



In the Matter of:

VETERANS CANTEEN SERVICE

ARB Case No. 96-115

With respect to an employee complaint filed by Paul L. Miller concerning work performed on the renovation of the concession/cafeteria property at the Veterans Administration facility in Northport, New York

(Formerly WAB No. 95-11)

DATE: October 25, 1996

BEFORE: The Administrative Review Board¹

FINAL DECISION AND ORDER

This matter is before the Administrative Review Board pursuant to the Davis-Bacon Act, as amended (DBA), 40 U.S.C. § 276a *et seq.* and the regulations at 29 C.F.R. Parts 5 and 7. Paul L. Miller has petitioned for review of the November 9, 1995 letter of the Deputy Director, Office of Enforcement Policy, Wage and Hour Division (Final Determination), declining to pursue enforcement action on behalf of Miller. For the reasons set forth below, we deny the petition for review.

BACKGROUND

Miller states that, as an employee of Manpower Temporary Services, he worked for three weeks in 1993 for Streater Fixture Corporation (Streater) under a contract for renovation of the canteen area at the Veterans Administration Hospital in Northport, New York. Miller performed carpenter's work, including shaping and fastening slotwall shelving to the walls of the canteen. Miller asserted that he was paid \$6.50 per hour for work performed during the first week and \$15 per hour for the second and third weeks.² Through a union representative, Miller complained to the Wage and Hour Division (Wage and Hour) that he should have been paid the

¹ On April 17, 1996, the Secretary of Labor re delegated authority to issue final agency decisions under, *inter alia*, the Davis-Bacon and Related Acts and their implementing regulations 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. Final procedural revisions to the regulations (61 Fed. Reg. 19982), implementing this reorganization were also published on that date.

² In his Statement in Support of Petition for Review, Miller stated that he was paid \$10.00 per hour for the final two weeks.

prevailing wage rate -- as predetermined for the area of Northport, New York by the Wage and Hour Division -- for his work.

Miller notes that he was injured on the Streater job and the injury has been found to be a permanent partial disability. The judge held the worker's compensation case in abeyance pending a determination of the rate of pay that Miller should have received at the time of the injury.

In considering Miller's claim, Wage and Hour determined that Veterans Canteen Services (Canteen Services) administered the contract with Streater. According to Canteen Services, the contract did not contain Davis-Bacon labor standards provisions or a Davis-Bacon wage determination, and the contract was completed and paid off in April 1993.

The Wage and Hour District Office advised Miller in July 1993 that it would not pursue enforcement in this case. The Regional Administrator affirmed that decision in 1994.

In the Final Determination, the Deputy Director declined to address whether the DBA applied to the contract. The Deputy Director explained that he agreed with the decision not to pursue enforcement in this case because of the completed status of the contract, which did not contain any Davis-Bacon provisions, and the agency's available resources.

DISCUSSION

The decision whether to enforce the DBA in a particular case is committed to the Administrator's discretion. *See W. J. Menefee Const. Co.*, WAB Case No. 90-15 (Oct. 25, 1993) (decision not to seek back wages is committed to Administrator's enforcement discretion). The Wage Appeals Board (WAB) regularly declined to second guess the Administrator's "otherwise reasonable enforcement decisions." *Ames Const., Inc.*, WAB Case No. 91-02 and *Winzeler Excavating Co.*, WAB Case No. 88-10 (Feb. 23 1993) (enforcement discretion to release withheld funds not reviewed by the Board).

Likewise, this Board will not second guess the Administrator's reasonable decision not to enforce the DBA in this case, in which Miller worked for three weeks on a paid out contract that did not contain Davis-Bacon Act provisions or an applicable wage determination.

SO ORDERED.

David A. O'Brien
Chair

Karl J. Sandstrom
Member

Joyce D. Miller
Alternate Member