



In the Matter of:

**LABORERS INTERNATIONAL UNION OF
NORTH AMERICA, EASTERN REGION,
and LABORERS LOCAL UNION 199,**

ARB CASE NO: 04-179

DATE: January 12, 2005

PETITIONERS,

v.

**ACTING ADMINISTRATOR, WAGE & HOUR
DIVISION, UNITED STATES DEPARTMENT
OF LABOR,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Acting Administrator, Wage and Hour Division:

**Joan Brenner, Esq., Steven J. Mandel, Esq., Howard M. Radzely, Solicitor of Labor,
U.S. Department of Labor, Washington, D.C.**

For the Petitioner:

**Joseph R. Biden, Esq., Joseph K. Koury, Esq., Bifferato, Gentillotti & Biden,
Wilmington, Delaware**

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

The Petitioners, the Laborers International Union of North America, Eastern Region, and Laborers Local Union 199 (LIUNA) seek review, pursuant to the Davis Bacon Act, 40 U.S.C.A §§ 3141-3148 (West Supp. 2003) and 29 C.F.R. Part 7 of a letter the Administrator of the Wage and Hour Division, Tammy D. McCutchen,¹ wrote to Senator Thomas R. Carper on April 21, 2004. The letter responded to Senator Carper's

¹ Tammy D. McCutchen has resigned from her position as the Wage and Hour Administrator. Alfred B. Robinson, Jr. is the Acting Administrator.

letter enclosing an inquiry from Brian M. P. McGlinchey, LIUNA's Director of Government Affairs for the Eastern Regional Office, to the Senator concerning whether the federally-assisted renovation project at the Central YMCA in Wilmington, Delaware is subject to the Davis-Bacon and Related Acts (DBRA) labor standards provisions. The Administrator stated in her letter to Senator Carper that, based on the information available at the time, the project was not subject to the DBRA labor standards provisions.

On September 28, 2004, the Administrative Review Board issued a notice of Appeal and Order Establishing Briefing Schedule. On October 25, 2004, the Wage and Hour Acting Administrator filed a Motion to Dismiss Petition for Review Due to Lack of Finality and to Suspend the Briefing Schedule (Motion to Dismiss). In the Motion, the Acting Administrator stated that LIUNA's petition for review is premature and that the Board should dismiss the appeal "as there has been no final agency action and accordingly, it is not ripe for review by the Board." Motion to Dismiss at 1. The Acting Administrator further asserted that LIUNA's petition for review raised matters not included in the Administrator's letter to Senator Carper. The Acting Administrator averred that he should address these matters in the first instance, before the Board considers them. Finally, the Acting Administrator agreed that if the Board grants its motion that it will treat LIUNA's petition to the Board as a request for a final ruling and, "based upon the information contained in LIUNA's Petition for Review and any further information that may be provided, will issue a final ruling pursuant to regulatory procedures." Motion to Dismiss at 5.

On November 10, 2004, LIUNA filed a reply to the Acting Administrator's Motion to Dismiss. LIUNA stated:

Given the Acting Administrator's representation that he will treat the Petition as a request for a final ruling and will issue such a ruling following his receipt of any further information (but without conceding the ripeness of the Petition in light of the letter opinion relied upon by the Petitioners), the Petitioners do not oppose the dismissal of this action, provided that such dismissal is without prejudice to appeal any adverse "final" ruling that may be made by the Acting Administrator with respect to this case, and assuming that the Acting Administrator makes his determination within a reasonable amount of time from any dismissal issuing from the Board.

Petitioner's Reply at 2-3. Accordingly, we **DISMISS** LIUNA's petition for review and **REMAND** the case to the Acting Administrator to issue a final ruling pursuant to regulatory procedures.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge