



In the Matter of:

**NORTH WARNING SYSTEM (NWS)
ALASKAN COMMUNICATIONS SYSTEMS
CONTRACT NO. F19628-92-C-0176**

ARB Case No. 96-166

**DATED: September 25,
1996**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ORDER OF DISMISSAL WITH PREJUDICE

This matter is before the Board pursuant to the Davis-Bacon Act, as amended (DBA) and 29 C.F.R. Part 7. On September 18, 1996, the Administrator, Wage and Hour Division (Administrator) filed a motion to dismiss this case with prejudice. In support of the motion to dismiss with prejudice, counsel for the Administrator has averred the following facts, which are supported by the record before the Board.

On June 13, 1996, the Wage and Hour Division issued a ruling letter to the effect that the DBA applied to construction work under the above referenced contract. The ruling letter was issued to the contracting agency, the U.S. Department of the Air Force, Electronic Systems Center (Air Force or Petitioner). On July 12, 1996, the Air Force filed a petition for review with this Board, seeking review of the Wage and Hour Division's June 13, 1996 final ruling letter. At that time, the Air Force requested an extension of time to and including August 21, 1996 within which to file a statement in support of the Petition for Review. The Board granted this request.

By August 21, 1996, Petitioner had not filed a statement in support of the Petition for Review. Rather, on that date, the Air Force sent a memorandum to the Wage and Hour Division. The substance of that memorandum was that the Air Force refused to comply with the Wage and Hour Division's ruling letter, which, as noted, found that construction work under the contract was covered by the DBA and, further, directed the Air Force to retroactively incorporate the prevailing wage provisions of the DBA in the contract.

Counsel for the Administrator avers that on September 6, 1996, the Office of the Solicitor was orally advised by Petitioner that the August 21, 1996 correspondence did not constitute an appeal of the June 13, 1996 ruling letter. Moreover, it is averred, Petitioner orally advised counsel for the Administrator that the Air Force did not intend to appeal the ruling.

On September 10, 1996, counsel for the Air Force confirmed the content of the September 6, 1996 conversation, stating in a letter to counsel for the Administrator that:

. . . the Air Force respectfully declines to amend the NWS Alaskan Communication System contract to retroactively incorporate Davis[-]Bacon Act provisions which the Air Force has reasonably determined are not applicable.

Based on the foregoing procedural history in this matter, the Board deems the Air Force to have abandoned its appeal. Accordingly, it is hereby Ordered that the Board's Notice of Appeal and Order Establishing Briefing Schedule is rescinded. It is, further Ordered that this matter is dismissed with prejudice and that the Wage and Hour Division's ruling letter dated June 13, 1996 (copy attached) is the final agency action of the United States Department of Labor.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member

JOYCE D. MILLER
Alternate Member