



In the Matter of:

BIONETICS CORPORATION

ARB CASE NO. 06-135

DATE: December 16, 2008

**Dispute concerning job classification
and wage rate for Bionetics employees
working on Contract F44650-97-D0005
at the Precision Measurement Equipment
Laboratory, Ellsworth Air Force Base,
South Dakota.**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

*For Petitioners Bionetics Employees James Aune, Charles Eickoff, Nickolas Jenniges,
Gregory Larson, Thomas Moeller, Jose L. Pena, Timothy Sanders, and Jonathon Wells:
Dennis W. Finch and Jeffrey P. Maks, Finch Bettman Maks & Hogue, P.C.,
Rapid City, South Dakota*

*For Respondent Administrator, Wage and Hour Division:
Jennifer R. Marion, Esq., William C. Lesser, Esq., Steven J. Mandel, Esq.,
Jonathan L. Snare, Esq., United States Department of Labor, Washington,
District of Columbia*

*For Intervenor United States Air Force:
Kathleen A. James, Washington, District of Columbia*

FINAL DECISION AND ORDER

This case involves a contract that the United States Air Force awarded to Bionetics Corporation on September 1, 1997. The contract called for Bionetics to provide calibration and repair services for aircraft landing and piloting instruments. The contract is governed by the McNamara-O'Hara Service Contract Act (SCA) that applies to contracts in excess of \$2,500 entered into by the United States or the District of

Columbia, the principal purpose of which is to furnish services to the United States. The SCA requires contractors and subcontractors to pay their employees no less than the wage rates and fringe benefits that prevail in the locality or the rates (including prospective increases) contained in a collective bargaining agreement.¹ The Petitioners have asked us to determine whether a final ruling of the United States Department of Labor's Wage and Hour Division is reasonable. We conclude that it is.

BACKGROUND

The Petitioners are Bionetics employees working at the Ellsworth Air Force Base Precision Measurement Equipment Laboratory (PMEL) in South Dakota.² They perform the job of "Metrology Technician."³ This job was not included on the wage determination that the Labor Department's Wage and Hour Division (WHD) issued to cover the SCA contract. Wage determinations set forth the minimum wages and fringe benefits that SCA contracts must contain.⁴ WHD later determined that the job and its wage rate must be added, or "conformed," to the wage determination covering the contract. The conformance process ensures that such new classifications and wage rates conform to the standard job classifications and corresponding wage rates listed on the wage determination.⁵

The conformance regulations provide both procedural and substantive guidelines for adding a job classification to the wage determination that applies to a particular SCA-covered contract.⁶ The job classifications that are listed on the applicable wage determination function as standards for comparison with a proposed classification in two primary ways. First, if the skills and duties required for the proposed classification are encompassed by a classification already listed on the wage determination, the proposal to

¹ 41 U.S.C.A. §§ 351-358 (West 2008).

² A PMEL is defined as "the base-level [Air Force Metrology and Calibration] Program focal point. It is the activity authorized to possess and use base measurement standards." Supplemental Administrative Record (Supp. AR) Tab 7 at 1. The record before us consists of both the "Supplemental Administrative Record" as well as the "Administrative Record" that we relied upon when we issued *Bionetics Corp.*, ARB No. 02-094 (Jan. 30, 2004) (*Bionetics I*).

³ "Metrology" is defined as "[t]he science or system of weights and measures used to determine conformance to technical requirements including the development of standards and systems for absolute and relative measurements." Supp. AR Tab 7 at 4.

⁴ 29 C.F.R. § 4.3(a) (2008).

⁵ See 29 C.F.R. § 4.6(b)(2)(i)-(vi).

⁶ *Id.*

add the new classification through the conformance process will be denied.⁷ Secondly, if a proposed classification is determined to be necessary, the classifications and wage rates listed on the wage determination provide standards for comparison in determining the category into which the job falls and the proper wage rate for the new classification.⁸ The conformance regulations require that a proposed position be categorized and paid a wage that reflects an “appropriate level of skill comparison” between the position proposed for addition to the wage determination and those classifications already listed on the wage determination.⁹

The Petitioners initiated this conformance action by filing a letter with WHD on November 16, 2000, in which they complained that they were improperly classified and paid under the existing wage determination’s Electronics Technician, Maintenance II (ETM II) classification.¹⁰ The Petitioners indicated that in 2000 they unsuccessfully attempted to prompt Bionetics to initiate a conformance action and asked the Air Force to initiate the same. They asserted that that they had been “trying since early 1995 (documentation on request) to remedy the unfair wages and practices enforced by the Air Force ... in regards to this contract.”¹¹

WHD investigated this situation in February 2001. It initially determined that the Petitioners, as Metrology Technicians, performed a variety of duties including: calibrating test and measurement equipment; comparing instrument performance to a standard known accuracy; adjusting to minimize errors; properly calibrating equipment to meet specifications; and relating quantitative information to measuring physical and/or chemical properties.¹² WHD also noted that “calibrations performed are to ‘full

⁷ See, e.g., *Burnside-Ott*, No. 1987-SCA-OM-002, slip op. at 6-10 (Dep. Sec’y Jan. 10, 1989).

