



**In the Matter of:**

**PALMETTO GBA**

**ARB CASE NO. 10-056**

**In re: Request for review and reconsideration of certain wage rates issued under the Service Contract Act (SCA) on Wage Determination No. 2005-2135 (Revision 6, issued April 14, 2009 and Revision 9 issued January 20, 2010)**

**DATE: February 28, 2012**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For Petitioner Palmetto GBA:*

**Daniel B. Abrahams, Esq. and Shlomo D. Katz, Esq., *Brown Rudnick LLP*, Washington, District of Columbia; Bruce W. Hughes, *President and Chief Operating Officer, Palmetto GBA*, Columbia, South Carolina**

*For Respondent Administrator, Wage and Hour Division:*

**Matthew Bernt, Esq.; Jonathan T. Rees, Esq.; William C. Lesser, Esq., and M. Patricia Smith, Esq., *U.S. Department of Labor*, Washington, District of Columbia**

**Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Joanne Royce, *Administrative Appeals Judge*; and Lisa Wilson Edwards, *Administrative Appeals Judge***

### **FINAL DECISION AND ORDER**

This case arose under the McNamara-O'Hara Service Contract Act of 1965, as amended (SCA or Act), 41 U.S.C.A. § 351 et seq. (West 1994)<sup>1</sup> and implementing

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<sup>1</sup> The SCA has been amended since Palmetto filed its Petition for Review in February 2010. See 41 U.S.C.A. § 6701 (Jan. 4, 2011)(Thomson Reuters 2012). These amendments are not pertinent to the issues in this case.

regulations under 29 C.F.R. Parts 4, 6, 8 and 18 (2011). Palmetto GBA (Palmetto) petitions for review of the January 25, 2010 final ruling for the Administrator, Wage and Hour Division (the Administrator) on “review and reconsideration” of Wage Determination 2005-2135 (Rev.6) resulting in Revision 9 issued January 20, 2010. Our jurisdiction to hear and decide Palmetto’s appeal is discretionary in nature. We decline to grant review in this case.

## **JURISDICTION AND STANDARD OF REVIEW**

The Administrative Review Board (ARB or Board) “has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from final decisions of the Administrator of the Wage and Hour Division” in connection with wage determinations arising under the Service Contract Act. 29 C.F.R. § 8.1(b). “The Board may decline review of any case whenever in its judgment review would be inappropriate because of lack of timeliness, the nature of the relief sought, the case involves only settled issues of law, the appeal is frivolous on its face, or other reasons.” 29 C.F.R. § 8.6(a).

## **DISCUSSION**

The SCA requires the Secretary of Labor to determine minimum wage and fringe benefit rates for service employees employed on Federal service contracts. The Administrator is charged by regulation with the responsibility for implementation. 29 C.F.R. § 4.3(a). Wage determinations are incorporated into contract specifications for each Federal service contract. In the absence of a collective bargaining agreement covering such employees, the Administrator issues a wage determination that reflects wages and benefits prevailing for service employees “in the locality.” 41 U.S.C.A. § 351(a)(1),(2); 29 C.F.R. §§ 4.50, 4.54. The Administrator bases these wage determinations on wage data, including surveys compiled by the Department of Labor’s Bureau of Labor Statistics. 29 C.F.R. § 4.51. Interested parties affected by wage determinations may request review and reconsideration by the Administrator. 29 C.F.R. § 4.56(a)(1),(2). The Administrator’s final decisions are subject to review by this Board. 29 C.F.R. § 4.56(b); 29 C.F.R. Part 8. As set forth above, the Board’s review is discretionary. 29 C.F.R. §§ 8.1(b), 8.6(a). If a party files a petition for review of a wage determination, prior to contract award, exercise of option or extension, the Board may review the wage determination after the award, exercise of option, or extension “if the issue is a significant issue of general applicability.” 29 C.F.R. § 8.6(d). Retroactive modification affecting wage determination rates for contemporaneous contract periods is not available, however. *D.B. Clark III*, ARB No. 98-106, slip op. at 9-10 (Sept. 8, 1998).

