



In the Matter of:

Disputes concerning the payment of
prevailing wage rates by:

INTERSTATE ROCK PRODUCTS, INC.;
DONALD STRATTON; CRAIG
STRATTON; AND MICHAEL MADSEN;

RESPONDENTS,

and

Proposed debarment for labor standards violations by:

INTERSTATE ROCK PRODUCTS, INC.;
DONALD STRATTON; CRAIG STRATTON;
AND MICHAEL MADSEN;

**With respect to ironworkers, cement finishers,
machine operators, and carpenters employed by
Interstate Rock Products, Inc.; Donald Stratton;
Craig Stratton; and Michael Madsen on U.S.
Department of Interior: National Park Service
Contract No. 1443C2011080753, to redevelop
visitor facilities and install flash flood protection
in Willow Beach, Arizona.**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Prosecuting Party, Administrator, Wage and Hour Division:

**M. Patricia Smith, Esq.; Jennifer S. Brand, Esq.; William C. Lesser, Esq.; Jonathan
T. Rees, Esq.; and Roger Wilkinson, Esq.; U.S. Department of Labor, Office of the
Solicitor; Washington, District of Columbia**

For the Respondents:

William S. Robbins, Jr., Esq.; Polsinelli PC, Kansas City, Missouri

ARB CASE NO. 15-024

ALJ CASE NO. 2013-DBA-010

DATE: SEP 27 2016

BEFORE: Paul M. Igasaki, Chief Administrative Appeals Judge; Luis A. Corchado, Administrative Appeals Judge; and Joanne Royce, Administrative Appeals Judge. Judge Corchado, concurring.

FINAL DECISION AND ORDER

This appeal arises under the labor standard provisions of the Davis-Bacon Act (DBA), 40 U.S.C.A. §§ 3141-3148 (Thomson/West 2005 Supp. Thomson Reuters 2015), and the Contract Work Hours and Safety Standards Act (CWHSSA), 40 U.S.C.A. § 3701 et seq. (Thomson/West 2005 Supp. Thomson Reuters 2015), a “Davis-Bacon Related Act” (DBRA), as well as their applicable implementing regulations at 29 C.F.R. Parts 1, 5, 6 and 7 (2015). After a hearing, a Department of Labor (DOL) Administrative Law Judge (ALJ) determined that Interstate Rock Products, Inc., (Interstate) violated the DBA, as it did not maintain proper documentation of the hours its employees worked in various work classifications and therefore did not properly classify and compensate some (69) of its workers for the actual type of work they performed. In addition, the ALJ determined that Interstate violated the overtime provisions of the CWHSSA as it failed to properly compensate the employees for the overtime hours they worked. Thus, the ALJ ordered Interstate to pay \$425,204.43 in back wages owed to its workers because of the violations. Interstate does not challenge the ALJ’s determinations that it violated the DBA and CWHSSA or the ALJ’s calculations of the amount of back wages owed on appeal.

The ALJ further held that Interstate and its named corporate officers: Donald Stratton individually and as President, Craig Stratton individually and as Secretary-Treasurer, and Michael Madsen individually and as Controller, be debarred for three years under both the DBA and the CWHSSA. On appeal, Interstate and its named corporate officers contend that the ALJ erred in finding that Interstate and its named officers intentionally disregarded their obligations under the DBA and therefore met the standard for debarment under the DBA. Similarly, they contend that the ALJ erred in finding that Interstate and its named officers committed an aggravated or deliberate violation of the CWHSSA’s overtime provisions and therefore met the standard for debarment under the DBRA. Upon review, we affirm the ALJ’s decision that Interstate and its named corporate officers be debarred for three years under the DBA.