⁸ 29 C.F.R. § 4.6(b)(2)(i), (vi)(A); see *Russian & East European P’ships, Inc.*, ARB No. 99-025, slip op. at 15-17 (Oct. 15, 2001); *COBRO Corp.*, ARB No. 97-104, slip op. at 10 (July 30, 1999).

⁹ 29 C.F.R. § 4.6(b)(2)(i); see 29 C.F.R. § 4.6(b)(2)(iv); *COBRO Corp.*, slip op. at 22-23.

¹⁰ Supp. AR Tab 2.

¹¹ *Id.* at 2. The regulation at 29 C.F.R. § 4.6(b)(2)(i) requires that before employees in unlisted job classifications perform their work, the contracting officer shall require the contractor to classify such employees “so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination.”

¹² See Supp. AR Tab 3.

manufacture’ specifications,” and found that “these calibration functions were an important aspect of [the Petitioners’] duties due to the sensitivity of the equipment, and that to a large degree repair functions were secondary to the calibration functions.”¹³ WHD compared the Metrology Technician duties to the ETM II duties, the classification under which the Petitioners were being paid, and determined that the duties differed. Therefore, WHD decided that Bionetics should have added, i.e., conformed, a new classification of Metrology Technician and a corresponding wage rate but had instead paid the Metrology Technicians as ETM IIs.¹⁴

As a result of the investigation, Clarence Strain, WHD’s Supervisory Salary and Wage Specialist, ruled on September 10, 2001, that the new classification of Metrology Technician would be added to the applicable wage determination.¹⁵ Strain explained that through its investigation, WHD determined that the PMEL Metrology Technicians had been “improperly classified as Electronic Technicians, and that no applicable classification existed on the wage determination or in the *Service Contract Act Directory of Occupations*.”¹⁶ In effect, Strain ruled that the Metrology Technician position would be conformed to the wage determination classification of Engineering Technician IV (ET IV), with an hourly wage rate of \$15.11.¹⁷

The Air Force objected to Strain’s ruling and requested that WHD reconsider it. The Air Force agreed that the PMEL technician position at Ellsworth Air Force Base needed to be added to the wage determination through the conformance process. But it disagreed with applying a rate other than the ETM II wage rate to the PMEL technician jobs. The Air Force explained that it had conformed the Ellsworth PMEL technician position to the ETM II classification and wage rate based on a 1996 WHD decision (the Stovall ruling) pertaining to PMEL technicians at Maxwell Air Force Base in Alabama.¹⁸ The Air Force thus asserted that Strain’s ruling was “a departure from your previous guidelines.”¹⁹ Finally, the Air Force requested that Strain rescind his September 10, 2001 ruling “and allow the Electronics Technician Maintenance II rate to prevail until such

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Supp. AR Tab 10.

¹⁶ Supp. AR Tab 9 at 1.

¹⁷ *Id.* In a 1998 conformance action, Strain conformed the Metrology Technician position to Engineering Technician IV for workers at Robins Air Force Base in Georgia. Supp. AR Tab 20.

¹⁸ See Supp. AR Tabs 8, 9.

¹⁹ Supp. AR Tab 8.

time as the SCA Directory of Occupations is revised” to include the PMEL technician classification.²⁰

The WHD Administrator reconsidered Strain’s ruling and then issued a final ruling on June 21, 2002.²¹ She approved the Air Force’s request to pay the Metrology Technicians at Ellsworth the ETM II wage rate, which was \$12.18 per hour.²² Although the Administrator recognized that the ET IV classification had been used on other contracts, she vacated Strain’s ruling.²³ Instead, she concluded that the 1996 Stovall ruling conforming the PMEL technician position to the ETM II classification and wage rate - on which the Air Force asserted it had relied - was “not unreasonable.”²⁴