Palmetto is a South Carolina-limited liability company and wholly-owned subsidiary of BlueCross BlueShield of South Carolina that provides claim processing services to the U.S. Railroad Retirement Board. Petition for Review at 3. The company employs approximately 300 workers in the classifications of “General Clerks, Accounting Clerks, and other administrative support personnel in Augusta, Richmond County, Georgia.” *Id.* Palmetto states that the final option year of this contract was to expire on September 30, 2010, and that the Railroad Retirement Board might subsequently solicit another contract for administrative support services, which may be performed anywhere within the United States. *Id.* at 4; Reply Brief at 16. Palmetto requests “expedited review” of the petition, stating that “[t]ime is of the essence, and there is a real risk that this appeal will be mooted by the award of a contract” to a contractor other than Palmetto. Petitioner’s Reply Brief at 16, 17. The company requests that the ARB “overturn” the Administrator’s decision and remand to the Administrator for publication of an accurate wage determination for Richmond County, Georgia.<sup>2</sup> Palmetto further requests additional corrections to the wage determination to put Richmond County in a competitive position and avoid the potential unemployment of almost 300 current workers. Petition for Review at 3-6; Reply Brief at 17. The Administrator responds, urging the Board to deny Palmetto’s request for review as it is without merit and to affirm the Administrator’s January 2010 final ruling.

Palmetto stated in its petition (filed February 2010), *supra*, that this appeal may be moot due to the passage of time. While Palmetto requested expedited review of this case in its brief, it did not file a motion to expedite with the Board to bring to our attention what it asserts is an urgent matter. The uncertainty of Palmetto’s status after September 2010 when its contract with the Federal Government was set to expire, *see* 29 C.F.R. § 8.2, along with the potential futility of what it seeks as remedies results in the

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<sup>2</sup> Palmetto contends that the 2010 revised wage determination (Revision 9) does not reflect prevailing wage rates for Richmond County, Georgia and thus does not comply with the requirements of 29 C.F.R. § 4.55(a). Petition for Review at 1; Reply Brief at 5-8. Palmetto argues that Wage and Hour erred when it retained January 2006 National Compensation Survey (NCS) wage rates for the General Clerk I (\$13.39) and III (\$16.21) classifications and should have relied on the “substantially lower wage rates” for the classifications of “Office and Administrative Support Occupations” contained in the March 2009 NCS for Augusta-Aiken, Georgia. Petition for Review at 2; Reply Brief at 8-10. Palmetto asserts that the revised wage rates are both substantially higher than wages paid within the federal pay system and higher than the wage rates paid for similar classifications employed within state and local institutions in this locality, data that Palmetto provided and Wage and Hour arbitrarily ignored on review. Petition for Review at 5, 6; Reply Brief at 10-16. Palmetto contends that these errors resulted in a flawed, arbitrary wage determination that has unrealistic rates, non-existent rates, and rates that cannot be achieved or maintained.

lack of timeliness. Under these circumstances, Board review is inappropriate. 29 C.F.R. § 8.6(a). Accordingly, we decline to grant review of this case and deny Palmetto's petition for review.<sup>3</sup>

### CONCLUSION

For the foregoing reasons, review is inappropriate in this case given Palmetto's statements that the appeal may be moot due to the passage of time since the filing of its appeal in February 2010. Accordingly, Palmetto's petition for review is **DENIED**.

**SO ORDERED.**

**LISA WILSON EDWARDS**  
**Administrative Appeals Judge**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**JOANNE ROYCE**  
**Administrative Appeals Judge**

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<sup>3</sup> While Palmetto makes numerous assertions challenging the Administrator's wage determination for Richmond County, Georgia, these assertions fail to satisfy the requirement of 29 C.F.R. § 8.6(d), in that the issues raised are neither significant nor have general applicability that would warrant review. *See L-3 Commc'ns Joint Operations Grp.*, ARB No. 02-120 (Jan. 30, 2004).