

**U.S. Department of Labor**

Office of Administrative Law Judges  
50 Fremont Street - Suite 2100  
San Francisco, CA 94105

(415) 744-6577  
(415) 744-6569 (FAX)



**Issue Date: 23 March 2007**

**Case No.: 2005-SCA-00024**

*In the Matter of:*

**PROGRESSIVE ENVIRONMENTAL LLC,**

and

**BRUCE CAMPBELL, Manager,**  
An Individual,

and

**RANDY HUMBERT, Manager,**  
An Individual,

***Respondents***

**APPEARANCES:**

Patricia Drummond, Attorney  
For the Department of Labor

Steven W. Hughes, Attorney  
For Respondent, Progressive Environmental, LLC

Clark H. Richards, Attorney  
For Respondent, Randy Humbert

**BEFORE:**

Russell D. Pulver  
Administrative Law Judge

**DECISION AND ORDER**

This proceeding arises under the McNamara-O'Hara Service Contract Act, 41 U.S.C. § 351 ("the Service Contract Act" or "SCA" or "the Act"). The regulations issued pursuant thereto can be found at 29 C.F.R. Parts 4 and 6. The Act sanctions those who are awarded a federal contract and subsequently fail to (1) pay the required wage, (2) award minimum fringe benefits or (3) keep adequate records, by barring them from receiving federal contracts for a period of 3 years.

## Background and Procedural History

On September 26, 2005, the Secretary of Labor (“Secretary”) filed a complaint against Respondents, alleging they had violated the Act by failing to timely pay the minimum hourly rate and minimum fringe benefits between October 2002 and March 2004. Administrative Law Judge Exhibit (“AX”) 1, ¶ IV. Respondents answered the complaint on October 17, 2005. AX 2. The Secretary and Respondents reached an accord to resolve those issues, except for whether debarment is an appropriate sanction against Respondents. AX 3. The Complaint and subsequent Stipulation between the parties specifically relate to Contract No. DACW-68-03-p-0135, a U.S. Army Corps of Engineers contract awarded June 3, 2003; Contract No. 14589, a Bonneville Power Administration (“BPA”) contract awarded July 16, 2003 through March 30, 2004; and Contract No. 9536, another BPA contract awarded October 1, 2001 through March 30, 2004. AX 1, ¶ II. Although the Administrator and Respondents have agreed upon payments of amounts due, debarment is sought. AX 3. This matter was thereafter assigned to me and a Notice of Hearing was issued on March 23, 2006 for the hearing to be held on June 22, 2006. AX 4. After two continuances, the formal hearing was held on September 19, 2006 in Spokane, Washington, at which time all parties presented testimony and other evidence. AX 5 and 6. The following exhibits were admitted into evidence: Administrative Law Judge Exhibits (“AX”) 1-9; Government’s Exhibits (“GX”) 1- 6 and Respondents’ Exhibits (“RX”) 1-7, 9 and 10. Plaintiff called James Jellison, an employee of the Bonneville Power Administration, and Wage and Hour Investigator, Seward Dinsmore. Respondents presented evidence in support of their request for relief from debarment, including testimony from respondent Randy Humbert; Jack Curtin, former attorney for Progressive Environmental; and William Simer, an accountant; as well as testimony elicited from James Jellison who was called as the government’s witness. Respondent Bruce Campbell did not appear nor did he offer evidence. Representations were made to the Court by counsel for Mr. Humbert that Mr. Campbell had no desire to take part in the proceedings. Hearing Transcript (“Tr.”) 6. Following the hearing, the record was left open for the submission of closing briefs to be filed by December 4, 2006.

## Issue

The only issue presented for my resolution is whether Respondents shall be debarred pursuant to § 354(a) of the Act. Furthermore, in reaching an outcome, I need not address whether Respondents actually violated the Act, since they have admitted doing so, although they argue these violations were inadvertent. I thus need only determine whether Respondents have established that they are entitled to relief from debarment.

## The Arguments of the Parties

The violations committed by Respondents were (1) failure to pay workers federal holiday pay, and (2) deducting \$30 per week from workers’ pay for transportation by company vehicles to and from work sites resulting in payments of less than the SCA prevailing wage. The Administrator argues that Progressive Environmental, LLC, and its owners and managers, Bruce Campbell and Randy Humbert, should be debarred for a period of three years because their conduct amounts to culpable neglect, and they are therefore not entitled to relief by proving the existence of unusual circumstances. The Administrator also argues that Respondents are

precluded from establishing unusual circumstances which would relieve them from the sanction of debarment because they have a history of violating the Act. In the alternative, the Administrator argues that Respondents have failed to prove unusual circumstances.

Respondents argue the violations were not the result of culpable conduct and that no other aggravating factors are present. They also argue they have proven the existence of unusual circumstances, including existence of a *bona fide* legal issue of doubtful certainty, lack of prior violations, *de minimis* nature of the violations and the particular circumstances of the business, sufficient to warrant relief from the ordinary sanction of debarment. Respondents also argue that even if Progressive Environmental, LLC and Bruce Campbell are debarred, Randy Humbert should not be debarred.

### Statement of Facts

#### **Testimony of Jack Lynn Curtin**

Respondents called Jack Lynn Curtin, an attorney licensed to practice in Idaho. He has known Randy Humbert and Bruce Campbell since 1988 and was involved in the creation of Progressive Environmental. Tr. 37. Mr. Curtin testified that Progressive Environmental, based in Coeur D'Alene, Idaho, is a company engaged in reforestation, e.g., tree planting, herbicide application, pre-commercial thinning, and right-of-way work. Tr. 38. He said that he has gone to the Progressive Environmental offices on occasion and has seen Bruce Campbell and the two women who work there. Tr. 38. The women in the office were engaged in administrative work such as processing payroll and handling contracts. Tr. 38. Curtin testified that he saw Randy Humbert at the office on rare occasions and that Humbert was principally in the field working out of his truck as the Pacific Northwest Manager. Tr. 39 Progressive Environmental had two regions but actually did work all over the U.S., although principally in the Pacific Northwest and in the South. Tr. 39.

Curtin testified that he obtained a copy of a letter to Bruce Campbell from Wage and Hour Investigator Dinsmore dated April 28, 2004, informing Campbell that there was an audit raising transportation issues. Tr. 40. He testified the letter cited an internal operating handbook of the Department. Tr. 41. Mr. Curtin said Dinsmore had provided a section of the Wage and Hour Handbook, but he assumed it was simply a guide to the federal regulations because the handbook was clearly disseminated to the general public. Tr. 61. Curtin thought the handbook was silent in regard to transportation from a place of residence to the worksite. Tr. 41. He said his research led him to the conclusion that the deductions for transportation of the Progressive Environmental employees from residence to job site were allowable deductions falling within the definition of "other facilities" found at 29 CFR §531.32(a). Tr. 42, 51.

