



In the Matter of:

MIAMI ELEVATOR COMPANY

ARB CASE NO. 97-092

**With respect to Request for
Conformance of employee classification
under Wage Determination
No. FL940002 applicable to Contract
No. GS-04P-94EX-C0046, U.S.
Courthouse II, New Construction.**

DATE: September 30, 1997

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ORDER OF DISMISSAL

Petitioner filed a Petition For Review ("Petition") in this matter on April 30, 1997. On May 5, 1997, the Board issued a Notice of Appeal and Order Establishing Briefing Schedule. On May 20, the International Union of Elevator Constructors filed a Notice of Intention to Intervene and Participate. On May 29, 1997, the Acting Administrator ("Administrator"), Wage and Hour Division ("Wage and Hour") filed a Motion to Dismiss for Lack of Ripeness.^{1/}

Petitioner seeks the Board's review of a negative response by the General Services Administration ("GSA"), the contracting agency, to its conformance request. Petitioner seeks to add the classification "elevator helper" to the wage determination governing its construction contract with GSA. The contracting agency's advice, which was apparently based on an April 5, 1995 letter from Wage and Hour to GSA, was relayed to Petitioner by letter of April 4, 1997. Petitioner chose to petition the Board for review upon receipt of this advisory determination.

Because the April 5th letter does not constitute a final decision of the Administrator, Petitioner's request is untimely, 29 C.F.R. §7.9, and thus, not ripe for review by the Board. The Board may properly review only final agency decisions with regard to conformance requests and the matter before us here does not fall within that category. *See Damon Insulation Company*, Wage Appeals Board Case No. 93-09, June 18, 1993; *see also, e.g., JED-SPG, Inc. and Jones E. Davis*, Case No. 84-SCA-48, Dec. of the Under Secretary, July 29, 1985 (review denied under Service Contract Act of 1965, as amended, 41 U.S.C. §351 *et seq.* in absence of a properly reviewable decision). The Administrator has indicated that he intends to treat the instant petition

^{1/}As noted by the Administrator in his motion, because Wage and Hour requests dismissal "without prejudice" in this matter, the administrative record in this case was not forwarded to the Board.

as a request for reconsideration and will accordingly issue a final decision in response. The Petition is **DENIED** and **DISMISSED WITHOUT PREJUDICE**. Conversely, the Motion of the Administrator is **GRANTED**.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member

JOYCE D. MILLER
Alternate Member