



In the Matter of:

**U.S. FIRE PROTECTION, INC.**

**ARB CASE NO. 98-140**

***In re:* Palestine Gardens North  
Number 084-EE-0019-WAH  
Wage Decision No. MO970009  
Kansas City, Missouri**

**DATE: August 17, 1998**

### **ORDER OF DISMISSAL**

In response to the Petition for Review filed in this case arising under the Davis-Bacon Act, 40 U.S.C. §276a *et seq.*, and 29 C.F.R. Part 7 (1997), the Acting Administrator of the Wage and Hour Division has filed a Motion to Dismiss for Lack of Ripeness and to Suspend the Briefing Schedule. According to the Acting Administrator, the Administrative Review Board has no jurisdiction and should dismiss the case without prejudice because Wage and Hour has not issued a final agency decision as required under 29 C.F.R. §7.9(a). The Acting Administrator further states, however, that it will treat the petition, which included additional information not previously considered by Wage and Hour, as a request for reconsideration and will promptly issue a final ruling on the conformance issue raised. Petitioner, Fire Protection, Inc., has not responded to the Acting Administrator's motion.

The applicable regulation at Section 7.9(a) provides:

Any party or aggrieved person shall have the right to file a petition for review with the Board . . . within a reasonable time from any final decision in any agency action under part 1, 3, or 5 of this subtitle.

29 C.F.R. §7.9. In this case, Fire Protection, Inc. seeks review of an April 1, 1998 letter from the Section Chief of the Wage and Hour Division to the U.S. Department of Housing and Urban Development concerning the subject contract. The letter advises that the decision is subject to further review if any interested party should wish to present additional information and also provides a contact person within the Wage and Hour office to whom questions should be directed. We agree with the Acting Administrator that the April 1, 1998 letter does not constitute a final agency decision pursuant to 29 C.F.R. §7.9 and that Fire Protection, Inc's petition to the Board therefore is premature. *See Damon Insulation Co.*, WAB Case No. 93-09 (June 18, 1993).

Accordingly, we grant the Acting Administrator's motion and dismiss the petition without prejudice.<sup>1/</sup> In accordance with the Motion to Dismiss, the Acting Administrator shall treat the petition as a request for reconsideration and issue a final ruling on or before **sixty (60)** days from the date of this order.

**SO ORDERED.**

**PAUL GREENBERG**

Member

**CYNTHIA L. ATTWOOD**

Acting Member

---

<sup>1/</sup> As we are granting the Acting Administrator's Motion to Dismiss, we need not grant his motion to suspend the briefing schedule.