He testified that when H2B workers come into the country, the company has to pay what is called the prevailing wage, which is almost always higher than the federal minimum wage. Tr. 43. Mr. Curtin testified that DOL claimed the \$30 per week deduction by the company was illegal because it reduced the workers' pay below the SCA minimum prevailing wage. Tr. 48-49. However, he said, the workers' pay fall below the federal minimum wage even though it did fall below the SCA prevailing wage as a consequence of the \$30 per week deduction. Tr. 49. Curtin suggested that 29 CFR Part 4 requires the company to pay the SCA minimum wage, but that it

(the SCA prevailing wage) was not the minimum wage for purposes of deductions. Tr. 65. He agreed that the SCA minimum wage is that which is found in the wage determination provided with the contract. Tr. 66. Curtin stated that in the southern region Progressive Environmental had taken the transportation deduction and DOL had never brought it up. He indicated this lack of consistency confused him and he sought clarification on behalf of the company. Mr. Curtin admitted that in the southeastern region, he did not remember whether the Service Contract Act played a role. Tr. 63. Curtin testified that although he received substantial authority (from counsel for the government) for various issues he never got anything that would change his mind. Tr. 59. Further, he noted that neither Humbert nor Campbell were lawyers. Tr. 60.

Curtin testified that many of the Progressive Environmental workers had driver's licenses and many of these workers had motor vehicles but that on a government contract site, there were strict minimum vehicle safety standards. Tr. 45. It was felt that workers' vehicles were not safe. Tr. 46. He stated carpoolers were overcharging workers, so the company made a determination of what was "just" and provided the transportation even though it was very costly. Tr. 46-47. He testified that the company has late model vehicles, all with safety equipment, and that the vehicles are available to workers or to the work crew assigned 24 hours a day, 7 days a week. Tr. 47. Curtin testified that he doesn't know of any records kept by the company regarding the personal use of the vehicles. Tr. 72. Regarding the other violations, Curtin testified that the failure to pay holiday pay was just a clerical oversight. TR. 55. Curtin testified that Progressive Environmental finally reimbursed the transportation deductions when the Stipulation (AX 3) was entered in early 2006. Tr. 68.

Curtin testified that Humbert and Campbell had both been officers of Progressive Forestry Services ("PFS"), that Campbell was the General Manager and Humbert was Regional Manager. Tr. 69, 70. Further, he testified that some employees were the same for both PFS and Progressive Environmental. He stated that the two companies (Progressive Environmental and PFS) used the same equipment, assets, tools and vehicles. Tr. 71.

### **Testimony of James Jellison**

James Jellison is a natural resource specialist for the Bonneville Power Administration. Tr. 77. In regard to RX 6, he testified that he wrote this letter of support for Progressive Environmental but that he did not have permission from his superiors to speak for the agency and has no knowledge whatsoever of Progressive Environmental's pay practices. Tr. 78. Jellison testified that he sets up brush contracts, goes out on the sites and evaluates if the brush should be treated and what kind of treatment should be applied, etc. Tr. 78 -79. He said he has interaction with Humbert and the crews. Jellison testified that Progressive Environmental is a competent contractor and that since 1994 they have been doing an excellent job for him, particularly in the Spokane region.<sup>1</sup> Tr. 81. He said the company has to pay prevailing rates. Tr. 82. He also said the contractor needs to know the rate so he can calculate fringe benefits. Tr. 83. He testified that the

---

<sup>1</sup> An objection was made by Counsel for the Administrator to testimony elicited by Respondents' counsel regarding whether or not the Respondents performed "good work" on the contracts. The basis of the objection was that such evidence is irrelevant to the issue of debarment. The ruling on the objection was deferred, Tr. 81. The objection to this testimony is overruled on the basis that such testimony may go to support Respondents' contention that unusual circumstances may include the particular circumstances of the company/respondents.

work sites can be as far as five to sixty miles from towns. Tr. 83. Jellison estimated the closest work unit would be two to ten miles from a community. He testified that Humbert, Campbell and Progressive have been doing SCA work since 1994, the earlier work being performed by Humbert and Campbell when they were principals of PFS. Tr. 84-86.

### **Testimony of Randy Humbert**

Randy Humbert is an owner and manager of Progressive Environmental along with Peter Smith and Bruce Campbell. Tr. 88, 130. He said that prior to forming Progressive Environmental, he and Campbell had been principals at Progressive Forestry Services. Tr. 130. Prior to that he was associated with Peter Smith at Evergreen Forestry (up to 1988). He said that when he was with Evergreen Forestry, Bruce Campbell was also working there. Tr. 130. Humbert testified that he managed crews for Evergreen and they were probably doing Service Contract Act work. Tr. 131. He did not recall bidding any government contracts for Evergreen. When Evergreen had a dispute between partners and one of them split off, Humbert went to work for the new company (Progressive Forestry Services or PFS) and he became a partner in about 1990-1991. Tr. 89, 132. Humbert began government contracting in 1994 when he was bidding this work for Progressive Forestry Services and oversaw the performance of these contracts.. Tr. 92. He was Regional Manager (of PFS) in charge of the Pacific Northwest Region. Tr. 93, 132.

The formation of Progressive Environmental, LLC was the result of yet another dispute. Tr. 89. Humbert testified that he and Campbell were not happy with the person running the PFS office, their partner, Zaharies, so they fired him and he sued. They were blocked from working as PFS because of the litigation so Humbert and Campbell then formed Progressive Environmental. Tr. 89, 90, 133-134. They never closed PFS. Tr. 134. Peter Smith and Bruce Campbell got together and Smith put up the money to buy the PFS equipment and satisfy the debt with the bank. Employees of PFS then moved over to Progressive Environmental. Tr. 135. Humbert was a manager of Progressive Environmental, along with Bruce Campbell. Tr. 90-91; GX 1. Humbert testified that he is now back with Progressive Forestry Services as the 100% owner of the company. Tr. 92. According to Humbert, Progressive Environmental stopped doing business at the end of 2005. Tr. 109. He testified that in January 2006, he bought Progressive Forestry Services 100% and has his wife managing it. Tr. 110. Humbert said that he still has ownership interest in Progressive Environmental which owns the equipment which he leases for Progressive Forestry Services. Tr. 135.

Humbert stated that Progressive Environmental's home office was in Coeur d'Alene, Idaho. Bruce Campbell was the General Manager but Humbert said he did not have an office in Coeur d' Alene as his office is in his truck where he has a computer. According to Humbert, Campbell ran the Progressive Environmental office and Humbert went out and looked at jobs, obtained jobs, hired people for jobs and made sure things were done right on the jobs. Tr. 91. He said that Progressive Environmental had 30 to 100 workers, depending on the work and the season. Tr. 95. Campbell and the office staff oversaw all the payroll functions for both private and government contracts. Tr. 95. Humbert testified that in the case of Progressive Environmental, he oversaw the actual day-to-day performance of the federal contracts. Tr. 132. Progressive Environmental had primarily non-government contracts during the audit period as

only 6% to 8% was government work. Tr. 95. The women working in the office, he said, were dealing with mostly private contracts where holiday pay is not required under those contracts. Tr. 95. However, it is required on a government contract. Tr. 96. At the time of the audit (in the instant case) most of the work of Progressive Environmental was private. Tr. 105. Now, Humbert said, the government contracting has increased to 40 % percent of his work.

When Humbert started his SCA work for Evergreen and PFS prior to Progressive Environmental, and was negotiating contracts, he knew there were wage determinations although he testified that he didn't pay a lot of attention to them. Tr. 136. Humbert testified that he understood that with SCA the minimum wage to be paid is the prevailing wage on the wage determination. Tr. 136, 147. Humbert said there were not wage determination sheets attached to every contract, but that eventually he obtained them. Tr. 136. He understood that if he didn't have a wage determination it was his responsibility to get one. Tr. 147, 148. In regard to the contracts in the instant case, Humbert said he was on the job supervising the crews and relied on Campbell and the office staff to take care of wage payments. Tr. 138. Humbert testified that after Progressive Environmental was audited by Wage and Hour he became aware that getting a wage determination is a "real pain." Tr. 100. He said the wage determination is not with the master contract. Tr. 101, 102. He testified that the wages are, for the most part, the same as the prevailing wage that is current for that year of operation, although the fringe benefits change. Tr. 102. Humbert testified that in the years that he has been doing SCA work the wage determination requirements for holiday pay and vacation hasn't really changed. Tr. 148. He knew there is a provision for federal holidays on the wage determination sheets, but he testified that in the twelve years he has been doing SCA work: "I didn't pay attention to those prior to this incident." Tr. 149. Humbert was aware what holidays his crews were working. Tr. 150.

Humbert testified that when he became aware that his workers were not being paid for holidays by the subject audit, he compiled another form so his office staff wouldn't make a mistake again. It has a category for whether holiday pay is a requirement of the particular job and what fringe amount is to be paid and the pay rate, among other details. Tr. 107.

Humbert stated that when he first had foreign workers, or "documented workers," they provided their own transportation. Tr. 115. He added that people who have worked two or three years for him usually get driver's licenses. "So then new people would end up carpooling with those guys but they would be charging people \$50 bucks a week for a ride, sometimes more." Tr. 115. He had seen vehicles with bald tires and Progressive Environmental decided that it would be better to make transportation available to its workers. It was difficult to get the carpoolers to switch because they were making money providing rides. Tr. 116. Humbert testified that there was no economic advantage to him to provide transportation and that he never made any money on it. Tr. 118. Currently, he doesn't charge for it and absorbs 100% of the cost. Tr. 118.

All of his workers were H2B workers who came from Guatemala or Mexico. Tr. 138. Humbert testified that the workers came to the United States without families or significant belongings. Most do not have automobiles. Tr. 139. They generally all stay in a motel although Humbert didn't remember where they stayed for these contracts. Tr. 140. He believes that Mr. Jellison's estimate that the work site can be ten to fifty miles from where the workers stay is correct, but it can vary. Tr. 140. He did state that the work is performed on power lines that go up

on mountainsides. Tr. 141. He also agreed that there are some work areas where you need a four wheel drive vehicle to reach them. Tr. 141. He testified that in Olympia, Washington, there is public transportation but he agreed there is no public transportation up on the mountainsides Tr. 145. Further, he testified that when he took the workers to the work site in vans there was no way for them to get back to their motels until he took them back. Tr. 145.

Humbert said that workers who were owed the most on Attachment A (attached to the Complaint at AX 1) are men who have worked for him for quite a few years. They are here (in the U.S.) for the majority of the holidays, so they were out the most holiday pay. Tr. 120-121. Humbert stated that the workers brought in under the H2B program are poor but he said that “the guys that lost two, three, six, seven hundred dollars (in lost wages and transportation deductions) have worked for me for years and they’re quite wealthy by the standards of where they live.” Tr. 151. Humbert testified that Progressive Environmental did not reimburse the workers for the transportation deductions until some two years after the deductions were taken, Tr. 151. Humbert testified that the percentage of government contracting has been increasing because it is more profitable since it’s very difficult to compete in private industry and make a decent profit because of the wage differential between H2B’s and “documented workers.” He said he does not know if he can sustain the business just on the private contracts. Tr. 124. Further, he uses the private contracts as bridges between government contracts and so debarment would affect him individually and would affect the long-term employees he hires. Tr. 127.

Humbert testified that he was an officer of Progressive Forestry Services when Seward Dinsmore conducted an investigation in 2002. Tr. 151. He stated there were problems then because he didn’t correctly calculate bonuses paid to the employees and the bonuses weren’t correctly plugged into the overtime base rate. Tr. 152. He testified that PFS had to pay \$8400 for back wages owed to workers in overtime. When Humbert was asked whose fault it was that holidays and proper wages were not paid to the Progressive Environmental workers, he replied that the office was not paying attention to things and that it was the fault of his office staff. Tr. 154. He said that he relied on the advice of his attorney in regard to the transportation issue.

### **Testimony of William Simer**

William Simer is a Certified Public Accountant, Tr. 155. In reviewing RX 1, he testified that the exhibit shows the government contracts that Progressive Environmental had entered into during the period of the audit from October 1, 2002 to March 30, 2004 and indicated total contract amounts. Tr. 157. He calculated back wages for individual violations to arrive at the percentage of those amounts compared to what he considered total revenue. Tr. 158. In connection with RX 9, he testified that there is an average of .28 cents per hour differential. Tr. 159 and 160. Although Simer stated that he did not prepare RX 9, it was his understanding that the amounts shown included all non-federal work as well as federal contract work. Tr. 161. He said that Vicky (Humbert’s wife) prepared it. He agreed that in regard to RX I, there were two more contracts listed on the exhibit than were audited by Wage and Hour amounting to an additional \$285,315.56.