BACKGROUND

A. Governing Law

The DBA requires that contractors and subcontractors on certain federal construction projects pay no less than the “prevailing wage” to the “laborers” they employ. 40 U.S.C.A. § 3142(a). The DOL’s Wage and Hour Division determines the prevailing wage rates for various job classifications and publishes these rates in documents known as “wage determinations.” 29 C.F.R. Part 1. The prevailing wage rates contained in the wage determinations derive from rates prevailing in the geographic 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. Those rates

are determined based on wages paid to the majority of laborers in corresponding classifications on similar projects in the area. *See* 29 C.F.R. § 1.2(a)(1). Contracts and subcontracts subject to the DBA must include a whole host of provisions detailing the employers' legal obligations, 40 U.S.C.A. § 3142(c); 29 C.F.R. § 5.5(a), including those related to prevailing wages. 40 U.S.C.A. § 3142(c)(1); 29 C.F.R. § 5.5(a)(1). DOL regulations also require that contracts and subcontracts subject to the DBA include provisions mandating that employers maintain proper payrolls and basic employee records. 29 C.F.R. § 5.5(a)(3).

The CWHSSA requires that contractors and subcontractors on federally assisted or insured construction contracts of at least \$100,000 pay "time and a half" to all of their laborers and mechanics who work more than forty hours per week. 40 U.S.C.A. §§ 3702, 3701(b)(1)(B)(iii), 3701(b)(3)(A)(iii); 29 C.F.R. § 5.5(b). The CWHSSA is a DBRA, *see* 29 C.F.R. § 5.1(a)(3), although in contrast to most other DBRAs, it does not incorporate any of the specific labor standards from the DBA.

B. Factual Background

Interstate is a construction contractor based in Utah that has had federal construction contracts subject to the DBA every year since the 1980s.¹ The federal contract at issue in this case was with the National Park Service to make improvements at the Willow Beach area of the Lake Mead National Recreation Area in Arizona.² This contract was the largest multimillion dollar federal contract it had ever been awarded.³

The DOL's Wage and Hour Division began investigating Interstate in January 2011 to determine its compliance with its DBA and CWHSSA obligations.⁴ Ultimately, the Wage and Hour Administrator filed an Order of Reference on February 27, 2013, asserting violations of the DBA's and the CWHSSA's labor standards provisions and overtime provisions and seeking debarment of Interstate and its named corporate officers.⁵ Interstate requested a hearing and the ALJ held a hearing.⁶

C. Debarment under the DBA

In cases arising under DBA-covered contracts, the Comptroller General is required to "distribute to all departments of the Federal Government a list of the names of persons whom the Comptroller General has found to have disregarded their obligations to employees and

¹ ALJ's Decision and Order (D. & O.) at 23, 33.

² D. & O. at 1, 4.

³ D. & O. at 4.

⁴ *Id.*

⁵ D. & O. at 2.

⁶ *Id.*

subcontractors.” 40 U.S.C.A. § 3144(b)(1). Upon publication of the list, no contract may be awarded to any identified person or to any firm, corporation, partnership, or association in which the person has an interest for three years. 40 U.S.C.A. § 3144(b)(2). The DOL regulations implementing the DBA similarly provide for debarment of those “contractors or subcontractors *and their responsible officers . . .* who have been found to have disregarded their obligations.” 29 C.F.R. § 5.12(a)(2)(emphasis added).

Once grounds for debarment under the DBA have been established, the three-year debarment period is mandatory, “without consideration of mitigating factors or extraordinary circumstances.”⁷ In implementing this mandate and statutory prohibition, the Administrator is required to transmit to the Comptroller General the names of contractors or subcontractors, and their responsible officers, “who have been found to have disregarded their obligations to employees” under the DBA, along with the recommendation of the Secretary of Labor or the Secretary’s authorized representative regarding debarment. 29 C.F.R. § 5.12(a)(2). Neither the DBA nor its implementing regulations define the term “disregard” as it relates to an employer’s obligations.

