



In the Matter of:

**UNITED GOVERNMENT SECURITY
OFFICERS OF AMERICA, LOCAL 52,**

ARB CASE NO. 05-068

DATE: April 15, 2005

PETITIONER,

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Petitioner:

**James D. Carney, International Union United Government Security Officers of
America, Westminster, Colorado**

For the Respondent Administrator, Wage and Hour Division:

**Joan Brenner, Esq., Ford F. Newman, Esq., William C. Lesser, Esq., Steven J.
Mandel, Esq., Howard M. Radzely, Esq., U.S. Department of Labor, Washington,
D.C.**

**ORDER DENYING MOTION FOR SUMMARY JUDGMENT
AND DISMISSING APPEAL**

This case arose when the United Government Security Officers of America, Local #52 (UGSOA), requested that the Administrator of the Wage and Hour Division refer the case to a Department of Labor Administrative Law Judge for a substantial variance hearing pursuant to section 4(c) of the McNamara-O'Hara Service Contract Act (SCA)¹

¹ 41 U.S.C.A. § 353 (c)(West 1994). This section provides:

No contractor or subcontractor under a contract, which succeeds a contract subject to this chapter and under which substantially the same services are furnished, shall pay any

Continued . . .

and its interpretive regulations.² Pending before the Administrative Review Board is UGSOA's Motion for Summary Judgment in which UGSOA requests the Board to enter immediate judgment in this case based on a procedural default because the Administrator failed to respond to UGSOA's request for a substantial variance hearing within thirty days as provided by regulation.³ Because the Board's authority to review SCA cases is limited to final decisions of the Administrator (or the Administrator's authorized representative) and decisions of Administrative Law Judges,⁴ we deny UGSOA's motion for summary judgment and dismiss its appeal.

BACKGROUND

UGSOA filed a request for a substantial variance hearing with the Administrator on December 29, 2004.⁵ In a letter dated February 2, 2005, that UGSOA received on February 7, 2005, Tiffany Allen-Holmes, Section Chief, Branch of Service Contract Wage Determinations, acknowledged that she had received UGSOA's request and indicated, "After we have reviewed it thoroughly, we will respond more fully."⁶

service employee under such contract less than the wages and fringe benefits, including accrued wages and fringe benefits, and any prospective increases in wages and fringe benefits provided for in a collective-bargaining agreement as a result of arm's-length negotiations, to which such service employees would have been entitled if they were employed under the predecessor contract: *Provided*, That in any of the foregoing circumstances such obligations shall not apply if the Secretary finds after a **hearing** in accordance with regulations adopted by the Secretary that such wages and fringe benefits are **substantially at variance** with those which prevail for services of a character similar in the locality.

Emphasis added.

² 29 C.F.R. § 4.10 (2004).

³ 29 C.F.R. § 4.10(b)(2).

⁴ Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64272 (Oct. 17, 2002).

⁵ UGSOA's Exhibit (UX) B.

⁶ UX B.

On March 4, 2005, UGSOA filed a Motion for Summary Judgment with the Board in which it argued that it was entitled to judgment in its favor because the Administrator had failed to respond to its substantial variance hearing request within the regulatory time period of thirty days. On March 9, 2005, the Deputy Administrator denied UGSOA's request for the hearing and informed UGSOA of its right to appeal his decision to the Board.

On March 10, 2005, the Board issued an Order requiring the Administrator to file a response to UGSOA's motion. On March 17, 2005, UGSOA petitioned the Board for review of the Deputy Administrator's denial of the hearing request. The Board has assigned this appeal ARB No. 05-087. The Deputy Administrator filed his response to the Board's Order on March 21, 2005, and UGSOA replied to the Deputy's response on March 23, 2005.

DISCUSSION

The Secretary of Labor established the Administrative Review Board to issue final decisions for the Secretary in cases arising under a limited number of specified statutory provisions.⁷ To establish the Board's jurisdiction, a petitioner must request review of a final order of the Administrator of the Department of Labor's Wage and Hour Division or a decision or recommended decision of a Department of Labor Administrative Law Judge (ALJ) arising under one of the statutory provisions listed in the Secretary's Order.⁸ In particular, the Secretary's delegation provides:

The Board is hereby delegated authority and assigned responsibility to act for the Secretary of Labor in review or on appeal of the matters listed below

- b. Final decisions of the Administrator of the Wage and Hour Division or an authorized representative of the Administrator, and from decisions of ALJ [sic], arising under the McNamara-O'Hara Service contract Act, as amended (41 U.S.C. 327 *et seq.*) . . .

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⁷ Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64272 (Oct. 17, 2002).

⁸ *In re ESU, Inc.*, ARB No. 04-180, slip op. at 1 (Jan. 26, 2005).

In this case, ARB No. 05-068, UGSOA has not appealed from a final decision of the Administrator or of an ALJ. Accordingly, given the Board's limited authority to act for the Secretary of Labor as provided in the Secretary's delegation of authority to the Board, we **DENY** UGSOA's Motion for Summary Judgment and **DISMISS** its appeal in ARB No. 05-068.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge