



In the Matter of:

**GREATER KANSAS CITY
AUTOMATIC SPRINKLER
CONTRACTORS ASSOCIATION**

ARB Case No. 97-107

DATE: September 30, 1997

ORDER OF DISMISSAL

Petitioner, the Greater Kansas City Automatic Sprinkler Contractors Association, pursuant to the Davis-Bacon Act (DBA), 40 U.S.C. §276a *et seq.* and 29 C.F.R. Part 7 (1997), is seeking review of a letter from the Regional Administrator (Administrator), Wage and Hour Division, dated March 26, 1997. That letter concerns Petitioner's request that the Administrator initiate a prevailing wage rate survey for sprinkler fitters in the Kansas City area. The petition is denied for the reasons set forth below.

BACKGROUND

Petitioner's attorney sent a letter dated March 19, 1997, requesting that the Administrator review and reconsider the prevailing wage determination for "sprinkler fitters" in the Kansas City area. The Administrator responded within a week of the request, advising Petitioner's attorney that a wage survey for sprinkler fitters was scheduled to be included in the Fiscal Year (FY) 1998 survey plan, based on the evidence furnished in support of the request. The letter went on to state that the FY 1997 Davis-Bacon wage surveys schedule had already been developed and distributed to interested parties.

Petitioner alleges that the Administrator's delay in failing to conduct a wage survey before the scheduled FY 1998 survey plan fails to meet pertinent statutory and regulatory responsibilities.

DISCUSSION

Petitioner misapprehends the dictates of the statute and the pertinent regulations governing the Administrator's responsibility to make wage determinations. The statute at 40 U.S.C. §276a requires the Secretary of Labor, and, by delegation, the Administrator of the Wage and Hour Division, Employment Standards Administration, to establish wage determinations for laborers and mechanics engaged in construction projects financed in whole or in part by the Federal government. The regulations at 29 C.F.R. §1.3 detail the procedure to be used by the Administrator in making such wage determinations, and require a comprehensive survey from a wide variety of sources including contractors, contractors' associations, labor organizations and other interested parties to reflect the wage rates paid to laborers and mechanics on various types

of construction in the area. Neither the statute nor the regulations set forth specific time frames within which the Administrator must act, save in timely response to a request for reconsideration by an interested party acknowledging the receipt and response to such request. 29 C.F.R. §1.8. The Administrator's response in this case was timely.

This Board, and its predecessor, the Wage Appeals Board (WAB), have routinely declined to intervene in matters pertaining to the Administrator's discretionary administrative management of the Wage and Hour Division. *See Veterans Canteen Service*, ARB Case No. 96-115, Oct. 25, 1996 (Administrator's decision not to enforce DBA); *W. J. Menefee Const. Co.*, WAB Case No. 90-15, Oct.25, 1993 (Administrator's decision not to seek back wages); *Ames Const., Inc.*, WAB Case No. 91-02, Feb. 3, 1993 (Administrator's decision to release withheld funds).

A recent decision in the United States District Court, Eastern District of New York, likewise supports the proposition that the Administrator has discretion to act administratively in a reasonable manner. *See Association of Court Security Officers v. Reich*, No. 96 CV (NG)(E.D.N.Y. Aug. 5, 1997) at 5-6 (Administrator is not obligated to simultaneously revise wage determinations for employees of the same employer in the same job classification in separate locales).

Having reaffirmed our position not to interfere with the reasonable exercise of the Administrator's discretionary authority to manage the Wage and Hour Division, we note that the commencement of FY 1998 is October 1, 1997, and therefore an updated survey will soon be undertaken.

ORDER

Petitioner's request for review of the Administrator's March 26, 1997, letter is **DENIED**.

SO ORDERED.

DAVID A. O'BRIEN

Chair

KARL J. SANDSTROM

Member

JOYCE D. MILLER

Alternate Member