



In the Matter of:

CITY OF LANSING

ARB CASE NO: 01-099

Disputes concerning the payment of prevailing wage rates or proper classification by the Davis Construction Company, a contractor for the city's Lansing Avenue Pump Station (LAPS) Project PS#25089

DATE: October 31, 2001

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

Appearances:

For the Petitioner:

Jack C. Jordan, Esq., *City of Lansing, Lansing, Michigan*

For the Respondent:

Barbara E. Racine, Esq., Douglas J. Davidson, Esq., Steven J. Mandel, Esq., *U.S. Department of Labor, Washington, D.C.*

ORDER DISMISSING PETITION FOR REVIEW WITHOUT PREJUDICE

In a letter dated July 18, 2001, the District Director of the Wage and Hour Division, Detroit Michigan informed the City of Lansing (Lansing) that it had closed its investigation into Lansing's allegations that workers on the Lansing Avenue Pump Station Project, PS325089, had not received the prevailing wage rate pursuant to the Davis-Bacon Act (DBA), 40 U.S.C.A. §§276a – 276a-5 (West 1986) and 29 C.F.R. Parts 5-7 (2000) and had determined that the investigation did not "support a conclusion that Davis Bacon violations occurred." Lansing petitioned the Administrative Review Board (Board) for review of this letter pursuant to 29 C.F.R. Part 7.

In response to Lansing's Petition for Review, the Acting Administrator of the Wage and Hour Administration has moved the Board to dismiss the Petition without prejudice, stating that "the matter is not ripe for review by the Board" because the Wage and Hour Division has not issued a final order in this matter as is required to invoke the Board's

^{1/} This appeal has been assigned to a panel of two Board members, as authorized by Secretary's Order 2-96. 61 Fed. Reg. 19,978 §5 (May 3, 1996).

jurisdiction pursuant to 29 C.F.R. §7.9(a). Counsel for the Acting Administrator also noted that she has been advised that the Wage and Hour Division's District Office has agreed to reinvestigate this matter.

On October 17, 2001, we issued an Order to Show Cause why, in light of the Administrator's position, we should not dismiss the Petition for Review. In response to the Show Cause Order, Lansing has filed a Motion to Withdraw and/or Dismiss its Petition for Review Without Prejudice. In this Motion, Lansing asserts that in light of "the Administrator's position that no final agency decision has been issued and the Wage and Hour Division of the Department of Labor has agreed to reinvestigate this matter," Lansing agrees that the Board should dismiss its Petition for Review without prejudice. The Board concurs and accordingly, we **DISMISS** Lansing's Petition for Review, without prejudice.^{2/}

SO ORDERED.

PAUL GREENBERG
Chair

E. COOPER BROWN
Member

^{2/} In our October 17, 2001 Order to Show Cause, we directed Lansing to identify the basis for the Board's jurisdiction over its petition. Lansing responded by providing a copy of an EPA document entitled "Labor Standards Provisions for Federal and Federally Assisted Contracts." Presumably, this document was part of Lansing's funding agreement with EPA.

Lansing's petition seeks review of wage payment practices on a *city* contract that was funded in part with monies provided by EPA. By its terms the Davis-Bacon Act only governs construction contracts entered into directly by the *Federal* government; because the Federal government apparently was not a direct party to the construction contract in Lansing, the Davis-Bacon Act itself does not apply. However, federally-assisted construction projects that are implemented by state or local governments or other entities nevertheless may be subject to prevailing wage requirements and the Labor Department's Davis-Bacon regulations if the authorizing statute under which the funds are provided includes Davis-Bacon-type language. Such statutes commonly are known as Davis-Bacon *Related* Acts. *See, e.g.*, 29 C.F.R. §5.1. This Board has jurisdiction to decide Davis-Bacon-type questions that arise under the Related Acts.

The EPA document that Lansing provided to the Board does not identify the specific Federal authorizing statute under which Lansing received Federal monies, and the Board's jurisdiction over this matter therefore has not been established. Because we grant Lansing's motion to dismiss its petition without prejudice, it is unnecessary for us to resolve this jurisdictional question now. However, if this matter is presented to this Board again at some later date, it will be necessary for the petitioner to demonstrate the Board's jurisdiction by identifying the statutory source of EPA's grant of Federal funds for the construction project.