But the regulations implementing the DBA impose a number of obligations on employers who participate in government construction contracts. Contractors and subcontractors are obligated to pay workers employed on the contract at least the locally prevailing wages (including fringe benefits) listed in the DBA wage determination in the contract. They must also properly classify employees according to the wage determination, maintain and submit accurate and timely payroll records, and comply with guidelines for employing apprentices and trainees. Employers confirm these obligations when they complete Statement of Compliance forms, in conjunction with their payroll submissions. The forms require the signatory to confirm that its workers have been paid “not less than the applicable wage rates contained in any wage determination incorporated into the contract” and that any apprentices employed on the project are participating in “a bona fide apprenticeship program” or are registered with the Bureau of Apprenticeship and Training.⁸

DBA violations do not, by themselves, constitute a disregard of an employer’s obligations within the meaning of the law—to support debarment, the evidence must establish a level of culpability beyond negligence.⁹ Disregard of DBA obligations must involve “some

⁷ *In re Thomas & Sons Bldg. Contractors*, ARB No. 00-050, ALJ No. 1996-DBA-037, slip op. at 4 (ARB Aug. 27, 2001).

⁸ *NCC Elec. Servs., Inc.*, ARB No. 13-097, ALJ No. 2012-DBA-006, slip op. at 7-8 (ARB Sept. 30, 2015).

⁹ *Id.*, slip op. at 8 (“[a]n innocuous mistake may trigger a violation of the DBA, but such mistakes, especially those that do not result in harm to employees, do not necessarily evidence an employer’s disregard of its DBA obligations”); *see also, e.g., In re Sundex, Ltd.*, ARB No. 98-130, ALJ No. 1994-DBA-058, slip op. at 6 (ARB Dec. 30, 1999).

element of intent.”¹⁰ The underpayment of prevailing wages, coupled with the falsification of certified payrolls, have constituted disregard of a contractor’s obligations to employees and, therefore, are sufficient to establish “intent” under the DBA debarment provisions.¹¹ In addition, an employer’s bad faith and an employer’s gross negligence regarding compliance have also been found to constitute disregard of DBA obligations.¹²

When an employer falsifies documents, it is disregarding its obligations, but an employer’s acts need not be the equivalent of intentional falsification to qualify as a disregard of its DBA obligations.¹³ The regulations distinguish the DBA’s “disregarded their obligations” standard from the standard governing debarment under the DBRAs. The regulatory language governing debarment under the DBRAs states:

Whenever any contractor or subcontractor is found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in § 5.1 other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years

29 C.F.R. § 5.12(a)(1) (emphasis added). This provision precedes the DBA debarment provision and contains a distinguishable standard for debarment, an aggravated or willful violation as opposed to intentionally failing to look at what the law requires. Thus, if an employer must act with an “element of intent,” that act need not rise to the level of a willful violation contemplated in the debarment standard under the DBRAs, but intentional failure to look at the law is sufficient. Intentional disregard of obligations may therefore include acts that are not willful attempts to avoid the requirements of the DBA.¹⁴ Consequently, the regulation does not allow contractors and subcontractors to ignore the rules and regulations applicable to DBA contracts,

¹⁰ *NCC Elec. Servs., Inc.*, ARB No. 13-097, slip op. at 8; *see also, e.g., In re Thomas & Sons Bldg. Contractors*, ARB No. 00-050, slip op. at 3; *In re Structural Concepts, Inc.*, WAB No. 95-02, slip op. at 3 (Nov. 30, 1995).

¹¹ *See, e.g., In re Star Brite Constr. Co.*, ARB No. 98-113, ALJ No. 1997-DBA-012, slip op. at 6 (ARB, June 30, 2000) (underpayment of prevailing wages coupled with the submission of certified payrolls “falsified to feign compliance with the DBA prevailing wage requirements”); *In re Sundex, Ltd.*, ARB No. 98-130, slip op. at 6-7 (underpayment of wages, coupled with failure to keep accurate records and the submission of falsified payroll records to conceal fact that prevailing wages were not paid held to constitute “serious violations of law, fully justifying debarment”).

