



In the Matter of:

**ENVIRONMENTAL CHEMICAL
CORPORATION**

ARB CASE NO. 96-113

(Formerly BSCA CASE NO. 96-02)

**With respect to review and reconsideration
of classification conformance ruling under
the Service Contract Act as applied to
Contract No. DACA87-92-D-0126, Camp Elliott,
San Diego, California**

DATE: October 7, 1996

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

ORDER

This matter is before the Board pursuant to motions filed by the Laborers' International Union of North America, AFL-CIO, and International Brotherhood of Teamsters (the Unions), dated April 22, 1996, and April 29, 1996 respectively, to intervene in the above-captioned matter. Petitioner opposed the motions to intervene in a statement filed on May 3, 1996.

In administrative proceedings arising under the McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. § 351 *et seq.* (SCA), this Board's predecessor (the Board of Service Contract Appeals^{2/}) and even prior administrative reviewers under the SCA (*see*, 29 C.F.R. Part 8 (1991), recognized the right of participation by interested parties or persons. Standards set forth at 29 C.F.R. § 8.12^{3/} establish the right of entities which are not technically parties -- within the

^{1/} On April 17, 1996, the Secretary of Labor re delegated authority to issue final agency decisions under this statute and the implementing regulations at 29 C.F.R. Part 8 to the newly created Administrative Review Board. Secretary's Order 2-96 (Apr. 17, 1996), 61 Fed. Reg. 19978, May 3, 1996. Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order and regulations under which the Administrative Review Board now issues final agency decisions.

^{2/} *See*, 29 C.F.R. Part 8 (1995).

^{3/} 29 C.F.R. § 8.12 provides, in pertinent part:

For good cause shown, the Board may permit any interested party to intervene or
(continued...)

generally accepted rules governing “standing” -- to participate in administrative SCA proceedings. Another of our predecessor adjudicative agencies -- the Wage Appeals Board (WAB) -- also recognized the right of interested parties or persons to intervene in administrative proceedings arising under the federal construction contract prevailing wage laws, the Davis-Bacon and Related Acts. See, 29 C.F.R. § 7.12 (1995); *see also, Iron Workers I*, WAB Case No. 90-26, Dec. of the Board, July 30, 1991. As the WAB noted in that case:

Administrative reviews such as that presently before the Board are not Article III proceedings to which constitutional standing requirements apply. It is well recognized that agencies may hear actions brought by parties who might lack standing to contest the same issues in a federal court. *See, Garden v. F.C.C.*, 530 F.2d 1086 (D.C. Cir. 1976). Furthermore, the Board’s responsibility to act as the representative of the Secretary of Labor in review of Wage and Hour Division determinations arising under the Davis-Bacon and Related Acts mitigates against an overly restrictive view of standing. Organizations such as labor unions and employer groups are uniquely qualified to advise the Board as to the proper administration of the Acts.

Id., slip op. at p.2

For the foregoing reasons, we therefore accept the Unions’ participation in this matter as interested parties within the meaning of 29 C.F.R. § 8.12 and accept their statements for consideration. Petitioner’s opposition to the Unions’ motions to intervene and participate in this proceeding is, accordingly, DENIED.

SO ORDERED.

David A. O’Brien
Chair

Karl J. Sandstrom
Member

Joyce D. Miller
Alternate Member

^{3/} (...continued)

otherwise participate in any proceeding held by the Board. . . . [A] petition to intervene or otherwise participate shall be in writing . . . and shall state with precision and particularity:

- a) The petitioner’s relationship to the matters involved in the proceedings;
and
- (b) the nature of the presentation which the petitioner would make.