



**In the Matter of:**

**Dispute concerning published wage rates by:**

**ASSOCIATED GENERAL CONTRACTORS  
OF MAINE (AGC-Maine)**

**ARB CASE NO.: 13-043**

**DATE: April 30, 2015**

**With respect to wage determination ME100029,  
Modification 0 dated April 8, 2011, for laborer,  
concrete worker and laborer, demolition  
classifications in Cumberland County, Maine.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Petitioner:*

**Scott T. Lever, Esq.; Associated Contractors of Maine, Augusta, Maine**

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

**M. Patricia Smith, Esq.; Jennifer S. Brand, Esq.; William C. Lesser, Esq.; Jonathan  
T. Rees, Esq.; Quinn Philbin, Esq.; U.S. Department of Labor, Washington, District  
of Columbia**

*For Interested Party, Laborers' International Union of North America:*

**Barry Hinkle, Esq.; Patricia M. Gates, Esq.; Nina Fendel, Esq.; Sharon  
Seindenstein, Esq.; Van Bourg, Weinberg, Roger & Rosenfel; Alameda, California**

**BEFORE: Paul M. Igasaki, Chief Administrative Appeals Judge; E. Cooper Brown, Deputy  
Chief Administrative Appeals Judge; and Joanne Royce, Administrative Appeals Judge.**

## FINAL DECISION AND ORDER

This case arises under the Davis-Bacon Act (DBA), as amended, 40 U.S.C.A. § 3141, *et seq.*, (Thomson/Reuters 2015), and its implementing regulations, 29 C.F.R. Parts 1 and 7 (2014). On March 7, 2013, AGC-Maine filed a petition with the Administrative Review Board (ARB) for review of a final written decision of the Principal Deputy Administrator of the Department of Labor's Wage and Hour Division (Administrator). AGC-Maine originally sought reconsideration and review of general wage determination ME100029, Modification 0, dated April 8, 2011. Administrative Record Tab A. The Administrator issued a final ruling on January 2, 2013, denying AGC-Maine's request for reconsideration and reissuing the applicable wage determination as ME120018, Modification 1, dated November 16, 2012. Administrative Record Tabs F, H. AGC-Maine appealed to the ARB.

### JURISDICTION AND STANDARD OF REVIEW

The ARB has jurisdiction to decide appeals from the Administrator's final decisions concerning DBA wage determinations.<sup>1</sup> DBA proceedings before the ARB are appellate in nature, and the Board will not hear matters *de novo* except upon a showing of extraordinary circumstances. 29 C.F.R. § 7.1(e). This general prohibition against *de novo* review means that the Board generally will not conduct an evidentiary hearing, call witnesses, or make credibility determinations, but will rely on the record and arguments presented by the parties.<sup>2</sup> We have previously stated that "in matters requiring the Administrator's discretion, the Board generally defers to the Administrator."<sup>3</sup> We assess the Administrator's rulings to determine whether they are consistent with the DBA and its implementing regulations and are a reasonable exercise of the discretion delegated to the Administrator to implement and enforce the Act.<sup>4</sup>

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<sup>1</sup> 29 C.F.R. § 7.1(b); *see also* Secretary's Order No. 2-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378 (Nov. 16, 2012).

<sup>2</sup> *See, e.g., Framlau Corp. v. Dembling*, 360 F. Supp. 806, 813 (E.D. Pa. 1973).

<sup>3</sup> *Road Sprinkler Fitters Local Union No. 669*, ARB No. 10-123, slip op. at 6 (ARB June 20, 2012) (citing *Titan IV Mobile Serv. Tower*, WAB No. 89-14, slip op. at 7 (Sec'y May 10, 1991)).

<sup>4</sup> *Y-12 Nat'l Sec. Complex*, ARB No. 11-083, slip op. at 5 (ARB Aug. 8, 2013); *Titan IV Mobile Serv. Tower*, WAB No. 89-14, slip op. at 7; *see also Road Sprinkler Fitters Local Union No. 669*, ARB No. 10-123, slip op. at 6 (citing *Titan IV Mobile Serv. Tower*, WAB No. 89-14, slip op. at 7).

## **DISCUSSION**

On review of AGC-Maine's petition and briefs, the parties' briefs, and the Administrator's final ruling, we are persuaded that the Administrator's January 2, 2013 decision is consistent with the DBA and its implementing regulations and is a reasonable exercise of the discretion delegated to the Administrator to implement and enforce that Act. Further, we find no abridgement of AGC-Maine's due process rights in the docketing of the pleadings and reject AGC-Maine's contrary assertion.

Accordingly, the Administrator's final ruling is **AFFIRMED**.

**SO ORDERED.**

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

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

**E. COOPER BROWN**  
**Deputy Chief Administrative Appeals Judge**