



In the Matter of:

**ADMINISTRATOR, WAGE AND
HOUR DIVISION, UNITED STATES
DEPARTMENT OF LABOR,**

ARB CASE NO. 01-031

ALJ CASE NO. 2000-NQW-1

PROSECUTING PARTY,

DATE: MAY 23, 2001

and

DAVID EDDIS AND GERALD EDDIS,

COMPLAINANTS,

v.

LB&B ASSOCIATES INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

SUPPLEMENTAL BRIEFING ORDER

In this case, Petitioners David Eddis and Gerald Eddis (together, "the Eddis brothers") seek to exercise a "right of first refusal" to be rehired as maintenance workers on a service contract at the Federal Building and Courthouse complex in Philadelphia, Pennsylvania. Their claim is based upon Executive Order ("E.O.")12933, Nondisplacement of Qualified Workers Under Certain Contracts," 59 Fed. Reg. 53559 (Oct. 24, 1994), and the implementing regulations at 29 C.F.R. Part 9 (2000) ("Part 9 regulations").

Pursuant to the Part 9 regulations, the Eddis brothers filed a complaint with the Labor Department in October, 1999, asserting that they had been denied their rights by Respondent LB&B Associates, Inc ("LB&B"). The Wage and Hour Division investigated the complaint.

In May 2000 the Regional Administrator of the Division concluded that the complaint had merit. LB&B disputed this determination and requested a hearing before an administrative law judge ("ALJ"). The ALJ issued a Decision and Order in the case on January 9, 2001, ruling for the company and dismissing the Eddis brothers' complaint. Eddis v. LB&B Associates, Inc., ALJ No. 2000-NQW-0001. Both the Wage and Hour Administrator and the Eddis brothers appealed to this Board.

On February 17, 2001, the President issued Executive Order 13204, revoking E.O. 12933. 66 Fed. Reg. 11228. The new Executive Order directed the Secretary of Labor to "promptly move to rescind any orders, rules, regulations, guidelines, or policies implementing or enforcing Executive Order 12933 of October 20, 1994, to the extent consistent with law." In addition, it directed the Secretary to "terminate, effective today, any investigations or other compliance actions based on Executive Order 12933[.]"

Based on this directive in E.O. 13204, on February 22, 2001, the Acting Administrator withdrew his Petition for Review, explaining that he was "of the view that the Petition is covered by the Executive Order's directive to `terminate any investigations or other compliance actions based on Executive Order 12933.'" Emphasis supplied. While withdrawing his own Petition, the Acting Administrator did not move to dismiss the remaining appeal that had been filed by the Eddis brothers.

Pursuant to E.O.13204, the Secretary rescinded the Part 9 regulations, effective March 23, 2001. 66 Fed. Reg. 16126.

LB&B has moved to dismiss the Eddis brothers' appeal, asserting that the Eddis brothers' appeal constitutes a "compliance action" barred under E.O. 13204, and that the basis of the Eddis brothers' action, E.O. 12933 and the Part 9 regulations, no longer have any force or effect. The Eddis brothers have opposed the motion to dismiss.

LB&B's motion raises issues not addressed by the parties. Accordingly, the Board hereby orders the Eddis brothers and LB&B, to submit supplemental briefs addressing the following questions:

- (1) Whether E.O. 13204 applies retroactively in such a manner that it extinguishes the claims asserted by the Eddis brothers in this case?
- (2) If E.O. 13204 does not apply retroactively, whether the Board's consideration of the Eddis brothers' Petition for Review is a "compliance action" within the terms of the Executive Order, and must therefore be terminated?

Recognizing that the Wage and Hour Administrator, U.S. Department of Labor, is no longer a party to this action, the Board nevertheless requests that the Wage and Hour Administrator also submit a brief addressing the foregoing issues as *amicus curiae*.

The supplemental briefs shall not exceed twenty (20) double-spaced pages in length, and shall be postmarked no later than June 25, 2001.

FOR THE ADMINISTRATIVE REVIEW BOARD:

Janet R. Dunlop
General Counsel

NOTE: Questions regarding any case pending before the Board should be directed to the Board's staff assistant, Ernestine Battle.

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