In the Matter of:

MILITARY SEALIFT COMMAND

In re: Applicability of wage rates and vacation fringe benefits collectively bargained by Bay Ship Management, Inc. and American Maritime Officers and Seafarers International Union of North America, Atlantic Gulf, Lakes and Inland Waters District, AFL-CIO to employment under a contract for operation and maintenance of 11 large medium speed roll on/roll off ships worldwide

ARB CASE NO. 02-003

ALJ CASE NO. 01-CBV-2

DATE: November 29, 2001

BEFORE: THE ADMINISTRATIVE REVIEW BOARD[1/]

Appearances:

For the Administrator:
Benton G. Peterson, Esq., Douglas J. Davidson, Esq., Steven J. Mandel, Esq., *U.S. Department of Labor, Washington, D.C.*

ORDER GRANTING MOTION TO WITHDRAW PETITION FOR REVIEW

This case arose when the Military Sealift Command, Department of the Navy, requested a substantial variance hearing under section 4(c) of the McNamara–O'Hara Service Contract Act of 1965 ("SCA"), as amended, 41 U.S.C. §353(c) (1994) and the SCA regulations at 29 C.F.R. §4.10(c)(2001). *See also* 29 C.F.R. Part 6 Subpart E (2001). The gravamen of the Military Sealift Command's concern was its belief that the vacation fringe benefits established under SCA Wage Determination 99-0007 were excessive as they applied to crews employed by Patriot Holdings, Inc., under Contract No. 5302. These crews were assigned to ships that were in Reduced Operating Status ("ROS") about 90% of the time, *i.e.*, most of their on-duty time was spent working a conventional 40-hour work week while their ships were layberthed along the mainland coasts, with only about 10% of their on-duty time spent in Full Operating Status ("FOS"), *i.e.*, deployed at sea, with the crew essentially on-duty 24 hours per day. Wage Determination 99-0007 mandated a vacation accrual rate

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[1/] This appeal has been assigned to a panel of two Board members, as authorized by Secretary's Order 2-96. 61 Fed. Reg. 19,978 §5 (May 3, 1996).

for all work time – both ROS and FOS – at a relatively high accrual level typically earned by maritime workers in Full Operating Status.

The Wage and Hour Administrator (Administrator) referred the matter for a hearing before a Department of Labor Administrative Law Judge (ALJ), who subsequently concluded that a substantial variance in the vacation fringe benefit level existed ("[T]here exists a substantial variance between vacation fringe benefits set out by WD99-0007 for crew members employed on ROS vessels under Contract No. 5302 and the prevailing vacation fringe benefits for similar ROS employment in the East and Gulf Coast localities"). *Applicability of Vacation Fringe Benefits Collectively Bargained by Bay Ship Management, Inc.*, ALJ No. 2001-CBV-2, slip op. at 7 (Sept. 28, 2001). As a remedy, the ALJ ordered the Administrator to issue a new "Wage Determination, effective July 23, 2001, for contract No. 5302, reflecting the prevailing vacation fringe benefits for ROS employment set out in the June and July 2001 collective bargaining agreements between Patriot and six maritime labor unions for the operation of ROS LMSR [Large Medium Speed Roll on/Roll off] vessels." *Id.*

The Administrator petitioned the Administrative Review Board to review the ALJ's Initial Decision and Order, pursuant to 29 C.F.R. §6.57. The Administrator did not contest the ALJ's underlying substantial variance finding, but argued that the ALJ had exceeded his authority (1) by ordering the Administrator to establish a particular vacation benefit rate and (2) by setting a retroactive effective date for the revised benefit. The Administrator also advised the Board that she had filed a Motion with the ALJ asking him to modify the Initial Decision and Order by deleting "the final paragraph of the decision in which [the ALJ] directed the Administrator to issue a wage determination containing specific wage rates and a specific effective date."

On October 11, 2001, the ALJ issued an Amended Initial Decision and Order in which the ALJ deleted the final paragraph of the first decision (per the Administrator's request) and instead simply ordered the Administrator to issue a new wage determination in accordance with the ALJ's Decision. On November 19, 2001, the Administrator filed with the ARB a Motion for Withdrawal of Petition for Review. We **GRANT** the Administrator's Motion; the Administrator's Petition for Review is hereby **DISMISSED.**

SO ORDERED.

PAUL GREENBERG
Chair

RICHARD A. BEVERLY
Alternate Member