



In the Matter of:

Disputes concerning the payment of prevailing wage rates by:

**LAKESHORE PLAZA HOLDING, LLC,
Prime Contractor,
J.J.O. CONSTRUCTION, INC.,
First-Tier Subcontractor, and
MONACO ELECTRICAL CONTRACTING, INC.,
Second-Tier Subcontractor,**

RESPONDENTS,

With respect to laborers and mechanics employed by Monaco Electrical Contracting, Inc., on storefront renovations and improvements at Shore Center Shopping Plaza, 22800-22840 Lakeshore Blvd. Euclid, Ohio,

and

In the Matter of:

Disputes concerning the payment of prevailing wage rates by:

**22300 LAKE SHORE BOULEVARD, LLC,
Prime Contractor,
J.J.O. CONSTRUCTION, INC.,
First-Tier Subcontractor, and
MONACO ELECTRICAL CONTRACTING, INC.,
Second-Tier Subcontractor,**

RESPONDENTS,

ARB CASE NO. 14-072

**ALJ CASE NOS. 2013-DBA-006
2013-DBA-007**

DATE: February 5, 2016

**With respect to laborers and mechanics employed
by Monaco Electrical Contracting, Inc., on storefront
renovations and improvements at the Lakeshore Plaza,
22300 Lakeshore Blvd. Euclid, Ohio.**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For Petitioner:

David M. Lynch, Esq., Euclid, Ohio

For Administrator, Wage and Hour Division:

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

Before: E. Cooper Brown, Deputy Chief Administrative Appeals Judge; Joanne Royce, Administrative Appeals Judge; and Luis A. Corchado, Administrative Appeals Judge

FINAL DECISION AND ORDER

This case arises under the Housing and Community Development Act, 42 U.S.C.A. § 5310 (Thomson Reuters 2015), and the American Recovery and Reinvestment Act of 2009, 123 Stat. 115, Pub. L. 111-5, both of which are Davis-Bacon Related Acts. The Davis-Bacon and related Acts (collectively the “DBRA”) incorporate the DBA’s various wage requirements into contracts between a non-Federal entity, such as a State or local government, and a contractor where the Federal government provides funding under the DBRA. Monaco Electrical, Inc. (Monaco) contracted to perform electrical services on the DBRA projects at issue. The United States Department of Labor’s Wage and Hour Division (WHD) investigated and assessed Monaco \$14,696.76 in back wages for failing to pay five electricians the prevailing wage rates and fringe benefits for electricians.

Pursuant to Monaco’s request for a hearing with an Administrative Law Judge (ALJ), on January 28, 2013, the WHD Administrator filed two Orders of Reference with the Office of Administrative Law Judges (OALJ) asserting that Monaco failed to pay prevailing wage rates and fringe benefits to the electricians. On May 29, 2014, the ALJ assigned to the case determined after a hearing that WHD had proven its case that Monaco owed \$14,696.76 in back wages. Thereafter, Monaco filed a petition for review of the ALJ’s Order with the Administrative Review Board (ARB). For the following reasons, we affirm the ALJ’s Order and dismiss Monaco’s petition.

BACKGROUND

This case involves two renovation projects in Euclid, Ohio: Shore Center Shopping Plaza and Lakeshore Plaza Project. The City of Euclid, Ohio received federal funding under the DBRA. Thus, Monaco was required to pay employees working on the projects DBA prevailing wages.

Both the Lakeshore Plaza and Shore Center Shopping Projects had separate contracts, which were nearly identical. J.J.O. Construction, Inc. was the first-tier subcontractor for both projects. Monaco (second-tier) subcontracted with J.J.O. to provide electrical work for both projects.

The prime contracts contained language requiring that J.J.O Construction comply with and pay Davis-Bacon prevailing wages. The second-tier subcontracts between J.J.O. and Monaco contained a general pass-through clause stating that the subcontractor was bound by the first-tier contract's terms and obligations. The second-tier contract noted in an attachment entitled "Description of Work" that there was a CD with several items including a "Davis Bacon Folder: prevailing wage payroll form, prevailing wage rate, Davis Bacon Poster." The CD with the applicable wage determinations was sent to Monaco at the end of June, but after at least one contract had been signed and work had begun.¹

Once Monaco learned that it had received the contract, it rebid with a laborers' prevailing rate for electrical work. Monaco claimed that it had attempted to find a rate for apprentice electrician because the employees at issue were neither trained nor certified as electricians. Monaco contacted an employee of the City of Euclid, who informed Monaco that the laborer rate was comparable to the wage rate for apprentice electrician. Employees testified that they ran wires, created joints, and installed lights on exterior and interior fixtures. According to Monaco, the workers installed the outlet boxes and ran the wires, but Michael and Joe Monaco did all the electrical design and technical supervision. Decision and Order (D. & O.) 14, 16,-17.

