



In the Matter of:

**ADMINISTRATOR, WAGE
AND HOUR DIVISION, UNITED
STATES DEPARTMENT OF LABOR,**

ARB CASE NO. 2022-0031

DATE: July 13, 2022

PROSECUTING PARTY,

v.

KESCO, INCORPORATED,

RESPONDENT.

**Before HARTHILL, Chief Administrative Appeals Judge, and BURRELL
and PUST, Administrative Appeals Judges**

ORDER DISMISSING PETITION FOR REVIEW

PER CURIAM. This case arises under the Davis-Bacon Act (DBA)¹ and its applicable implementing regulations.² Respondent Kesco, Incorporated (Kesco) is a flooring installation company located in Florida. On January 21, 2022, Respondent requested four job classifications for Contract Number 2020-033D, Blue Sky Landing, which included Vinyl Installer, Resilient Installer, Carpet Installer, and Tile Installer, and conformed wage rates of \$15.00 per hour with no fringe benefits.

On March 21, 2022, the Department of Labor's Wage and Hour Division (WHD) Section Chief issued a letter denying Respondent's requested wage rates and approving a conformed wage rate of \$25.00 per hour and \$1.17 in fringe benefits for the four job classifications.

On March 24, 2022, Kesco filed a Petition for Review by the Administrative Review Board (Board) of the "notification dated March 21, 2022" (WHD Notification Letter).

¹ 40 U.S.C. § 3141 et seq.

² 29 C.F.R. Part 7 (2021).

On April 4, 2022, the Board issued a Notice of Appeal and Order Establishing Briefing, which required that Respondent's opening brief be filed by May 2, 2022. On May 17, 2022, no opening brief having been filed, the Board issued an Order to Show Cause.

On May 31, 2022, the Acting Administrator of the WHD filed a Motion to Dismiss and Response to Order to Show Cause. The Acting Administrator requests that the Board dismiss the petition for review without prejudice on the grounds that it is not ripe for review because the WHD has not issued a final ruling.

The applicable regulations provide that “[a]ny party or aggrieved person shall have a right to file a petition for review with the Board . . . within a reasonable time from any final decision in any agency action under part 1, 3, or 5 of this subtitle.”³ The Acting Administrator contends that the March 21, 2022 letter does not constitute a final decision. She states that,

Although the letter reflected the Wage and Hour Section Chief's opinion in response to Respondent's request for a lower conformed wage rate, it did not incorporate any language indicating that it was a final ruling or informing the recipient of appeal rights to the Board, as is customary in final rulings.⁴

The WHD Notification Letter advised Respondent that “any appeal letters be emailed to dba.bcwd.appeal@dol.gov.” The Acting Administrator describes the purpose of providing this email address as follows: “to enable such internal reviews to be conducted by BCWD in its capacity as an authorized representative of the Administrator.”⁵ Respondent had actual notice of the requirements of WHD's internal appeal process.⁶

Without a final ruling, the Board lacks jurisdiction to render a decision in this matter.⁷ We agree with the Acting Administrator that the March 21, 2022

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

⁴ Admin. Response at 4.

⁵ *Id.*

⁶ *See* Petition for Review at 12-13, 21-22.

⁷ *See In the Matter of Bramble, Inc.*, ARB Nos. 2014-0090, -0091 (ARB Dec. 17, 2014) (dismissing a petition for review where the petitioner failed to show cause as to why the case should not be dismissed because it failed to obtain a final decision from WHD); *In the Matter of Wicke*, ARB No. 2002-0062 (ARB May 21, 2002) (dismissing a petition for review without prejudice because WHD had not issued a final decision and the matter was not ripe for review); *In the Matter of Bradbury*, ARB No. 2001-0100 (ARB Nov. 9, 2001) (dismissing

WHD Notification Letter does not constitute a final ruling. As such, this case is not yet ripe for review because the Acting Administrator has not yet issued a final ruling as provided in 29 C.F.R. § 7.9.

Accordingly, we **DISMISS** the Petition for Review without prejudice and **REMAND** the case to WHD for a final ruling.⁸

SO ORDERED.



SUSAN HARTHILL
Chief Administrative Appeals Judge



THOMAS H. BURRELL
Administrative Appeals Judge



TAMMY L. PUST
Administrative Appeals Judge

a petition for review without prejudice because a determination letter from WHD was not a final agency decision).

⁸ In any appeal of this Decision and Order that may be filed, we note that the appropriately named party is the Secretary, Department of Labor, and not the Administrative Review Board.