¹² *See, e.g., In re P.J. Stella Constr. Corp.*, WAB No. 80-13, slip op. at 5-6 (Mar. 1, 1984); *In re Vicon Corp.*, WAB No. 65-03, slip op. at 6-7 (Dec. 15, 1965).

¹³ *NCC Elec. Servs., Inc.*, ARB No. 13-097, slip op. at 8-9.

¹⁴ *Id.*, slip op. at 9.

pay their employees less than prevailing wages, and avoid debarment by asserting that they did not intentionally violate the DBA because they were unaware of the Act's requirements.¹⁵

D. Debarment under the DBRAs

In contrast to the DBA, the CWHSSA, one of the DBRAs, does not include a debarment provision. Rather, it is the DOL's implementing regulations, promulgated pursuant to Reorganization Plan No. 14 of 1950, that provide for debarment for violations of DBRAs, prohibiting the awarding of federal contracts to those "found . . . to be in aggravated or willful violation" of the DBRA labor standards provisions and imposes debarment "for a period not to exceed 3 years." 29 C.F.R. § 5.12(a)(1) (emphasis added); *see also* 29 C.F.R. § 5.12(d).

While the DBA and its implementing regulations mandate a three-year period of debarment, the DBRA implementing regulations provide for a debarment period "not to exceed 3 years." 29 C.F.R. § 5.12(a)(1).¹⁶ While the regulation's language, "a period not to exceed 3 years," appears to afford some discretion about the length of debarment, one of our predecessor Boards, the Wage Appeals Board, made clear that, once the Administrator shows that a violation is "aggravated or willful," debarment should be for the full three years except in "extraordinary circumstances."¹⁷

Finally, although the regulations do not explicitly grant authority to debar individual corporate officers in DBRA cases, the regulations have been interpreted to grant such authority.¹⁸ The relevant regulation requires that violators be debarred from "receiv[ing] any federal contracts or subcontracts subject to any of the statutes listed in § 5.1." 29 C.F.R. § 5.12(a)(1)

¹⁵ *Id.*, slip op. at 9-10 (citing *Ray Wilson Co.*, ARB No. 02-086, ALJ No. 2000-DBA-014, slip op. at 12 (ARB Feb. 27, 2004)).

¹⁶ *See generally* *Adm'r, Wage & Hour Div. v. Coleman Constr. Co.*, ARB No. 15-002, ALJ No. 2013-DBA-004, slip op. at 16 (ARB June 8, 2016); *Thomas & Sons Bldg. Contractors, Inc.*, ARB No. 00-050, ALJ No. 1996-DBA-037, slip op. at 4-5 (ARB Aug. 27, 2001); *A. Vento Constr.*, WAB No. 87-51, slip op. at 5-7 (Oct. 17, 1990); *see also* *P&N Inc./Thermodyn Mech. Contractors, Inc.*, ARB No. 96-116, ALJ No. 1994-DBA-072, slip op. at 4 (ARB Oct. 25, 1996) (distinguishing between the standards under the DBA and those under the DBRA and applying the laxer standard under the DBA because that case, like this case, involved violations of both the DBA and an one of the DBRA).

¹⁷ *A. Vento Constr.*, WAB No. 87-51, slip op. at 5 ("unless a case presents extraordinary circumstances, an order imposing a three-year debarment period is warranted under the provisions governing debarment for 'aggravated or willful' violations of the labor standards provisions of the Related Acts."); *id.* at 14 ("The Board . . . concludes that 'aggravated or willful' violations of the labor standards provisions of the Related Acts warrant an order imposing a three-year debarment period absent extraordinary circumstances.").

¹⁸ *Facchiano Const. Co., Inc. v. U.S. Dep't of Labor*, 987 F.2d 206, 213-14 (3d Cir. 1993).

(emphasis added). The list includes not only all of the DBRAs, but also the DBA itself as well. 29 C.F.R. § 5.1(a)(1).