The Petitioners appealed the Administrator’s June 21, 2002 final ruling to the Administrative Review Board (ARB or Board). In its Decision and Order of Remand, the Board determined that the Administrator had not adequately explained why she chose the ETM II classification, per the 1996 Stovall decision, rather than the ET IV classification, per the 2001 Strain ruling.²⁵ Therefore, the ARB remanded the case to the Administrator to explain that choice. The ARB also noted that the record did not demonstrate that the Air Force and Bionetics took steps to comply with the regulatory requirement, noted above, that before employees in unlisted job classifications perform their work, the contracting officer and the contractor must initiate the conformance process.²⁶ The ARB thus indicated that “on remand, the Administrator should further develop the record to address this question as well as the various factors that are relevant to setting the wage rate under Sections 4.6(b)(2)(i), (ii) and (iv).”²⁷ The ARB added that the Administrator should consider and determine the relevance of documents that the Petitioners had proffered on appeal.²⁸

²⁰ *Id.*

²¹ Supp. AR Tab 3.

²² *See* Administrator’s Brief at 3. The wage determination applicable to the contract between Bionetics and the Air Force is contained in the Administrative Record for *Bionetics I*.

²³ *Id.*

²⁴ *Id.* at 2.

²⁵ *Bionetics I*, slip op. at 12.

²⁶ *Bionetics I*, slip op. at 13; see 29 C.F.R. § 4.6(b)(2)(i), (ii).

²⁷ *Id.*

²⁸ *Id.*

Pursuant to this remand order, on October 31, 2005, WHD's Deputy Administrator issued a final ruling, again concluding that the ETM II classification bore "a better reasonable relationship" to the Metrology Technicians at the Ellsworth PMEL and that the \$12.18 ETM II wage rate should also apply. The Deputy Administrator indicated that he based his conclusion on a review of the record and the parties' positions, as well as on an analysis of the pertinent regulatory framework.²⁹ The Petitioners ask us to reverse this ruling.

JURISDICTION AND STANDARD OF REVIEW

The Board has jurisdiction to hear and decide "appeals concerning questions of law and fact from final decisions of the Administrator of the Wage and Hour Division or authorized representative" rendered under the SCA.³⁰ The Board's review of the Administrator's SCA final rulings is in the nature of an appellate proceeding.³¹ We are authorized to modify or set aside the Administrator's findings of fact only when we determine that those findings are not supported by a preponderance of the evidence.³² The Board reviews questions of law de novo.³³ We nonetheless defer to the Administrator's interpretation of the SCA when it is reasonable and consistent with law.³⁴

DISCUSSION

The Legal Standard

We explained earlier that the conformance regulations require that a proposed position be categorized and paid a wage that reflects an "appropriate level of skill comparison" between the position proposed for addition to the wage determination and

²⁹ Administrator's Oct. 31, 2005 final ruling at 3.

³⁰ 29 C.F.R. § 8.1(b) (2008); *see also* Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002).

³¹ 29 C.F.R. § 8.1(d).

³² 29 C.F.R. § 8.9(b).

³³ *United Gov't Sec. Officers of America, Loc. 114*, ARB Nos. 02-012 to 02-020, slip op. at 4-5 (Sept. 29, 2003); *United Kleenist Org. Corp. & Young Park*, ARB No. 00-042, ALJ No. 1999-SCA-018, slip op. at 5 (ARB Jan. 25, 2002).

³⁴ *See Department of the Army*, ARB Nos. 98-120/-121/-122, slip op. at 15-16 (Dec. 22, 1999).

those classifications already listed on the wage determination.³⁵ As far as establishing the wage rate for the conformed classification, the Administrator exercises broad discretion. The process of establishing “wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination “cannot be reduced to any single formula.”³⁶ “The approach used [by the Administrator] may vary from wage determination to wage determination depending on the circumstances.”³⁷ Federal employee pay systems, other wage determinations issued for the same locality, and standard wage and salary administration practices “which rank various job classifications by pay grade pursuant to point schemes or other job factors” may be used as guidance in the conformance process.³⁸

The Administrator’s wage rate decisions will be reversed “only if inconsistent with the regulations, or if they are ‘unreasonable in some sense, or . . . exhibit[] an unexplained departure from past determinations’”³⁹ When reviewing the Administrator’s determination in a conformance action, we must focus on the Administrator’s choice and the rationale advanced to support it.⁴⁰ In challenging the Administrator’s conformance action, the burden on a petitioner is not merely to prove that other choices were available – or perhaps even preferable – but to demonstrate affirmatively that the Administrator’s choice was unreasonable.⁴¹

The Petitioners’ Arguments

The Petitioners contend that the Deputy Administrator’s decision to conform the Metrology Technician classification to the ETM II classification and wage rate is inconsistent with the requirement that the conformed classification bear a “reasonable relationship (i.e., appropriate level of skill comparison)” to the classification in the wage determination that covers the contract.⁴² They also argue that this final ruling does not

³⁵ 29 C.F.R. § 4.6(b)(2)(i); see 29 C.F.R. § 4.6(b)(2)(iv); *COBRO Corp.*, slip op. at 22-23.