## **Testimony of Seward Dinsmore**

Seward Dinsmore testified that he is a Wage and Hour Investigator (WHI) with the United States Department of Labor and has been since July 1975, a period of 30 years. He has received training encompassing the Fair Labor Standards Act (“FLSA”) and the various adjuncts to that Act, child labor laws, recordkeeping, the Migrant and Seasonal Agricultural Worker Protection Act (“MSPA”), Davis Bacon and Related Acts (“DBA”) and the Service Contract Act. Tr. 164. His investigations generally cover the FLSA, MSPA, the two prevailing wage acts, the SCA and the DBA, as well as the Family and Medical Leave Act. Dinsmore said that in his career he has conducted in excess of two thousand investigations. Tr. 166.

Dinsmore said that at the time he did the audit in the instant case the principals of Progressive Environmental were Bruce Campbell, Peter Smith and Randy Humbert. Tr. 166. He was familiar with them through prior investigative action of Evergreen Forestry and Progressive Forestry Services. Tr. 166-167. Dinsmore said that at the time of his investigation of Progressive Environmental, Progressive Forestry Services was in suspension but had not been dissolved. The site visit for the Progressive Environmental investigation was the same as the location of Progressive Forestry Services. He testified that Bruce Campbell told him that when Progressive Environmental was established, a number of employees of Progressive Forestry Services were retained, including their supervisors. Tr. 167. The two people that Dinsmore observed running Progressive Environmental were Bruce Campbell and Randy Humbert. Tr. 167.

Dinsmore’s investigation was conducted under the FLSA, MSPA and the SCA. When Dinsmore inquired about whether the company had federal service contracts he was given three. Tr. 168. His understanding was that those were the three contracts that were currently ongoing. One contract was with the Corps of Engineers and the other two were with the Bonneville Power Administration. Tr. 168. Dinsmore testified that he had spoken with the Contracting Officers about the instant case and discovered that Progressive Environmental had less than one hundred workers performing these service contracts and that the workers were largely from either Guatemala or Mexico. Dinsmore said that according to Bruce Campbell, the workers had come to this country under the H2B program. In Dinsmore’s experience, these workers were non-English speaking. Tr. 169. Further, information from company officials led Dinsmore to believe that over 90 percent of the workers on these three contracts were H2B workers. Tr. 169.

Dinsmore testified that when he spoke to the Contracting Officers about the working conditions in respect to the contracts he asked about transportation conditions. He was told by the Contracting Officers that there would be no public transportation to these work units and that they would not encourage private automobiles to be driven to these work sites. Dinsmore testified that he discovered in the first week of his investigation that there was a problem regarding the employer’s provision of transportation. He spoke with Bruce Campbell and told him that he did not believe that under the circumstances of the SCA the company would be allowed to deduct the \$30 a week vehicle charge. He told Campbell that the Department (U.S. Department of Labor) would not look at this transportation as a “facility” that would be deductible from an employee’s minimum prevailing wage. Tr. 171. Dinsmore thought that Mr. Campbell didn’t understand the Department’s position, so subsequently he gave him copies of the appropriate Field Office Handbook section and also had a number of conversations with him

about it. Tr. 171-172, 198-199. Dinsmore testified that he explained the different minimum wages that could be applicable in a business investigation and that in regard to the Service Contract Act he told Bruce Campbell that the rate that had to be minimally paid was the wage determination classification rate. Tr. 175. He also explained to Mr. Campbell why the Wage and Hour Division did not consider the transportation provided by the company a benefit to the employees. He told Campbell that under the circumstances, because of the remoteness of the units and the fact that largely people didn't have access to public transportation, and if they had private transportation it couldn't take them to the work unit, Wage and Hour determined that the deduction of a transportation cost was clearly a benefit to the company since getting the workers to the unit would be the only way the company could perform the contract. Tr. 175-176. Dinsmore told Campbell that the Department would not allow a \$30 per week vehicle deduction for transportation of people to and from a work unit as they did not believe that it represented the interest of the worker. Further, he told Campbell that he had discussed the matter with his superiors, the Assistant District Director (of Wage and Hour), the District Director and the Agricultural Regional Manager. He told Campbell that the Agricultural Regional Manager had even talked to an Agricultural Specialist in Washington, D.C. and that they were all in concurrence on this issue. Tr. 172.

In addition to the transportation issue, Dinsmore had told Campbell two weeks earlier that he had found violations of the requirements regarding base rate, fringe benefits and holiday pay. He said that Campbell agreed when Dinsmore told him there were requirements for holiday pay in all three of the federal contracts he reviewed and that none of the holidays had been paid. Further he said that he specifically asked to speak with Randy Humbert about these issues. Humbert told him that he was not aware that there was a holiday pay requirement. Tr. 173.

Dinsmore discussed the transportation issue with Humbert also. Dinsmore testified that Humbert said he was not aware of the Department's position regarding the deduction of transportation on government contracts, but that Dinsmore told him what that position was. Tr. 174. He said that he had the impression that the company intended to consult their attorney. Dinsmore testified that it was his understanding that Randy Humbert negotiated the contracts on behalf of Progressive Environmental.

Dinsmore told Campbell what the company owed in back wages and restitution. He said that the company agreed to pay the back wages for the holiday pay, the fringe benefits and incorrect base rate. However, they disagreed with the Department's position on transportation. Based on this, Dinsmore said the matter was submitted to the District (Wage and Hour) Office. Tr. 176. Dinsmore said that Wage and Hour would not have given the company a back wage assessment if the back wages were *de minimis*. He said that investigators' instructions are that they are not to assess back wages for any amount less than \$20 due to an individual. In his experience, he testified, a \$20,000 total back wage liability, as in this case, would not be insignificant. Tr. 177. Dinsmore testified that there would be no change in a contractor's liability under the Act if there were no wage determination sheet attached to the contract when it is received. The contractor must contact the Contracting Officer to obtain one. Tr. 177.