E. ALJ's DBA Debarment Decision

Initially, Interstate asserted that one reason for its misclassification of workers was that it was unaware that use of rebar in concrete work was considered “ironwork” in Arizona, and it had never had a prevailing wage contract involving such a work classification definition before. But the ALJ found its assertion “not credible” . . . “given its experience with DBA contracts.”¹⁹

Next, although Interstate’s employee time cards failed to properly contain work descriptions or list work classifications that the employees performed, Interstate asserted it was able to add such work classifications during its subsequent payroll process through the use of phase codes to reconstruct an employee’s daily activities. But the ALJ found that the phase codes are not the same as wage classifications, as Interstate admitted that the phase codes were used primarily for tracking costs and were not the same as wage classifications. In addition, the ALJ found such a system was prone to “errors through use of incorrect phase codes or misclassification” during the payroll process. Thus, the ALJ found Interstate’s assertion “not credible” that its officers could be aware of or recount what type of work each worker did on any given day during the subsequent payroll process that was done in Utah, not on the worksite in Arizona. The ALJ found such a “post-hoc reverse classification” procedure did not satisfy the DBA’s timekeeping work classification requirements that “tasks employers with recording work classifications as they occur, not guessing at this information after the fact,” to ensure the appropriate compensation of workers.²⁰

The ALJ further found that although a “ cursory reading” of the relevant wage determination would have demonstrated that there were multiple classifications within a category of work, Interstate’s misclassification violations were widespread across every category of work performed. Also, after being informed of the violations, the ALJ found that Interstate’s response to the investigation was “lackadaisical.”²¹

Given Interstate’s experience of working on DBA contracts since the early 1980s and, therefore, its apparent awareness of the DBA classification requirements to segregate and record different classifications of labor, the ALJ found that Interstate “disregarded its obligations to its workers to compensate them appropriately” due to inadequate procedures and found that Interstate’s failure to properly classify rebar, carpentry, and cement finishing work showed a willful violation of the DBA, or at least gross negligence, warranting a three-year debarment for Interstate and its named officers pursuant to 29 C.F.R § 5.12(a)(2)-(d)(1).²²

¹⁹ D. & O. at 32.

²⁰ *Id.* at 33.

²¹ *Id.*

²² *Id.* at 33-34.

F. ALJ's DBRA Debarment Decision

The ALJ found that Interstate employees testified that their time cards “appeared to have been falsified to reflect a 40-hour work week and to erase any overtime hours.”²³ Although Interstate’s named officers testified that they were not aware of this practice and that it was approved only at a lower supervisory level, the ALJ found this testimony was not credible, for if they claimed to be familiar with the type of work done on the jobsite during the subsequent payroll process, “then it is not credible” that they were unaware that workers were not properly recording their overtime hours. Moreover, the ALJ found that Interstate and its named officers were responsible for the actions of their lower level supervisors. Thus, the ALJ found the altering and falsifying of time cards to eliminate the record of overtime hours was a “purposeful” and “knowing” overtime violation of the CWHSSA overtime provisions, thereby establishing an aggravated and willful violation, and also showed gross negligence, warranting a three-year debarment of Interstate and its named officers pursuant to 29 C.F.R. § 5.12(a)(1).²⁴

JURISDICTION AND STANDARD OF REVIEW

The Administrative Review Board has jurisdiction to hear and decide, in its discretion, appeals from final decisions under the DBA and DBRAs.²⁵ In reviewing an ALJ’s decision in a DBA and DBRA case, the Board acts “as the authorized representative of the Secretary of Labor” and “shall act as fully and finally as might the Secretary of Labor concerning such matters.” 29 C.F.R. § 7.1(d). Pursuant to the Administrative Procedure Act, the Secretary, acting on behalf of the Department of Labor, “has all the powers which [the agency] would have in making the initial decision except as [the agency] may limit the issues on notice or by rule.” 5 U.S.C.A. § 557(b). One rule limiting the Board’s power in DBA and DBRA cases at 29 C.F.R. § 7.1 provides that this “Board is an essentially appellate agency.” 29 C.F.R. § 7.1(e).²⁶ Though the Board “will not hear matters de novo except upon a showing of extraordinary circumstances,” 29 C.F.R. § 7.1(e), the Board does decide questions of law de novo. It also “may remand under appropriate instructions any case for the taking of additional evidence and the making of new or modified findings by reason of the additional evidence.” *Id.*

²³ D. & O. at 34.

