



In the Matter of:

**THE KORTE COMPANY, PIASA  
COMMERICAL INTERIORS INC.  
and ANGELA BRUMMETT d/b/a AB  
DRYWALL,**

**ARB CASE NO. 03-157**

**DATE: January 30, 2004**

**PETITIONERS,**

v.

**ROBERT D. HOWSE and THE UNITED  
STATES DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT, REGION V,**

**RESPONDENTS.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Petitioners:*

*David M. Duree, Esq., David M. Duree & Associates, P.C., O'Fallon, Illinois*

**FINAL ORDER DISMISSING APPEAL AND REFERRING CASE TO THE  
ADMINISTRATOR**

This case arose when Robert D. Howse filed a complaint and affidavit claiming that he was not paid the appropriate wages and/or wage rates on a project in accordance with the Davis-Bacon Act, 40 U.S.C.A. § 3141 *et seq.* (West Supp. 2003)(DBA or the Act). On August 20, 2003, the Region V Labor Relations Officer, Department of Housing and Urban Development (HUD), issued a determination in Howse's favor, finding that AB owed Howse \$18,765.89 in unpaid wages.

Petitioners, The Korte Co., Piasa Commercial Interiors, Inc. and Angela Brummet d/b/a/ AB Drywall have petitioned the Administrative Review Board "for review, and

appeal and, request an evidentiary hearing, with respect to the August 20, 2003 decision of the U.S. Department of Housing and Urban Development, Region V.”

On September 30, 2003, the Board ordered the Petitioners to show cause why the appeal should not be dismissed. The Board stated that the Petitioners had cited to no statutory authority, nor was the Board aware of any statutory authority investing the Board with jurisdiction to review a determination of a HUD Labor Relations Officer. The Board noted that pursuant to 29 C.F.R. Parts 5 and 6, it has jurisdiction to entertain an appeal from a final decision of the Administrator of the Department of Labor’s Wage and Hour Administration (Administrator), as provided in 29 C.F.R. § 5.11(c)(3) and from the decision of a Department of Labor Administrative Law Judge (ALJ) as provided in 29 C.F.R. §§ 5.11(b)(3), 6.34 (2003). However, Korte appealed from neither the final decision of the Administrator, nor from an ALJ’s decision.

Korte Co. responded with a detailed explanation of its extensive, but ultimately unsuccessful attempts to ascertain the correct procedure for obtaining review of the Labor Relations Officer’s decision and an evidentiary hearing.<sup>1</sup> The Petitioner noted that the Labor Relations Officer’s decision had instructed:

In the event that AB Drywall, Piasa Commercial Interiors Inc., or the Korte Company choose to appeal this final determination to the U.S. Department of Labor, you must file a formal appeal within 30 days of the date of this letter in accordance with Title 29 of the Code of Federal Regulations (Part 5, 6, & 7).

The Labor Relations Officer did not cite to a specific provision of the regulations providing for a direct appeal from her decision to the Board and in fact, the regulations contain no such provision. However, the regulations do provide the procedure for “resolution of disputes of fact or law concerning payment of prevailing wage rates, overtime pay, or proper classification.” 29 C.F.R. § 5.11(a). These procedures may be invoked by the Administrator, upon referral of a Federal Agency or upon the contractor’s or subcontractor’s request. *Id.* The regulations further provide that once this provision is invoked, the Administrator shall notify the contractor and/or subcontractor of “the investigation findings”<sup>2</sup> and that the contractor and/or subcontractor may then request a hearing before a Department of Labor ALJ, if the contractor and/or subcontractor believes that there are relevant facts at issue. 29 C.F.R. § 5.11(b), (c).

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<sup>1</sup> Although invited to do so, the Administrator did not respond to the Board’s Order.

<sup>2</sup> The regulations provide, “The Administrator shall cause to be made such investigations as deemed necessary, in order to obtain compliance with the labor standards provisions of the applicable statutes listed in § 5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes listed in § 5.1.” 29 C.F.R. § 5.6(b).

Petitioner has obviously attempted to invoke the section 5.11 procedures, but has done so in the wrong forum. Accordingly, we **DISMISS** the appeal and refer this case to the Administrator for further proceedings in accordance with 29 C.F.R. § 5.11.

**SO ORDERED.**

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

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