Dinsmore testified that the investigation in the current case was conducted under the Fair Labor Standards Act as well as the SCA. He said that he again looked at the question of

production bonuses as he had previously with PFS but the company had left no paper trail for him to use to determine how bonuses were in fact being calculated. Tr. 179. Dinsmore stated that in previous investigations, Bruce Campbell had been told that the company needed to preserve the paper trail because Wage and Hour could not determine how bonuses were being paid. Tr. 179. Records indicated that some bonuses were determined on a mathematical basis but others were clearly being paid on a flat rate basis. Dinsmore testified that he found that bonuses had not been included in the regular rate for the purpose of computing overtime. Dinsmore said that the fact that records were still not being kept resulted in his inability, in the instant investigation, to determine whether or not there was “some kind of charade” going on in regard to how the company was asserting that they were adjusting bonuses as part of overtime pay. Tr. 181. Dinsmore testified that he had discussed this with Randy Humbert who opined that the company shouldn’t pay bonuses at all. Tr. 201. Dinsmore added that one of the principals of Progressive Environmental, Peter Smith, had a history of SCA violations when he was with Evergreen Forestry. Tr. 181.

### **FINDINGS OF FACT & CONCLUSIONS OF LAW**

Respondents are subject to debarment under the SCA, which prescribes an automatic three-year period of debarment.

The debarment provision of the SCA states:

The Comptroller General is directed to distribute a list to all agencies of the Government giving the names of persons or firms that the Federal agencies or the Secretary have found to have violated this chapter. Unless the Secretary otherwise recommends because of unusual circumstances, no contract of the United States shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest until three years have elapsed from the date of publication of the list containing the name of such persons or firms. Where the Secretary does not otherwise recommend because of unusual circumstances, he shall, not later than ninety days after a hearing examiner has made a finding of a violation of this chapter, forward to the Comptroller General the name of the individual or firm found to have violated the provisions of this chapter.

*41 U.S.C. § 354(a).*

As noted above, debarment is presumed whenever there is a finding of violations under the Act unless the contractor is able to show the existence of “unusual circumstances.” 29 C.F.R. §§ 4.188(a) and (b); *see Hugo Reforestation, Inc.*, ARB No. 99-003, ALJ No. 1997-SCA-20

(ARB Apr. 30, 2001); *A to Z Maintenance*, 710 F. Supp. 853, 855 (D.D.C. 1989). “The debarment of contractors is the norm, not the exception, and only the most compelling of justifications should relieve a violating contractor from that sanction.” *Sec’y of Labor v. Glaude*, ARB No. 98-081, ALJ No. 1995-SCA-38, slip op. at 6-7 (ARB Nov. 24, 1999) (quoting *Vigilantes v. Adm’r of Wage and Hour Div.*, 968 F.2d 1412, 1418 (1st Cir. 1992)). The term “unusual circumstances” is not statutorily defined and any determination with respect thereto “must be made on a case-by-case basis in accordance with the particular facts present.” 29 C.F.R. § 4.188(b)(1). Neither ignorance of the SCA’s requirements nor negligence, e.g., failure to read and become familiar with the terms of the contract, are sufficient to demonstrate unusual circumstances. See 29 C.F.R. § 4.188(b)(1) and (b)(6); *Integrated Res. Mgmt, Inc.*, ARB No. 99-119, ALJ No. 1997-SCA-14 (ARB June 27, 2002). Similarly, the lack of a history of noncompliance is insufficient to establish unusual circumstances. See, e.g., *Jernigan’s Backhoe and Loader*, Case No. 86-SCA-9 (Dep. Sec’y. May 16, 1991) (finding of unusual circumstances does not turn solely on the absence of culpable conduct, but must take into account, inter alia, history of similar violations and compliance history, cooperation, payment of monies due, and assurances of future compliance).

The determination as to whether unusual circumstances exist is governed by a three-part test. 29 C.F.R. § 4.188(b)(3)(i)-(ii); *Hugo Reforestation, Inc.*, *supra*. Under part one, the contractor must establish that the violations were not willful, deliberate, aggravated in nature, or the result of “culpable” conduct, and must also demonstrate an absence of a history of similar, “culpable conduct” as defined in the regulation to include culpable neglect to ascertain whether practices are in violation, culpable disregard of whether the contractor was in violation, or culpable failure to comply with recordkeeping requirements. 29 C.F.R. § 4.188(b)(3)(i). Further, there must not be a record of repeated, or serious violations of the SCA. 29 C.F.R. § 4.188(b)(3)(i). Under part two of the test, the contractor must show a “good compliance history, cooperation in the investigation, repayment of moneys due, and sufficient assurances of future compliance.” 29 C.F.R. § 4.188(b)(3)(ii). Finally, under part three, a variety of factors must be considered, including any prior investigations for violations of the Act, recordkeeping violations which impeded the investigation, the existence of a “bona fide legal issue,” the contractor’s efforts to ensure compliance, the nature, extent, and seriousness of any violations (including the impact on employees), and whether the amount due was promptly paid. 29 C.F.R. § 4.188(b)(3)(ii). It is “the violator of the Act [who] has the burden of establishing the existence of unusual circumstances to warrant relief from the debarment sanction.” 29 C.F.R. § 4.188(b)(1); *Bither v. Martin*, 1992 WL 207912 (unreported) (C.D. California 1992), *Vigilantes, Inc.*, *supra*.

Respondents, as explained below, have failed to meet their burden of demonstrating “unusual circumstances” under any of the three parts of the SCA debarment test.

### **Part I of the SCA Debarment Test**

The evidence of record convincingly proves that Respondents’ SCA violations were willful, deliberate, aggravated in nature, or the result of culpable conduct. None of the Respondents has offered convincing evidence of innocence of culpable conduct. 29 C.F.R. 4.188(b)(3)(i) dictates that violations are a result of culpable conduct where there is culpable neglect to ascertain whether practices are in violation or a culpable disregard of whether they were in

violation or not. In this case, culpable neglect appears obvious. The Requests for Proposals issued by the contracting agencies contained the requirements for minimum prevailing wage, fringe benefits and holiday pay. Indeed, these requirements are all contained on the same page. See GX 3 at 32; GX 4 at 45; and GX 5 at 68. If there were only one contract involved, Progressive Environmental's position might be more reasonable. But there were three contracts, overlapping each other in time. And in view of RX I, it appears there were even more federal contracts in the office than were revealed to the Wage and Hour Investigator. Progressive Environmental had to review the bid solicitation for each project and each one contained the pay requirements. Humbert signed the Master Contract with Bonneville Power Administration. RX 10 at 13.

Respondents contend that this matter is similar to *Action Systems, Inc.*, 82-SCA-81, 85-SCC-15, 86-SCA-37, and 88-SCA-96, January 25, 1991, in which the contractor was relieved from debarment on the basis that it was dealing with a learning or startup period wherein it was learning how to set up administrative procedures to deal with requirements for governmental contracts. However, the Respondents in this case were not in a learning phase just beginning governmental contracting. Humbert and Campbell had substantial experience in the negotiation and administration of federal contracts for forestry work. Humbert testified that he not only bid the federal contracts (and had been doing so for over twelve years) but that he supervised the day to day performance of the contracts. Tr. 132. Humbert testified that when it came to paying employees properly, he simply didn't pay attention to the wage determinations which must be utilized in determining proper base rates and fringe benefits to the holiday pay requirements in the contracts that he himself negotiated. Tr. 149. He shifted the blame to Bruce Campbell and the office staff. Tr. 154. Campbell offered no evidence at all of unusual circumstances which would free him from debarment in this case. The evidence offered by Humbert at the very least indicates culpable neglect of duties by the Respondents in their failure to pay their employees properly. Humbert is an owner of the company and had an office in his car, including a computer. Tr. 91. Respondents underpaid their workers by not paying them for holidays that are standard in every federal contract. The fact that Mr. Humbert, an owner of the company, in his words "didn't pay any attention," to the holidays that should have been paid and left all payment up to the office staff does not excuse the conduct of this company and its officers. It is management's job to monitor their employees and their hours and their pay. The Respondents were under an affirmative obligation to ensure that their pay practices complied with applicable laws. Further, there was no evidence that any of Respondents sought guidance from Wage and Hour Division as to the deductibility of the transportation costs nor sought legal counsel with respect to the transportation issue until after the investigation brought forward this violation. Tr. 182.

What Humbert appears to be offering by way of "unusual circumstances" is a blame-shifting scheme. However, neither the regulations nor the case law permit this sort of evasion of responsibility. 29 C.F.R., §4.188(b)(5) *Security Systems, Inc.*, Decision of the AU, SCA 774-775, April 10, 1978; *Ventilation & Cleaning Engineers, Inc.*, Decision of the Secretary, SCA 176, September 27, 1974. Neither simple negligence nor ignorance of the law, as noted above, constitutes "unusual circumstances" which would preclude debarment. See 29 C.F.R. § 4.188(b)(1) and (b)(6). In fact, where, as here, the SCA requirements are plain from the face of the contract, the contractor is "at least culpably negligent in failing to read and perform them."

*See Integrated Res. Mgmt, Inc.*, ARB No. 99-119, ALJ No. 1997-SCA-14 (ARB June 27, 2002). The regulations specifically state that such “culpable neglect to ascertain whether practices are in violation” constitutes sufficiently aggravated conduct to preclude relief from debarment. 29 C.F.R. § 4.188(b)(3)(i).

Further, the burden under part one also requires that the contractor demonstrate the absence of a history of similar violations, and absence of repeat violations of the SCA, and to the extent that the contractor has violated the SCA in the past, that such violation was not serious in nature. Respondents did not demonstrate an absence of history of similar violations. While no evidence was offered of prior SCA violations of Progressive Environmental, two of the principals of Progressive Environmental, Humbert and Campbell have a history of wage and hour violations. Humbert testified that while working as a principal of Progressive Forestry Services, a predecessor of sorts to Progressive Environmental (two out of three of the same principals, all of the same equipment and assets, and many of the same employees) that company was found to have underpaid its employees \$8400 in overtime pay by failing to include bonus payments in the employees’ regular rate for overtime. Tr. 151-152. Further, Dinsmore testified that at the time of the earlier investigation, he discussed the violations with Humbert and Campbell and made it plain that the company had to keep records so that Wage and Hour could conduct its investigations in a thorough manner. Tr. 179-182. Nevertheless, during the investigation which is the subject of this action, Dinsmore was impeded in his ability to determine whether the company was in compliance with wage and hour requirements because the company again failed to keep records of the methods for determining bonuses. Additionally, the third owner of Progressive Environmental, Peter Smith, has a history of SCA violations with his former company, Evergreen Forestry. Progressive Environmental, through Peter Smith, should have had a heightened awareness of the requirements of the SCA and should have actively sought compliance with the Act in every respect. Tr. 182.

This evidence taken together establishes that the aforementioned violations were the product of Respondents’ willful, deliberate, or culpable conduct, and consequently, Respondents have failed to establish “unusual circumstances” under part one of the debarment test.

## **Part II of the SCA Debarment Test**

Although their failure to meet part one of the “unusual circumstances” test would alone be sufficient to order debarment, I further find, as explained below, that Respondents have not established either that they cooperated in DOL’s investigation of this matter, or that they promptly repaid moneys due covered employees for back wages and benefits or made sufficient assurances of future compliance. Respondents have thus failed to meet the second part of the debarment test as well.

Under part two of the “unusual circumstances” test, the Judge must consider (among other things) whether the contractor has previously been investigated for violations of the SCA, whether the contractor has committed recordkeeping violations which impeded the Department’s

investigation, and whether sums due were promptly paid. At least one of the principals of Progressive Environmental, namely Peter Smith, has been previously investigated by DOL and found to be in violation of the SCA. Tr. 182. The recordkeeping problems were also noted previously. At least half of the sums due were not promptly paid. In fact, they were not paid until 2006 although Progressive Environmental had been on notice of the debt since April 2004. Respondents gave the appearance of cooperation in this investigation. However, the failure to provide the records mentioned in the preceding section constituted an impediment to the overall investigation. Tr. 181. In addition, while the Respondents paid the monies due for the unpaid wages, fringe benefits and holidays, they did not reimburse the workers for the illegal transportation deductions until two years after the deductions were made and over four months after this action was filed. AX 3.

Part two also requires sufficient assurances of future compliance. Neither Progressive Environmental, which is currently not operating, nor Campbell, offered evidence of a change in practices which would assure future compliance. Humbert did testify that he has now put in place procedures in his current company, Progressive Forestry Services, that will ensure that workers are paid properly. Tr. 107. Smith, Campbell and Humbert were all at one time connected with Evergreen. Tr. 136. Evergreen, under Smith, has a history of SCA violations. Tr. 181. Campbell and Humbert left Evergreen and eventually became partners, with Wade Zaharies in Progressive Forestry Services. Tr. 130. Progressive Forestry Services has a history of wage and hour violations for which they paid workers \$8400 in back wages in 2002. Tr. 151-152. Campbell and Humbert left Progressive Forestry Services and formed Progressive Environmental where they committed the subject violations of the Service Contract Act and avoided any thorough investigation under the FLSA by simply not keeping records. At this point, assurances of future compliance are overdue.