³⁶ 29 C.F.R. § 4.6(b)(2)(iv)(A).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Environmental Chem. Corp.*, ARB No. 96-113, slip op. at 3 (Feb. 6, 1998) (quoting *Titan IV Mobile Serv. Tower*, WAB No. 98-14 (May 10, 1991); see also *COBRO Corp.*, slip op. at 11.

⁴⁰ *COBRO Corp.*, slip op. at 23.

⁴¹ *Id.*

⁴² See 29 C.F.R. § 4.6(b)(2)(i).

follow the ARB's remand instructions in *Bionetics I*.⁴³ In response, the Deputy Administrator argues that his ruling was consistent with the applicable regulations, was reasonable, and was not an unexplained departure from past determinations or an abuse of discretion.⁴⁴ The Air Force concurs with the Deputy Administrator's position.⁴⁵

1. The Petitioners' primary job duty is calibrating specialized equipment, and the Deputy Administrator's choice to conform the Metrology Technician classification to the Electronics Technician, Maintenance (EMT) classification was not unreasonable.

The Petitioners contend that the Deputy Administrator erred when he concluded that their primary job function is calibrating specialized equipment. They argue that their primary job function is metrology and not simply calibration; that "metrological principles supersede and precede the precise task of calibration."⁴⁶ Thus, because their duties are more complex than the ETM classification to which the Deputy Administrator conformed their Metrology Technician classification, the Petitioners urge us to find that the Deputy Administrator's conformance action was unreasonable and an abuse of discretion.⁴⁷

The Petitioners rely on an Air Force Technical Order showing that PMEL is the focal point of the Air Force Metrology and Calibration Program;⁴⁸ an unsigned August 2000 conformance request that Petitioner Gregory Larson filed;⁴⁹ and an unsigned July 2001 letter from Petitioner Timothy Sanders to United States Senator Tim Johnson

⁴³ Petitioners' Brief at 11-18.

⁴⁴ Administrator's Brief at 10-25.

⁴⁵ Air Force's Brief at 1-4.

⁴⁶ Petitioners' Brief at 12.

⁴⁷ Amended Petition for Review at 5-6; Petitioners' Brief at 11-15.

⁴⁸ Supp. AR Tab 7 is an undated Air Force Technical Order showing, inter alia, that PMEL is "the activity authorized to possess and use base measurement standards." Ellsworth PMEL is a Type II B PMEL. This Technical Order describes such a PMEL as, "A base-level PMEL which can support aircraft, missiles, ground systems, and/or other equipment on base or in other local area. This includes the Rapid Assistance Support for Calibration (RASCAL) sets."

⁴⁹ Supp. AR Tab 17.

claiming discrimination against Ellsworth PMEL employees.⁵⁰ The Deputy contends that the record supports his determination that the calibration of specialized equipment is the Petitioners' primary duty.

A preponderance of the evidence supports the Deputy's determination that the Petitioners' primary duty as Metrology Technicians is calibrating specialized equipment. Following a February 2001 on-site investigation at Ellsworth, WHD determined that the PMEL technicians "spent the majority of their time conducting calibrations of specialized equipment. . . [that] was used to measure characteristics of objects, substances, or phenomena, such as but not limited to length, time, mass, temperature, electrical current, luminous intensity, and derived units of physical or chemical measure."⁵¹ The WHD investigator further determined that calibration was "the important aspect" of the job because of the sensitivity of the equipment involved and that repair work was secondary as "a support mechanism of the job."⁵² In addition, the WHD investigator found that the PMEL technicians performed "a wide variety of duties," including complete calibration of test and measurement equipment, comparison of instrument performance to a standard known accuracy, correction adjustment to minimize errors, proper calibration of equipment to meet specifications, relating quantitative information to measurements of physical and/or chemical properties, calibration according to standards traceable to the National Institute of Standards and Technology, and calibrations to "full manufacture" specifications.⁵³ Evidence that the Petitioners rely upon does not contradict WHD's determination that calibrating specialized equipment was the primary duty or that his decision was unreasonable.⁵⁴

⁵⁰ Supp. AR Tab 43.