²⁴ *Id.*

²⁵ Secretary of Labor Order No. 02-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378 (Nov. 16, 2012); *see* 29 C.F.R. § 7.1(b) (“The [Administrative Review] Board has jurisdiction to hear and decide . . . appeals concerning questions of law and fact from final decisions under part[] . . . 5 of this subtitle”); 29 C.F.R. Part 5 (regulations addressing DBA and DBRA labor standards); 29 C.F.R. § 5.11 (setting forth procedures for disputes “concerning payment of prevailing wage rates, overtime pay, or proper classification”).

²⁶ *See also Adm’r, Wage & Hour Div. v. Coleman Constr. Co.*, ARB No. 15-002, ALJ No. 2013-DBA-004, slip op. at 7 (ARB June 8, 2016).

Where a ruling of the Administrator of the Wage and Hour Division is appealed, the Board will assess the ruling to determine whether it is consistent with the applicable statute and regulations, and is a reasonable exercise of the discretion delegated to the Administrator to implement and enforce the DBA and DBRAS.²⁷

DISCUSSION

Initially, we note that Interstate has not challenged on appeal the ALJ's determinations that Interstate violated the DBA, as Interstate did not properly classify and compensate some (69) of its workers for the actual type of work they performed, and violated the overtime provisions of the CWHSSA, as it failed to properly compensate the employees for the overtime hours they worked. Nor does Interstate challenge on appeal the ALJ's calculation of \$425,204.43 in back wages owed to Interstate workers because of the violations. Thus, the ALJ's determinations in these regards are affirmed.

In regard to the ALJ's order of a three-year debarment for Interstate and its named officers under the DBA, Interstate reiterates the contention on appeal that it made before the ALJ—that Interstate was unaware that use of rebar in concrete work was considered “ironwork” in Arizona. It also argues that it was unaware that carpentry wage rates and fringe benefits were required for certain concrete work. But the ALJ found its assertion regarding ironwork “not credible” “given its experience with DBA contracts.”²⁸ Because DBA proceedings before the Board are appellate in nature and the Board will not hear matters de novo except upon a showing of extraordinary circumstances under 29 C.F.R. § 7.1(e), the Board generally will not make credibility determinations and such review gives some level of deference to an ALJ's credibility determinations based on demeanor.²⁹ Generally, the Board will defer to an ALJ's factual findings, especially in cases in which those findings are predicated upon the ALJ's weighing and determining credibility of conflicting witness testimony.³⁰ “[I]t must be remembered that the ALJ heard and observed the witnesses during the hearing. It is for the trial judge to make determinations of credibility, and an appeals body such as the . . . Board should be loathe [sic] to reverse credibility findings unless clear error is shown.”³¹ Following our general practice, we defer to the ALJ's credibility findings in this case and accept all the ALJ's findings of fact based

²⁷ *Selco Air Conditioning, Inc.*, ARB No. 14-078 (ARB July 27, 2016); *In re Spencer Tile Co.*, ARB No. 01-052 (Sept. 28, 2001).

²⁸ D. & O. at 32.

²⁹ See *Associated Gen. Contractors of Me.*, ARB No. 13-043, slip op. at 2 (ARB Apr. 30, 2015); *Pythagoras Gen. Contracting Corp. v. Admin., Wage & Hour Div.*, ARB Nos. 08-107, 09-007, slip op. at 9 (ARB Feb. 10, 2011) (as reissued Mar. 1, 2011).