Having failed to cooperate with DOL during the course of its investigation, or to repay promptly all wages or fringe benefits resulting from violations of the SCA, Respondents do not meet the “unusual circumstances” requirement under part two of the debarment test. This lack of proof by Respondents, as previously noted with respect to the part one requirements, would alone justify debarment.

### **Part III of the SCA Debarment Test**

With respect to part three of the debarment test, I find that Respondents have committed recordkeeping violations which impeded the investigation. I also find that Respondent’s arguments that liability was dependent on resolution of a *bona fide* legal issue of doubtful certainty and that the violations in this case were *de minimis* are weak, at best.

As noted previously, contractors are required to maintain the records enumerated in the regulations for three years from the completion of the work and to make them available for inspection and transcription by authorized representatives of DOL. 29 C.F.R. § 4.6(g); 29 C.F.R. § 4.185; see also 29 C.F.R. § 4.6(g)(2)(3). The time and expense required to complete DOL’s investigation would undoubtedly have been less substantial had Respondents maintained and produced the records required by the regulations. The Agency’s investigation was thus clearly impeded as a result of Respondents’ recordkeeping violations.

Another factor in part three of the test for unusual circumstances is whether the determination of liability under the Act was dependent upon the resolution of a *bona fide* legal issue of doubtful certainty. 29 C.F.R. § 4.188(b)(3)(ii). Respondents argue that the transportation deductions, the illegality of which they have stipulated to, constitute an excuse from debarment because of the existence of a *bona fide* legal issue of doubtful certainty. As to the holiday pay issue, Respondents do not argue any legal issue in dispute as the employees were clearly entitled to such pay. In regard to the transportation deductions, Dinsmore was very clear that he informed Progressive Environmental early on in his investigation that the Department would not consider these deductions legal. Tr. 171. He informed them that he had discussed the matter with his Regional Director and Assistant Director and with the Department's Regional Agricultural Specialist and with the national office. Tr. 171. He explained the Department's view that the nature of the worksites, their remoteness as told to him by the Contracting Officers, the lack of available transportation, all led to the inescapable conclusion that the transportation provided to the worksites by the company was incident to this remote right of way work and was considered a benefit to the employer, not the employee. Dinsmore told Respondents in April of 2004 what amounts were owed in reimbursement to the workers for these transportation deductions. Respondents refused to pay in April of 2004 and did nothing until August 2004 when attorney Jack Curtin wrote a letter to the Department demanding clarification. When nothing further was forthcoming from the Department, Respondents did not make any further efforts and did not pay the monies owed until over four months following the filing of the Complaint in this case. When this transportation issue is viewed in light of the employer's inability to perform its contractual obligations to the federal government without these foreign workers, and its inability to ensure that these workers, who are without their own automobiles and normally without any form of public transportation to the worksites, actually show up for work at these utility rights of way in remote areas, one can only conclude that the benefit derived from the transportation weighs heavily on the side of the employer. While Respondents contend that they were engaged in a *bona fide* legal dispute regarding the transportation issue, it is noteworthy that no evidence was presented to show that Respondents either sought legal advice or guidance from Wage and Hour Division of DOL prior to instituting its transportation program to be paid by its workers. Tr. 182. Respondents in this case have admitted the violation in regard to the transportation deduction. Progressive Environmental was provided with ample information supporting the Administrator's position that the transportation deductions had to be reimbursed. One letter, written to the Wage and Hour Office by an attorney, consulted only after the violations were discovered, challenging the government's position seems a strained attempt to raise a *bona fide* legal dispute.

Respondents offered RX 1 and 9, supported by testimony of CPA Simer, ostensibly to give an example of the how minimal the damages suffered by the employees were compared with the large volume of business done by the Respondents. However, these records have very little value, even in regard to the purpose for which they were offered, since RX 1 contains contracts that were not offered to the Wage and Hour Investigator when he requested copies of all government contracts. The addition in this document of \$285,315.56 in previously unreported federal contracts renders Simer's calculations inapplicable at any rate. In regard to RX 9, offered to show that the workers actually suffered about a \$0.28 per hour differential due to the violations is also invalid, since it pools all federal work with non-federal work of the company. In any case, when Attachments A and B to the Complaint filed in this case are viewed in light of

the testimony of Humbert and Dinsmore that these H2B workers are very poor, primarily non-English speaking men who are brought to this country without families, significant belongings, or automobiles, and who are sent out onto the countryside to perform labor so difficult that American citizens apparently will not even apply for the jobs, it seems unreasonable to suggest that these violations were *de minimis*, at least to these workers.

Additionally, Respondents assert that the unusual circumstances to be considered in this case include good faith on the part of Humbert and the harm that debarment would potentially bring to Humbert, as well as the foreign workers he employed. In view of the failure to meet the first two prongs of the three-part test, there is no need to question Humbert's expressed good faith nor the performance of good work on his part as Jellison testified. Tr. 81; RX 6. As to the prospect of debarment affecting Humbert and the foreign workers he currently employs, any debarment would have an effect on the entity debarred and its current workers. However, the desired effect of debarment is to insure that employers on government contracts pay the required wages, including fringe benefits and without improper deductions, to its employees. Debarment in this case will not deter the work of the federal government as contracts will continue to be let. Neither will the worker pool be punished as work will still be available no matter what contractor obtains the contracts. Hopefully, debarment will, however, instill in future contractors the desire to read and comply with the requirements, and specifically federal wage requirements, of these contracts rather than to simply obtain the contract and "ignore" the wage details.

In view of the failure of Respondents to meet either the first or second prongs of the three part test, these arguments in favor of unusual circumstances under part three need not be reached, although they remain unpersuasive.

#### Parties Responsible under the SCA

This debarment period applies not only to the violating contractor, but also to any person or firm in which the debarred contractor holds a substantial interest. Congress did not define the term "substantial interest." However, implementing regulations list specific connections between a debarred person and a firm that establish a substantial interest per se. 29 C.F.R. §4.1 88(c). Itemized connections include part ownership in the firm, participation in the firm's contract negotiations and as particularly relevant in this case, service as an officer in the firm, i.e., "where a person is an officer or director in a firm. . . a 'substantial interest' will be deemed to exist." See *In the Matter of: Development Resources, Inc.*, 2002 WL 831821 (DOL Adm. Rev.Bd.), ARB Case No. 02-046, April 11, 2002. If Progressive Environmental is debarred, Respondents Bruce Campbell and Randy Humbert, both of whom are owners and managers, can also be debarred. It is well settled that an individual with share ownership who is responsible for the performance of the contract or who has overall control of the business operations, is personally responsible for violations of the Act and can be debarred. See *Nantom Services, Inc.*, 1997-SCA-35 (ALJ, Dec. 22, 1998); *Rasputin, Inc.*, ARB Case No. 03-059, 1997-SCA-32 (ARB, May 28, 2004); *Stephen W. Yates*, ARB Case No. 02-119, 2001-SCA-21; *SuperVan, Inc.*, ARB Case No. 00-0008, Case No. 1994-SCA-47 (ARB, Sept. 30, 2002); *Hugo Reforestation, Inc.*, ARB Case No. 99-0003, 1997-SCA-20 (ARB, Apr. 30, 2001); *Melton Sales and Services, Inc.*, 1982 SCA-127 (ALJ, Nov. 18, 1985).

