



In the Matter of:

PWCA (formerly PREVAILING WAGE
CONTRACTORS' ASSOCIATION, Inc.)

ARB CASE NOS. 2016-0019
2016-0021

and

DATE: JUN 24 2019

NATIONAL ASSOCIATION OF
PREVAILING WAGE CONTRACTORS
(NAPWC),

PETITIONERS,

v.

SECRETARY OF LABOR,

RESPONDENT,

INDIANA-ILLINOIS-IOWA FOUNDATION FOR
FAIR CONTRACTING (III FFC),

INTERVENOR.

Appearances:

For the Petitioner PWCA (formerly Prevailing Wage Contractors Association, Inc.):

Martha L. Hutzelman, Esq.; Law Office of Martha L. Hutzelman; New Albany, Ohio; and Maurice Baskin, Esq.; Littler Mendelson, PC; Washington, District of Columbia

For the Petitioner National Association of Prevailing Wage Contractors (NAPWC):

Richard M. Freeman, Esq.; Sheppard, Mullin, Richter & Hampton LLP; San Diego, California

For the Respondent Administrator, Wage and Hour Division:

Kate S. O’Scannlain, Esq.; Jennifer S. Brand, Esq.; Jonathan T. Rees, Esq.; Quinn Philbin, Esq.; and Mary E. McDonald, Esq.; United States Department of Labor; Washington, District of Columbia

For Intervenor Indiana-Illinois-Iowa Foundation for Fair Contracting (III FFC):

Keith R. Bolek, Esq.; Lance Geren, Esq.; and Jacob N. Szewczyk, Esq.; O’Donoghue & O’Donoghue, LLP; Washington, District of Columbia; and Melissa L. Binetti, Esq.; Marc R. Poulos, Esq.; and Kara M. Principe, Esq.; Indiana- Illinois-Iowa Foundation for Fair Contracting; Countryside, Illinois

For Amicus Curiae North America’s Building Trades Unions (NABTU):

Terry R. Yellig, Esq.; and Esmeralda Aguilar, Esq.; Sherman Dunn, P.C.; Washington, District of Columbia

For Amicus Curiae United Steelworkers:

Benjamin Eisner, Esq.; and Yael Kalman, Esq.; Spear Wilderman, P.C.; Philadelphia, Pennsylvania

ORDER GRANTING ADMINISTRATOR’S MOTION TO REMAND

This matter arises under the Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141-3148 (2006) (DBA or the Act) and its implementing regulations at 29 C.F.R. Parts 1, 5, 6 and 7 (2018). Petitioners PWCA and the National Association of Prevailing Wage Contractors sponsor plans that offer a supplemental unemployment benefit (“SUB”) to participating employers. Petitioners challenge the October 22, 2015, final rulings of the Administrator, Wage and Hour Division (the Administrator) that participating employers in their SUB plans must annualize contributions to the SUBs to satisfy the DBA’s prevailing wage requirements.

On March 14, 2019, the Board issued an Order for Supplemental Briefing, inviting the Administrator to address two questions. The Administrator has submitted the “Administrator’s Motion to Remand to the Wage and Hour Division and Response to Supplemental Briefing Order” (May 23, 2019). The Administrator requests that this case be remanded to the Administrator to determine whether the October 22, 2015, rulings should remain in effect. Motion at 2, 5-9. Alternatively, the Administrator requests a stay of the current proceedings pending her review of the October 22, 2015, rulings. Motion at 9-10, 20-21. The Administrator further

provides “a brief response” to the questions the Board posed in its Order for Supplemental Briefing. Motion at 10-20.

The Intervener, the Indiana-Illinois-Iowa Foundation for Fair Contracting (III FFC), and the North America’s Building Trades Unions (NABTU), as amicus curiae, filed a joint motion for an extension of time to respond to the Administrator’s motion and the Board’s order. Petitioner PWCA filed an objection to their joint request for an extension of time to respond to the Administrator’s motion. Subsequently, without the Board acting on their joint motion for an extension of time or granting them leave to do so, the Intervener, III FFC, and the NABTU, as amicus curiae, have filed an untimely response to the Administrator’s motion and the Board’s order.

Upon review of the Administrator’s motion to remand, we **GRANT** the Administrator’s motion and **REMAND** this case to the Administrator to determine whether the Administrator’s October 22, 2015, rulings should remain in effect. We **DENY** the joint motion for an extension of time to respond to the Administrator’s motion as it is rendered moot by this remand. Thus, we **DISMISS** the above-captioned appeals without prejudice.

SO ORDERED.

FOR THE ADMINISTRATIVE REVIEW BOARD:



WILLIAM T. BARTO
Chief Administrative Appeals Judge

Note: Questions regarding any case pending before the Board should be directed to the Board’s staff at (202) 693-6200 or by facsimile at (202) 693-6220.