³⁰ *R & W Transp., Inc.*, ARB No. 06-048, slip op. at 6 (ARB Feb. 29, 2008).

³¹ See *Groberg Trucking, Inc.*, ARB No. 03-137, ALJ No. 2001-SCA-22, slip op. at 2-3 (ARB Nov. 30, 2004) (quoting *Homer L. Dunn Decorating, Inc.*, WAB No. 87-003, slip op. at 2 (Mar. 10, 1989)).

on those credibility determinations. Consequently, we reject Interstate's contention and affirm the ALJ's credibility determination as a reasonable exercise of his discretion.

Interstate also asserts that it did in good faith segregate and record different work classifications that its employees performed and paid them accordingly, using the job or phase codes. But the ALJ properly found that Interstate admitted that the phase codes were used primarily for tracking costs and that they were not the same as wage classifications. Further, the ALJ correctly found Interstate's assertion that its officers could recount what type of work each worker did during the subsequent payroll process "not credible" and thus, Interstate did not satisfy the DBA's timekeeping work classification requirements.³² Again, we defer to the ALJ's credibility finding.

Finally, Interstate argues that it has not violated the DBA and DBRAs on any covered contracts since the investigation in this case and argues that debarment in this case would not serve the remedial purpose of the Acts but would be merely punitive. But as the ALJ stated:

Debarment has consistently been found to be a remedial rather than punitive measure so as to encourage compliance and discourage employers from adopting business practices designed to maximize profits by underpaying employees in violation of the Act. *See United States v. Bizzell*, 921 F.2d 263, 267 (10th Cir. 1990); *S.A. Healy Co. v. Occupational Safety and Health Review Comm'n*, 96 F.3d 906, 911 (7th Cir. 1996). *See also Bae v. Shalala*, 44 F.3d 489, 493 (7th Cir. 1995).³³

As the ALJ determined, Interstate failed to keep proper time card records tracking the actual work its workers performed, which prevented Interstate from complying with the DBA obligations to pay workers according to the work performed. Moreover, as Interstate has not challenged the ALJ's determination that it violated the DBA by misclassifying workers whose work should have been classified as carpentry work, Interstate in essence admits it disregarded the DBA requirements or obligations that laborers be paid according to the work they perform, 29 C.F.R. § 5.5(a)(1)(i), resulting in the underpayment of thousands of dollars due to its workers. Interstate's admitted violations support the ALJ's finding that it disregarded its obligations under the DBA to its employees, thereby subjecting it to debarment.³⁴ Consequently, we affirm the

³² D. & O. at 33. *See Cody Zeigler Inc. v. Admin., Wage & Hour Div.*, ARB Nos. 01-014, -015; ALJ No. 1997-DBA-017, slip op. at 10, 12, 32 (ARB Dec. 19, 2003) (debarment proper for contractor who used phase codes to classify employees' work).

³³ D. & O. at 31-32.

³⁴ *See NCC Elec. Servs., Inc.*, ARB No. 13-097, slip op. at 10-11. Interstate also asserts that there is no evidence to support the ALJ's statements that it classified experienced workers as general laborers, that there were no journeymen on the project, or that the workers were unaware that the project was a prevailing wage job. In addition, Interstate contends that its response to the investigation was not lackadaisical, as the ALJ characterized it, as Interstate asserts that it provided the DOL all information that was requested, whereas the DOL did not timely provide Interstate the

ALJ's determination that Interstate willfully violated the DBA, or at least demonstrated gross negligence, warranting a three-year debarment for Interstate as reasonable and supported by the evidence of record.