## **Bruce Campbell**

Campbell was a principal of Progressive Environmental LLC as well as a principal in Progressive Forestry Services where both Campbell and Humbert engaged in Service Contract Act work prior to forming Progressive Environmental. Although Campbell chose not to participate in the hearing in this case, he was by all accounts a hands-on manager in the company and certainly was present and managing the business office for Progressive. He was observed there by both the Wage and Hour Investigator and by attorney Jack Curtin. Tr. 38, 69-70. 167. He had participated in the earlier (2002) Wage and Hour investigation of Progressive Forestry Services and was familiar with Wage and Hour laws. In this case, he did not raise any contest to the charge of failing to pay proper wages, fringe benefits and holiday pay. He signed the Stipulation (AX 3) in which he admitted the violations alleged in the Complaint. He did challenge Wage and Hour's refusal to allow a \$30 per week deduction from workers' wages for transportation provided by Progressive Environmental to the workers from their place of residence to the worksite. He was informed in much detail by Dinsmore as to how this deduction was viewed by the Department, why it did not meet the definition of permitted facilities and how much was deemed owed to the workers. Tr. 171. He was informed also that the question had been thoroughly vetted through his superiors at Wage and Hour, in the Wage and Hour Region and indeed at the national level. Tr. 172. He then turned it over to his attorney who wrote one letter to Wage and Hour and then did no more about it until four months after the Complaint was filed. In addition, Campbell must share in the blame for obfuscating Wage and Hour's ability to investigate other wage and hour violations of the company by simply not keeping records in regard to production bonuses while knowing full well that the company had a responsibility in this area since it was required to pay workers \$8400 in back wages for the same violation in 2002. Tr. 179-181.

## **Randy Humbert**

While Humbert apparently spent less time in the office than Campbell, he was nevertheless a "party responsible" in this case. He was one of the owners and managers of Progressive Environmental along with Bruce Campbell and Peter Smith. Tr. 88. He was responsible for bidding and negotiating the contracts and his signature can be found on them. (See GX 4 and 5.) He oversaw the day to day performance of the contracts. Tr. 132. When it came to ensuring that his crews were paid properly, he "didn't pay attention." Tr. 149. This is particularly culpable since he testified that he and Campbell felt that their former partner Zaharies had not properly run the office for Progressive Forestry and he, Humbert, and Campbell had to go in and straighten it out. Tr. 89-90. Further he admitted that as an owner of Progressive Forestry Services he knew that the company had to pay \$8400 in back wages to employees because they were shorted on their overtime as a result of the company's failure to include production bonuses in the regular rate when calculating overtime. Tr. 151-152. Nevertheless, when Wage and Hour tried to assure itself that this violation was not being perpetuated by Progressive Environmental, the investigator discovered that production bonuses were still being paid, but the records were simply not being kept, rendering it impossible for Wage and Hour to do its work. Humbert prefers to bestow the blame for the failure to pay correct wages, fringe benefits and holiday pay on his office staff. Humbert had been bidding and performing Service Contract Act work since 1994. Contracting with the federal government is a privilege, not a right, and requires the contractor to comply with a variety of provisions, including specific

minimum payments to workers. A person who doesn't pay attention to the details of whether his workers are paid properly should not be granted the privilege of contracting with the government. Humbert testified that although there are many private forestry contracts to be had, he seeks government contracts because he considers them more profitable. This is not a reason to allow a noncomplying employer continue.

It has been the burden of the Respondents to demonstrate "unusual circumstances" which would justify relief from the debarment requirements of the SCA. They have failed to carry this burden. These violations were the result of at least culpable negligence on the parts of these veteran government contractors prohibiting relief from debarment under part one of the test. Respondents' arguments under parts two and three of the unusual circumstances test are unpersuasive as well. All of the Respondents, Progressive Environmental LLC, Bruce Campbell and Randy Humbert share in the responsibility for underpaying their employees in their efforts to expand company profits. Each is subject to debarment under the SCA.

Based on all the foregoing, I find there is thus nothing under any one of the three parts of the debarment test, which would warrant a finding of "unusual circumstances" to preclude debarment under the SCA. Debarment of Respondents will thus be imposed as ordered below.

### **ORDER**

It is hereby ORDERED that Respondents, Progressive Environmental, LLC, Bruce Campbell and Randy Humbert, shall be debarred for a period of 3 years.

**A**

Russell D. Pulver  
Administrative Law Judge

**NOTICE:** To appeal, you must file a written petition for review with the Administrative Review Board ("ARB") within 40 days after the date of this Decision and Order (or such additional time that the ARB may grant). *See* 29 C.F.R. § 6.20. The Board's address is:

Administrative Review Board  
United States Department of Labor  
Room S-4309  
200 Constitution Avenue, NW  
Washington, DC 20210

A copy of any such petition must also be provided to the Chief Administrative Law Judge, Office of Administrative Law Judges, 800 K Street, NW, Washington, DC 20001-8002. Your petition must refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on the ineligibility list shall also state the unusual circumstances

or lack thereof under the Service Contract Act, and/or the aggravated or willful violations of the Contract Work Hours and Safety Standards Act or lack thereof, as appropriate.

The ARB's Rules of Practice further require that the petitioner provide to the ARB an original and four copies of the petition and any other papers submitted to the ARB. 29 C.F.R. § 8.10(b). Service is to be in person or by mail. 29 C.F.R. § 8.10(c). Service by mail is complete on mailing, and the petition is considered filed upon the day of service by mail. 29 C.F.R. § 8.10(c). The petition must contain an acknowledgement of service by the person served or proof of service in the form of a statement of the date and the manner of service and the names of the person or persons served, certified by the person who made service. 29 C.F.R. § 8.10(d).

A copy of the petition is also required to be served upon the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210; the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210; the Federal contracting