



**In the Matter of:**

**GARY J. WICKE**

**ARB CASE NO: 03-102**

**Dispute concerning the proper wage rates for truck drivers employed by E. Larsen Co., contractor to the Forest Service, United States Department of Agriculture, for land rehabilitation at various locations in the Nicolet-Chequamegon National Forests.**

**DATE: November 25, 2003**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Petitioner:***

**Gary J. Wicke, pro se, Gleason, Wisconsin**

***For Intervenor Building and Construction Trades Department, AFL-CIO:***

**Terry R. Yellig, Esq., Sherman, Dunn, Cohen, Leifer & Yellig, P.C., Washington, D.C.**

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

**Roger W. Wilkinson, Esq., Douglas J. Davidson, Esq., Steven J. Mandel, Esq., Howard M. Radzely, Esq., Acting Solicitor, U. S. Department of Labor, Washington, D.C.**

**FINAL ORDER REMANDING CASE TO ADMINISTRATOR**

This case arises under the Davis-Bacon Act (DBA), 40 U.S.C.A. § 3141 et seq. (West Supp. 2003).<sup>1</sup> Petitioner Gary J. Wicke filed a petition for review with the Board, requesting it to review a final decision of the Administrator of the Department of Labor's Wage and Hour Administration issued on May 5, 2003. On October 2, 2003, the Intervenor, Building and Construction Trades Department, AFL-CIO, filed a Motion

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<sup>1</sup> The DBA, formerly codified at 40 U.S.C.A. § 276A et seq. (West 2001), was revised without substantive change, effective August 21, 2002, and is now currently codified at 40 U.S.C.A. § 3141 et seq. (West Supp. 2003).

requesting the Board to either remand this case for the taking of additional evidence and the making of new or modified findings by reason of the additional evidence or requesting an extension of time in which to file a reply brief. In particular the Intervenor stated that information revealed by the contract between E. Larsen Co. and the Forest Service, which was not part of the record when the Administrator made her decision “might affect the Administrator’s determination of whether Davis-Bacon prevailing wage rates applied to some or all of the work petitioner Wicke performed transporting materials from burrow pits to the locations of the various jobs specified in the contract.”

Furthermore, although the Department of Labor amended the regulations implementing the DBA found at 29 C.F.R. § 5.2 (2002), effective January 19, 2001, *see* 65 Fed. Reg. 80268-80277 (Dec. 20, 2000), the work on the contract at issue in this case was completed in 2000, Administrative Record, Tabs A, F.

Both the Administrator and Wicke were given the opportunity to respond to the Intervenor’s motion.<sup>2</sup> Neither party objects. Accordingly, for good cause shown, we **DISMISS** the petition for review and **REMAND** the case to the Administrator for the taking of additional evidence as requested in the Intervenor’s motion and to issue a final decision which is based upon the evidence and which addresses which regulations apply to the contract at issue in this case.

**SO ORDERED.**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

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<sup>2</sup> E. Larsen Co. [Larsen] waived its right to file briefs in this case by letter dated June 16, 2003, instead choosing to rely upon the Administrator’s submissions. In addition, a copy of the Intervenor’s motion was served on Larsen, but Larsen has not responded.