



**In the Matter of:**

**RAYMOND VAZQUEZ, President/Owner  
FLORIDA KEYS ELECTRIC INC.,  
Request for Electrician's Helper  
Classification Pursuant to  
Davis-Bacon Act Regulations under  
wage determination FL20100162.**

**ARB CASE NO. 12-088**

**DATE: October 25, 2013**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Petitioners:*

**James G. Brown, Esq.; Ford & Harrison LLP, Orlando, Florida**

*For the Respondent Deputy Administrator, Wage and Hour Division:*

**Jonathan T. Rees, Esq.; Jennifer S. Brand, Esq.; and M. Patricia Smith, Esq.;**  
*United States Department of Labor, Washington, District of Columbia*

**BEFORE: Paul M. Igasaki, Chief Administrative Appeals Judge; Joanne Royce,  
Administrative Appeals Judge; Lisa Wilson Edwards, Administrative Appeals Judge**

**ORDER OF DISMISSAL**

This case involves a contract subject to the Davis-Bacon and Related Acts (DBA), 40 U.S.C.A. §§ 3141-3148 (West Supp. 2013) and 29 C.F.R. Parts 1, 5 and 7 (2013). Florida Keys Electric, Inc. (Florida Keys) was a subcontractor on a prime contract involving a public middle school construction project, and sought to add a work classification to the applicable wage determination. The Chief, Branch of Construction Wage Determination (Branch Chief), denied the request on May 3, 2012. The Branch Chief denied a motion for reconsideration on June 20,

2012. Florida Keys petitioned the Administrative Review Board (ARB) for review. We dismiss the petition, as the case is moot.

## BACKGROUND

Florida Keys was a subcontractor on a prime contract involving the Horace O'Bryant Middle School construction project in Key West, Florida. On April 10, 2012, Florida Keys requested the Department of Labor to add an "Electrician Helper" work classification to the applicable wage determination (FL 20100162). The Branch Chief denied the request on May 3, 2012, due to lack of supporting information. On May 31, 2012, Florida Keys sought reconsideration, and supplemented the request with additional information. In a response dated June 20, 2012, the Branch Chief denied the request for failure to satisfy the regulatory requirement for designation of a helper classification as set out in 29 C.F.R. § 5.5(n)(4).<sup>1</sup>

On July 17, 2012, Florida Keys petitioned the ARB for review of the Branch Chief's response. Following the ARB's order establishing a briefing schedule, the Deputy Administrator of the Wage and Hour Division (Administrator) filed a Statement In Response To The Petition For Review, and stated, among other things, that the that the Branch Chief's response should be treated as the Administrator's final, appealable determination.

On September 19, 2013, the ARB issued an Order to Show Cause<sup>2</sup>, directing the parties to show cause whether the ARB should dismiss the case as moot because the contract work has been completed, and any ARB ruling would not affect the wage requirements of the contract. Alternatively, the ARB ordered the parties to show cause whether the case should *not* be dismissed because Florida Keys paid electrical workers on the construction project less than the full wage rate for a journeyman electrician in violation of the Administrator's final determination. In responses to the Show Cause Order, Florida Keys and the Administrator urged ARB to dismiss this case as moot.

## DISCUSSION

The contract from which this case arises was attached to the petition for review and states that "substantial completion" of the final phase of the construction project at issue must be reached by "April 30, 2013." In *Naval Supply Systems Command*, WAB No. 78-24, 1979 WL

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<sup>1</sup> Administrative Record Tab (AR) I.

<sup>2</sup> In the Order, the ARB determined that the Branch Chief's response would be treated as the Administrator's final, appealable determination consistent with the holding in *In re Diversified Collection Servs., Inc.*, ARB No. 98-062, slip op. at 2 (ARB May 8, 1998) (a non-final Wage and Hour Division decision must be so labeled or could be treated as a final decision). See also 29 C.F.R. § 5.13; 29 C.F.R. § 7.9(a).

29173, slip op. at 2 (Apr. 6, 1979), the Wage Appeals Board, our predecessor agency, addressed a similar issue concerning completion of a contract, and determined “that the question before it is moot because the contract has been awarded and work completed” and, thus the Wage Appeals Board could not issue a ruling with reference to the contract “which could affect the wage requirements of the contract.”

Under this precedent, if the contract work that is the subject of the petition in this case has been completed, the issue before ARB is moot unless the electrical contractor has not paid electrical workers on the construction project the full wage rate for a journeyman electrician as the Branch Chief’s June 20 and May 3, 2012, determinations required. If the contract work has been completed, but the electrical contractor paid any of its electrical workers on the contract *less* than the full wage rate for a journeyman electrician, the ARB could address the petition for review and determine whether the Administrator properly denied the addition of an electrician helper classification and wage rate to general Wage Determination No. FL20100162, which was incorporated in the construction contract.

In response to the ARB’s Order to Show Cause, Florida Keys states “that the petition should be dismissed because the question before the ARB is moot,” as the “contract work has been completed and any ARB ruling would not affect the wage requirements of the contract.”<sup>3</sup> The Administrator states that “[f]ollowing receipt of the Board’s order, the Administrator confirmed that the contract at issue is in fact complete.”<sup>4</sup> In addition, the Administrator states that the Wage and Hour Division’s “Miami District Office has resolved the Davis-Bacon compliance issues arising from petitioners’ performance on the contract at issue, including all issues relating to petitioners’ use of electrical workers on the project,” and “the petitioners have now paid all back wages assessed by [the Wage and Hour Division] in connection with petitioners’ work on the contract at issue.”<sup>5</sup>

Based on the facts presented by the parties, we determine that the case is moot because the contract work is complete, and Florida Keys paid its electrical workers on the construction project in accordance with the Administrator’s final determination.

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<sup>3</sup> Florida Keys Electric, Inc.’s Response to the Administrative Review Board’s Order to Show Cause.

<sup>4</sup> Response of the Principal Deputy Administrator to Order to Show Cause at 1.

<sup>5</sup> *Id.* at 1-2.

**CONCLUSION**

For the foregoing reasons, the case is **DISMISSED** as moot.

**SO ORDERED.**

**LISA WILSON EDWARDS**  
**Administrative Appeals Judge**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**JOANNE ROYCE**  
**Administrative Appeals Judge**