with prejudice.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

⁷ 29 C.F.R. § 1.6(c)(3); Deputy Administrator's Response to Order to Show Cause at 3.