⁵¹ See *Bionetics I*, slip op. at 2.

⁵² *Id.*

⁵³ *Id.* at 2, n.2.

⁵⁴ For example, the Petitioners point to a letter that a Bionetics official wrote to WHD during its investigation that favorably compared the Metrology Technician classification to the Electronics Technician, Maintenance (ETM) classification. Supp. AR Tab 12. The Petitioners argue that since the Administrator came to the same conclusion about the classifications, his decision is "no more than an after the fact reiteration of an argument previously made by Bionetics" and is therefore unreasonable. Petitioners' Brief at 12. But even if the Deputy Administrator did in fact accept Bionetics's argument, this would not make his decision unreasonable. The Petitioners also argue that the Deputy Administrator erred when he failed to take into account the Air Force's 1994 and 1999 legal opinions that its Metrology and Calibration Program could be held liable for negligence. Supp. AR at Tabs 4, 5. Petitioners' Brief at 14. But this evidence is irrelevant as to whether the Deputy Administrator's conformance decision was reasonable.

Furthermore, the Deputy Administrator relied primarily on the Service Contract Act Directory of Occupations in choosing to classify the Petitioners as electronics technicians (ETM IIs) rather than engineering technicians (ET IVs). According to the Directory, the “Engineering Technician” classification specifically excludes workers engaged in calibration and refers those workers to the “Electronics Technician, Maintenance” classification. The Petitioners note that while the Engineering Technician classification excluded calibration workers, it did not exclude metrology workers.⁵⁵ But the fact that there may be arguments in favor of conforming the Metrology Technician classification to the Engineering Technician classification does not render unreasonable the Deputy’s choice of the ETM II classification.⁵⁶ Therefore, in relying upon the SCA Directory, the Deputy Administrator employed an objective and reasonable rationale for choosing the ETM classification.

2. The Deputy Administrator explained his choice to conform the Metrology Technician wage rate to the ETM II wage rate.

The Petitioners argue that the Deputy did not explain why he decided that the ETM II wage rate should apply. They contend that he did not consider the factors relevant to choosing the wage rate, set out at 29 C.F.R. § 4.6(b)(2)(i), (ii) and (iv).⁵⁷ The record, however, shows that the Deputy offered support for and explained his wage rate ruling, and that that ruling is consistent with the regulations.

The Deputy explained that because the Metrology Technician work on this contract was performed at multiple locations throughout the United States, he compared the existing wage determination rates at those locations with the Federal Wage Board wage rates that apply at those other locations, i.e., he compared the wages that Department of Defense civilian employees receive to the wages that non-federally employed workers, like the Petitioners, receive at these other locations.⁵⁸ He attached a

⁵⁵ Petitioners’ Brief at 15.

⁵⁶ See *ERC/Teledyne Brown Eng’g*, ARB No. 05-133, slip op. at 6-8 (Jan. 31, 2007) (Administrator’s ruling conforming Marshall Space Flight Center calibration technicians to the Service Contract Act Directory of Occupations’s Instrument Mechanic classification not rendered unreasonable by the possibility that another classification might also be an appropriate benchmark).

⁵⁷ Amended Petition for Review at 5, 6; Petitioners’ Brief at 17. The Administrator notes that in their Amended Petition for Review at 5, the Petitioners mistakenly rely upon 29 C.F.R. § 4.54(a), which pertains to wage determinations and not to conformance actions such as this. Administrator’s Brief at 19-20. In their Brief, however, the Petitioners do not rely on that regulation.

⁵⁸ Using the terminology provided in 29 C.F.R. § 4.6(b)(2)(iv)(A), the Deputy Administrator referred to “the Federal Wage Board system of pay” and “the Federal Wage

chart to his final ruling that contained the rate comparison. The Deputy Administrator's decision to use this comparison is specifically allowed under 29 C.F.R. § 4.6(b)(iv)(A), which provides that guidance in setting the wage rate for a conformed classification may be obtained by comparing the way jobs are rated under the Federal Wage Board Pay System. The Deputy's chart shows that the ETM II wage rate is approximately the same as or higher than the Federal Wage Board wage rate at all of the locations except two, one of which is the Ellsworth Air Force Base where the Petitioners worked. The ETM II rate at Ellsworth is \$3.44 less than the Federal Wage Board wage rate.⁵⁹ He concluded that the fact that the ETM II wage rate was lower than the comparable Federal Wage Board wage rate at Ellsworth was not a sufficient reason to reject his wage comparison as an appropriate conformance approach in this case.⁶⁰ Because the Deputy's ruling that conformed the Metrology Technician wage rate to the ETM II wage rate at Ellsworth is consistent with the regulations, not unreasonable, and not an unexplained departure from past determinations, we must uphold it.⁶¹

