



In the Matter of:

**PROFESSIONAL AIR TRAFFIC
CONTROLLERS ORGANIZATION
(PATCO)**

ARB CASE NO. 09-030

DATE: April 23, 2009

**Air traffic control specialists, terminal
(series 30012).**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Petitioner:

Ron Taylor, Stuart, Florida

For the Acting Administrator, Wage and Hour Division:

**Gregory F. Jacob, Steven J. Mandel, William C. Lesser, Roger Wilkinson,
United States Department of Labor, Washington, District of Columbia**

FINAL DECISION AND ORDER DISMISSING APPEAL

On December 1, 2008, the Professional Air Traffic Controllers Organization (PATCO) filed a petition requesting the Administrative Review Board to review a final decision of the Administrator, Wage and Hour Division (WHD), under the McNamara-O'Hara Service Contract Act.¹ In response, the Acting Administrator, WHD, filed a Motion to Dismiss the Petition for Review, or, Alternatively, to Revise the Briefing Schedule.

¹ See 41 U.S.C.A. § 351 *et seq.* (West 1994) and its implementing regulations at 29 C.F.R. Parts 4, 6 and 18 (2006).

The Acting Administrator argued in support of his motion that PATCO's petition for review is deficient because it does not include all of the required elements of a petition for review specified in 29 C.F.R. § 8.4. For example, the Acting Administrator noted that PATCO's petition for review fails to identify clearly the wage determination and location where the contract will be performed, as specified in 29 C.F.R. § 8.4 (a)(3) and fails to provide sufficient supporting data, views, or arguments for review as required by 29 C.F.R. § 8.4 (a)(6). In addition, we noted that PATCO's petition for review also fails to state that all data or other evidence submitted have previously been submitted to the Administrator, 29 C.F.R. § 8.4(a)(7), and whether PATCO consents to disposition of the questions by a single member of the Board, 29 C.F.R. § 8.4(b).

Because PATCO's petition is deficient and fails to meet all of the requirements of 29 C.F.R. § 8.4, we permitted PATCO to file an amended petition no later than April 3, 2009, that complies with the regulation's requirements. We cautioned PATCO that if it failed to file a complying petition, its appeal would be subject to dismissal.²

PATCO has failed to file a conforming petition for review even though we gave it ample opportunity to do so and warned it of the penalty should it fail to file a conforming petition. Accordingly, we consider PATCO to have abandoned its appeal.³ Therefore, we grant the Acting Administrator's Motion and **DISMISS** PATCO's appeal.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

² We also noted that, as the Acting Administrator acknowledged, should PATCO acquire more detailed information and supporting evidence than that provided to the Acting Administrator previously, PATCO could decide to renew its request for review by the Acting Administrator pursuant to 29 C.F.R. § 4.56(a), based on the additional evidence or information, rather than pursuing its appeal before the Board at this time,

³ *Cf. Administrator, WHD v. Pegasus Consulting Group, Inc.*, ARB No. 05-085, ALJ No. 2004-LCA-021, slip op. at 3 (ARB Nov. 28, 2008) (Board has authority to issue sanctions, including dismissal, for a party's failure to comply with the Board's orders and briefing requirements).