Dennis Meaney, the business manager of International Brotherhood of Electrical Workers, Local Union No. 38, testified that the electricians' trade union exclusively performed the work he observed at the two sites. D. & O. at 8. According to Stephen Banig, WHD investigator, the work was not something that would fall into the class of laborers. *Id.* at 10.

¹ The CD contained the applicable Ohio wage determination, which provided prevailing electrician and laborer rates but did not provide a rate for middle categories or apprentices. AX-5; Hearing Transcript at 190. Prevailing wages were based on union rates.

WHD investigated and concluded that the five employees at issue were paid less than the total prevailing rate for electricians. WHD determined that Monaco owed the employees \$8,788.48 in back wages for the Lakeshore Project and \$5,908.28 for the Shore Center Shopping Plaza Project. *Id.* at 20. The WHD assessed back wages from the date that Monaco received notice of the wages, that is from the date on which it received the CD.

Pursuant to a request for hearing with WHD, on January 28, 2013, the WHD Administrator filed two Orders of Reference with the OALJ asserting that Monaco failed to pay prevailing wage rates and fringe benefits. The ALJ found for WHD. This appeal follows.

JURISDICTION AND STANDARD OF REVIEW

Pursuant to Secretary of Labor Order No. 02-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378-69,380 (Nov. 16, 2012), the ARB is delegated the Secretary's authority to review cases arising under the DBRA. Consistent with that authority, the ARB has jurisdiction and authority to decide, in its discretion, appeals from decisions of Department of Labor ALJs arising under 29 C.F.R. Parts 1, 3 and 5, including decisions involving controversies concerning the payment of prevailing wage rates. 29 C.F.R. § 7.1(b) (2015).

DISCUSSION

The DBA requires that contractors pay no less than the prevailing wage to the various classifications of mechanics or laborers they employ. 40 U.S.C.A. § 3142(a) (Thomson Reuters 2015). The Department of Labor's Wage and Hour Division determines the prevailing wages and publishes them as "Wage Determinations." The prevailing wage rates contained in the wage determinations derive from rates prevailing in the area where the work is to be performed or from rates applicable under collective bargaining agreements. 40 U.S.C.A. § 3142(b); 29 C.F.R. § 1.3. "Prevailing" wages are wages paid to the majority of laborers or mechanics in corresponding classifications on similar projects in the area. The DBRA statutes require that any employer that enters into a federally assisted contract pay its employed laborers and mechanics the minimum prevailing wage and fringe benefit rates. Accordingly, the DBRA, the DBA, and its implementing regulations require that government contractors and subcontractors pay all mechanics and laborers prevailing wages and fringe benefits to which the employees are entitled. *Pythagoras Gen. Contracting Corp. v. Admin. Wage & Hour Div.*, ARB Nos. 08-107, 09-007, ALJ No. 2005-DBA-014 (ARB Feb. 10, 2011).

In this case, the ALJ listed twenty-eight findings of fact in support of his conclusion that WHD had demonstrated that the five workers were misclassified and paid as laborers when they should have been classified as electricians and paid electrician wages and fringe benefits. The

ALJ concluded that Monaco owed the employees \$8,788.48 in back pay for the Lakeshore Plaza Project and \$5,908.28 for the Shore Center Shopping Plaza Project.

In its petition for review, Monaco claims that the workers were properly classified as laborers because apprentices could perform the work and apprentices were paid at the rate of or nearly at the rate of laborer. Monaco claims that it was entitled to use laborer rates because the classifications and wage determination were not provided until fifteen-to-twenty days after the contract signature and after work had begun. Monaco also argues that it relied upon Euclid's statements in choosing laborer prevailing rates for the workers and work at issue and that it made several attempts to ascertain the proper rates for the workers. Monaco argues that its due process rights guaranteed by the Fourteenth Amendment were violated because it did not have notice of the wage classifications and rates until after work had begun.

Having reviewed the evidentiary record as a whole, and upon consideration of the parties' briefs on appeal, we conclude that the ALJ's findings of fact, upon which the ALJ determined that WHD had sufficiently demonstrated its assessment against Monaco for back wages in the amount of \$14,696.76, are supported by substantial evidence. We further conclude that the ALJ's legal analysis and conclusions of law on the issues are in accordance with applicable law. Monaco failed to demonstrate that the ALJ committed reversible error. None of Monaco's arguments demonstrate that the ALJ abused his discretion or that any alleged erroneous rulings preclude affirming the ALJ's dismissal. Accordingly, for the reasons articulated in the ALJ's Decision and Order, based upon the ALJ's findings of fact and conclusions of law, we affirm the ALJ's dismissal of Monaco's petition.²

CONCLUSION

The ALJ's Decision and Order dismissing Monaco's complaint is **AFFIRMED**.

SO ORDERED.

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

LUIS A. CORCHADO
Administrative Appeals Judge

² While we affirm the ALJ's dismissal of Monaco's claim, we do not endorse every collateral legal issue in the ALJ's legal analysis.