3. The Deputy Administrator's decision did not disregard the ARB's remand instructions in *Bionetics I*.

The Petitioners argue that the 2005 ruling does not comply with the ARB's remand instructions in *Bionetics I*, in which we remanded the case and ordered the Administrator to explain why he chose the 1996 Stovall ruling over the 2001 Strain decision. The Petitioners argue that on remand the Deputy Administrator did not explain that choice.⁶² The Deputy points out that, unlike the earlier final ruling, here, on remand, he did not base his decision on the 1996 Stovall ruling, or any other ruling.⁶³ Instead, he argues that he considered the record, the parties' arguments, and the regulatory framework for conformance actions. This different approach in deciding conformance issues is not inconsistent with applicable regulations or unreasonable.

Board rates" to determine "how Federal employees would be paid for Metrology Technician work." Supp. AR Tab 5 at 4, 5. The record does not define the Federal Wage Board pay system. It is apparent from charts found in the record, however, that this system covers United States Department of Defense civilian personnel. Supp. AR Tab 46.

⁵⁹ Supp. AR Tab 1 (Administrator's Oct. 31, 2005 final ruling) at 5.

⁶⁰ *Id.*

⁶¹ See *Environmental Chem. Corp.*, slip op. at 3; see also *Dyncorp*, No. 87-SCA-OM-5, slip op. at 3 (Dep. Sec. Jan. 22, 1991) (noting that the Administrator's "determination may be less reasonable than another without being altogether unreasonable").

⁶² Amended Petition for Review at 5; Petitioners' Brief at 16-17.

⁶³ Administrator's Brief at 22.

The Petitioners also argue that the Deputy did not comply with the ARB's remand order that he further develop the record regarding what steps Bionetics or the Air Force took to comply with the regulatory requirement that the agency and the contractor must initiate the conformance process before employees in unlisted job classifications, such as the Petitioners, perform their work.⁶⁴ This argument is significant, however, only if the Deputy Administrator determined that the Petitioners should retroactively receive higher wages.

SCA regulations provide that when WHD discovers that the contracting officer and the contractor have not initiated the conformance process, it "shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work."⁶⁵ On remand, the Deputy Administrator conformed the Ellsworth Metrology Technician position and wage rate to the ETM II classification and wage rate listed in the wage determination, i.e., he conformed the wage rate to the same rate the Petitioners had been paid since they began work on the contract. Accordingly, the Petitioners are not owed additional compensation retroactive to the date they began work on this contract. Consequently, the Petitioners' argument that the Deputy did not develop the record about efforts to initiate the conformance process is moot because, even assuming that Bionetics or the Air Force did not initiate the conformance, the Deputy properly decided that the Petitioners were not entitled to a retroactive wage increase.

Furthermore, we find no merit in the Petitioners' assertion that the Deputy Administrator failed to follow the Board's remand order to consider documents the Petitioners had proffered on appeal in *Bionetics I*. The Deputy notes that his 2005 ruling on remand specifically refers to one of the documents that the Petitioners submitted during the *Bionetics I* appeal. He also states that he fully considered the Petitioners' arguments.⁶⁶ The fact that the Deputy's final ruling does not specifically address each and every document that the Petitioners may have proffered does not indicate that he did not consider them as we directed in *Bionetics I*.

CONCLUSION

A preponderance of the evidence supports the Deputy Administrator's finding that the Petitioners' primary duty was calibrating special equipment. In addition, the SCA Directory of Occupations supports his decision to conform the Metrology Technician position to the ETM II classification, and SCA regulations support his decision to conform the wage rate to the ETM II rate at Ellsworth. Furthermore, the Deputy did not

⁶⁴ See *Bionetics I*, slip op. at 13; 29 C.F.R. § 4.6(b)(2)(i), (ii).

⁶⁵ 29 C.F.R. § 4.6(b)(2)(vi).

⁶⁶ Administrator's Brief at 24.

disregard our remand instructions in *Bionetics I*. Therefore, the Deputy Administrator's October 31, 2005 final ruling is reasonable. As a result, we affirm that ruling.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge