



In the Matter of:

**PAINTERS DISTRICT COUNCIL NO. 2
and PAINTERS LOCAL UNION NO. 1265
PETITION FOR REVIEW of GENERAL
DECISION NO. MO100079, RELATED to
the CLASSIFICATION of PAINTER:**

ARB CASE NO. 10-125

**BRUSH ONLY; PAINTER: ROLLER ONLY;
and PAINTER: SPRAY ONLY.**

DATE: October 15, 2010

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Petitioner:

James R. Kimmey III, Bartley Goffstein, LLC, St. Louis, Missouri

For the Administrator, Wage and Hour Division:

Roger W. Wilkinson, Esq., William C. Lesser, Esq., M. Patricia Smith, Esq., United States Department of Labor, Washington, District of Columbia

Before: Paul M. Igasaki, Chief Administrative Appeals Judge, and E. Cooper Brown, Deputy Chief Administrative Appeals Judge

FINAL DECISION AND ORDER DISMISSING APPEAL WITHOUT PREJUDICE

On July 19, 2010, the Painters District Council No. 2 and Painters Local Union No. 1265 (collectively, Painters) filed a petition seeking review, under the Davis-Bacon Act (DBA or the Act),¹ of a response by a Regional Wage Specialist to its initial request for reconsideration of three Painter classifications on General Decision No. MO100079. In response, the Administrative Review Board issued a Notice of Appeal and Order Establishing Briefing Schedule. On August 31, 2010, the Administrator of the Wage and Hour Division moved the Board to dismiss the petition for review without prejudice on the grounds that the matter is not ripe for review because “there has not been a final ruling in this matter.”²

¹ 40 U.S.C.A. §§ 3141-3148 (Thomson Reuters 2010). The regulations that implement the Act are found at 29 C.F.R. Part 1 (2010).

² Deputy Administrator’s Motion to Dismiss the Petition for Review and to Suspend the Briefing Schedule (Mot.) at 1.

The regulations addressing the Board's jurisdiction in cases like this one provide in pertinent part, "[a]ny interested person may appeal to the Administrative Review Board for a review of a wage determination or its application . . . after reconsideration by the Administrator has been sought pursuant to § 1.8 and denied."³ The Administrator averred:

Wage and Hour, which has the authority to issue final rulings (see 29 C.F.R. 5.13), does not consider the statements made in the June 16, 2010 letter from the Regional Wage Specialist to constitute a final ruling. The Specialist's response did not provide notice of a final ruling. To the contrary, it indicated that the Painters needed to submit an additional request to seek review and reconsideration from the Wage and Hour Administrator. Without a "final decision" subject to review, the Board lacks jurisdiction to render a decision and, therefore, should dismiss this matter without prejudice. *See* 29 CFR 7.9(a).⁴

Accordingly, the Board issued an order requiring Painters to "**SHOW CAUSE** no later than **September 24, 2010**, why we should not dismiss its Petition for Review without prejudice because the Petitioners have failed to obtain a final decision from the Administrator as required by 29 C.F.R. § 1.9." The Petitioners have not responded to the Board's show cause order. Therefore, we conclude that Painters does not oppose the Administrator's motion.

Painters has neither established that it has appealed from a decision of the Administrator on reconsideration, nor proffered any other basis on which the Board could properly assert its authority to hear this appeal. Consequently, we **DISMISS** Painters appeal without prejudice.⁵

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

³ 29 C.F.R. § 1.9.

⁴ Mot. at 4-5 (footnote deleted).

⁵ *Accord In re Gary J. Wicke*, ARB No. 02-062 (May 21, 2002); *Laborers International Union of N. Am. v. Acting Administrator, Wage & Hour Div.*, ARB No. 04-179 (Jan. 12, 2005); *South Florida Carpenters Regional Council*, ARB No. 02-069 (Sept. 25, 2002).