



In the Matter of:

**CAROMA CONSTRUCTION COMPANY
Request for additional work classification for
Flex Duct Installer and the provision for a
minimum wage rate in General Decision
TN20100043**

ARB No. 11-045

DATE: July 26, 2011

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Daniel L. Jones, *pro se*, Memphis, Tennessee

For Administrator, Wage and Hour Division:

Roger W. Wilkinson, Esq.; Jonathan T. Rees, Esq.; Jennifer S. Brand, Esq.; M. Patricia Smith, Esq.; *United States Department of Labor, Washington, District of Columbia*

BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge*, and E. Cooper Brown, *Deputy Chief Administrative Appeals Judge*

**FINAL DECISION AND ORDER DISMISSING PETITION FOR REVIEW
WITHOUT PREJUDICE**

On April 21, 2011, the Administrative Review Board issued a Notice of Appeal and Order Establishing Briefing Schedule in this case arising under the Davis-Bacon Act (DBA or the Act).¹ On May 20, 2011, the Acting Administrator of the Wage and Hour Division moved the Board to dismiss the Petitioner's Petition for Review. The Administrator averred that the

¹ 40 U.S.C.A. §§ 3141-3148 (West 2010). The regulations that implement the Act are found at 29 C.F.R. Part 1 (2009).

Petition for Review should be dismissed without prejudice on the grounds that the matter was not ripe for review because “there has not been a final ruling” in this matter.²

According to the Acting Administrator, on September 24, 2010, Caroma’s treasurer sent a letter to Sarah D. Vanoy of Community Development Partners, LLC requesting the addition of two job classifications for work performed under contract number TN09-004 for Apartment Rehabilitation in Shelby County, Tennessee. In response, Vanoy requested the Wage and Hour Division to add these classifications for WD No. TN20100043. Specifically, Vanoy requested that Wage and Hour add, through the conformance process, the classification of HVAC Equipment Installer, at a \$13.00 hourly wage, and HVAC Flex Duct Installer, at a \$14.00 hourly wage. In response to Vanoy’s request for additional classifications, Wage and Hour Section Chief Terry Sullivan granted the request for the HVAC Equipment Installer but denied the request for an HVAC Flex Duct Installer.

Deborah A. Conyers of the U.S. Department of Housing and Urban Development (HUD) requested reconsideration of Sullivan’s denial of the additional HVAC Flex Duct Installer classification. Vanessa Shaw-Jennings, Branch Chief, Construction Wage Determination, responded to the reconsideration request and affirmed the denial of the request to add a job classification and wage rate for HVAC Flex Duct Installer.

In response, Caroma filed a Petition for Review with the ARB. The regulations addressing the Board’s authority to review cases like this one provide in pertinent part, “[a]ny party or aggrieved person shall have a right to file a petition for review with the Board . . . from any final decision in any agency action under part 1, 3, or 5 of this subtitle.”³ The Administrator contends:

Wage and Hour, which has the authority to issue final rulings, does not consider the statements made in the February 22, 2011 letter [from the Branch Chief] to constitute a final ruling. Although the letter reflected the Wage and Hour Branch Chief’s opinion in response to HUD’s request for further review of the October 19, 2010 conformance decision, it did not incorporate any language indicating that it was a final ruling or informing the recipient of appeal rights, as is customary in final rulings. It was not issued by the Acting Administrator of Wage and Hour, and no request has been made to the Acting Administrator for a ruling pursuant to 29 CFR 5.13. . . .

² Acting Administrator’s Motion to Dismiss the Petition for Review and to Suspend the Briefing Schedule (Mot.) at 1.

³ 29 C.F.R. § 7.9; *see also* 29 C.F.R. § 7.1(b).

Without a “final decision” subject to review by it, the Board lacks jurisdiction to render a decision and, therefore, this matter should be dismissed without prejudice.^[4]

Accordingly, we ordered the Petitioner to “**SHOW CAUSE** no later than **July 12, 2011**, why we should not dismiss its Petition for Review without prejudice because the Petitioner has failed to obtain a final decision from the Administrator as required by 29 C.F.R. § 7.9.” The Petitioner has not responded to the Board’s Order to Show Cause. Therefore, we conclude that the Petitioner has conceded that the Board has no authority to decide this case, as the Administrator has averred. Knowing of no basis upon which to disagree, we **GRANT** the Administrator’s Motion to Dismiss without prejudice to Petitioner’s right to timely file a petition for review from the Administrator’s final decision.⁵

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

⁴ Mot. at 4-5 (citations and footnote omitted). The Acting Administrator avers that “Wage and Hour will consider the petition for review as a request for a final ruling pursuant to 29 C.F.R. 5.13 and will issue a final ruling expeditiously.” *Id.* at 6.

⁵ *Accord Donald J. Murray*, ARB No. 11-042 (July 14, 2011)(petition for review dismissed where petitioner failed to obtain final order from Administrator prior to filing petition for review pursuant to 29 C.F.R. § 7.9).