Finally, Interstate has not raised any specific argument on appeal regarding why its named officers should not also be subject to debarment. The ALJ found that all of Interstate's named officers were veteran DBA contractors, who had been working on DBA contracts since the early 1980's, and, as such, were familiar or should have been familiar with DBA requirements. The ALJ concluded that their respective failures to set up adequate procedures to ensure that their employees' labor was properly classified under the DBA were sufficient to show gross negligence amounting to a willful DBA violation. Therefore, we also affirm the ALJ's determination that Interstate's named officers, Donald Stratton individually and as President, Craig Stratton individually and as Secretary-Treasurer, and Michael Madsen individually and as Controller, be debarred for three years under the DBA, for as the ALJ stated, "individuals responsible for managing the employing entity's affairs are also subject to debarment when the violation is aggravated or willful" under 29 C.F.R. § 5.12(a)(2).³⁵ Accordingly, the Secretary is directed to forward the names of Interstate and its named officers to the Comptroller General as provided by 41 U.S.C.A. § 6706(b).³⁶

CONCLUSION

The ALJ's determinations that Interstate violated the DBA as Interstate did not properly classify and compensate some (69) of its workers for the actual type of work they performed and violated the overtime provisions of the CWHSSA as it failed to properly compensate the


DOL's method for determining the amount of back wages owed. But these arguments are unavailing, as again Interstate has not challenged the ALJ's determination that it violated the DBA by misclassifying workers or the ALJ's calculations of the amount of back wages owed on appeal. Accordingly Interstate effectively admits that it disregarded the DBA requirements that it pay laborers according to the work they perform, which resulted in the underpayment of thousands of dollars due to its workers and supports the ALJ's finding that it disregarded its obligations under the DBA to its employees, subjecting Interstate to debarment.

³⁵ D. & O. at 31. See *Pythagoras*, ARB Nos. 08-107, 09-007, slip op. at 21-22; *Abhe & Svoboda, Inc.*, ARB Nos. 01-063, et al; ALJ Nos. 1999-DBA-20 through 27, slip op. at 37 (ARB July 30, 2004); *Cody Zeigler Inc.*, ARB Nos. 01-014, -015; slip op. at 32.

³⁶ The ALJ ordered a three-year debarment for Interstate and its named officers under both the DBA and DBRA to run "concurrently," see D. & O. at 35. Thus, because we affirm the ALJ's determination that Interstate and its named officers be debarred for three years under the DBA, we need not address debarment under the DBRA. Reduction of the term for debarment is only available under the DBRA implementing regulations, see 29 C.F.R. § 5.12(c); *A. Vento Constr.*, WAB No. 87-51, slip op. at 10-11, so debarment under the DBA in this case renders debarment under the DBRA redundant and moot. See *P&N Inc./Thermodyn Mech. Contractors, Inc.*, ARB No. 96-116, slip op. at 4 (distinguishing between the standards under the DBA and the DBRAs and applying the laxer standard under the DBA because that case involved violations of both the DBA and DBRAs).

employees for the overtime hours they worked are **AFFIRMED** as unchallenged on appeal. Similarly, the ALJ's order that Interstate pay \$425,204.43 in back wages to its workers because of the violations is **AFFIRMED** as unchallenged on appeal. Finally, for the reasons stated above, the ALJ's determinations that Interstate and Interstate's named officers, Donald Stratton individually and as President, Craig Stratton individually and as Secretary-Treasurer, and Michael Madsen individually and as Controller, be debarred for three years under the DBA is **AFFIRMED**. Accordingly, the Secretary is directed to forward the names of Interstate and its named officers to the Comptroller General as provided by 41 U.S.C.A. § 6706(b).


SO ORDERED.


PAUL M. IGASAKI
Chief Administrative Appeals Judge


JOANNE ROYCE
Administrative Appeals Judge

Judge Corchado, concurring.

The record supports the ALJ's finding that the failure to properly classify workers and pay them according to the appropriate classification was deliberately done in disregard of the law. This alone justifies a debarment in my view and, therefore, I need not comment on the additional violations.


LUIS A. CORCHADO
Administrative Appeals Judge