In the Matter of:

**VETERANS CANTEEN SERVICE**

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

**ARB Case No. 97-044**

(Formerly ARB No. 96-115)

**DATE: January 22, 1997**

BEFORE: The Administrative Review Board

**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 seeks reconsideration of the Board's October 25, 1996 Final Decision and order in this case. We deny the request. Miller petitioned for review of the letter of the Deputy Director, Office of Enforcement Policy, Wage and Hour Division (Final Determination), declining to pursue enforcement action on behalf of Miller concerning work he performed in 1993 under a contract for renovation of the canteen area at a Veterans Administration Hospital. Noting that a decision whether to enforce the DBA is committed to the discretion of the Wage and Hour Administrator, this Board declined to second guess the Administrator and denied the petition for review.

Miller seeks reconsideration of the Board's Final Decision on the ground that the Wage and Hour Final Determination was contrary to the regulation at 29 C.F.R. § 5.5(b)(3). That regulation authorizes government agencies, on their own action or pursuant to a written request of the Department of Labor, to cross-withhold funds under one contract because of the contractor's DBA violations on a different contract. The Department of Labor made no such cross-withholding request in Miller's case.

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1 On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under this statute to the newly created Administrative Review Board. 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 implementing this reorganization were also promulgated on that date. 61 Fed. Reg. 19982.
The availability of cross-withholding does not alter our earlier ruling that we will not second guess the Administrator's reasonable decision not to enforce the DBA in this case. Accordingly, the request for reconsideration is **DENIED**.

**SO ORDERED.**

DAVID A. O'BRIEN  
Chair

KARL J. SANDSTROM  
Member

JOYCE D. MILLER  
Alternate Member