

U.S. Department of Labor



Office of Administrative Law Judges  
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Issue Date: 10 December 2002

Case No. 2002-LCA-3

In the Matter of

ADMINISTRATOR, WAGE AND HOUR DIVISION,

Prosecuting Party,

v.

COMPUTECH CORPORATION,

Respondent.

**ORDER GRANTING DISMISSAL**

This matter was scheduled to be heard on December 19, 2002, in Oak Park, Michigan. The U.S. Department of Labor, through its attorneys, filed a Motion to Dismiss on grounds that the appeal was incorrectly docketed as a LCA matter under 20 C.F.R. Part 655, Subpart H. A review of the documents in the record demonstrates that this appeal falls under the regulations governing the Wagner-Peyser Act at 20 C.F.R. Part 658, Subpart E, dealing with complaints under the Job Service Complaint System.

The U.S. Department of Labor also argues that if the case is re-docketed, it should nonetheless be dismissed as the court would lack jurisdiction to hear this appeal concerning the New Jersey prevailing wage determination. Under the regulations, Computech has specific appeal rights regarding the prevailing wage determination, made by ETA, and which is then transmitted to Computech by ESA. In order to appeal the ESA decision, Computech must initiate such appeal with ETA "within 10 days after the employer receives ETA's prevailing wage determination from the [ESA] Administrator." 20 C.F.R. §655.731(d)(2). Computech did not seek review of the New Jersey wage rates and there was no appeal of that ETA decision. Accordingly, the U.S. Department of Labor argues that the appeal must be dismissed.

Accordingly, IT IS HEREBY ORDERED that the Motion to Dismiss this matter is GRANTED to allow this matter to be re-docketed under the appropriate regulations. Given the dismissal of this matter it is not necessary to address the jurisdictional issue raised by the Department of Labor.

IT IS FURTHER ORDERED that the hearing scheduled for December 19, 2002, is cancelled.

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DANIEL J. ROKETENETZ  
Administrative Law Judge