



In the Matter of:

**UNITED GOVERNMENT SECURITY
OFFICERS OF AMERICA, LOCAL 63**

ARB CASE NO. 98-161

DATE: August 10, 1999

***In re:* Review and Reconsideration of
a Wage Determination for Court Security
Officers, Contract No. MS-98-D-0007
East St. Louis, Illinois**

Appearances:

For the Petitioner:

Edward M. Bendelow, William J. Thorvilson, *Bendelow & Darling, P.C.*
Denver, Colorado

For the Respondent:

Joan Brenner, Douglas J. Davidson, Steven J. Mandel, *U.S. Department of Labor,*
Washington, DC

ORDER OF DISMISSAL

Petitioner United Government Security Officers of America, Local 63 (Local 63) sought review under the McNamara-O'Hara Service Contract Act of 1965, as amended (SCA), 41 U.S.C. §351 *et seq.* (1994), of a letter written by a Wage and Hour Division Regional Investigator on July 3, 1997. In the letter, the Regional Investigator explained to Local 63 why the U. S. Marshall's Service had applied wage determination WD 94-2309 (Rev. 2) to a 1994-1995 contract for court security officers employed on federal service contracts in East St. Louis, IL, rather than applying a later wage determination to the contract, WD 94-2309 (Rev. 3). Revision 3 of the wage determination had higher wage rates for court security officers. Among several remedies requested, Local 63 sought a new determination of the prevailing wage for court security officers, and retroactive application of wage determination WD 94-2309, Revision 3 to the 1994-1995 court security contract in East St. Louis, with retroactive payment of the higher wage rate.

The Acting Administrator of the Wage and Hour Division has moved to dismiss the petition in part for lack of ripeness, and in part for mootness. With respect to Local 63's request for a new determination of a prevailing wage for court security officers employed in the East St. Louis area, the Acting Administrator argues that the matter is not ripe for review because the July 3, 1997 letter from the Wage and Hour Division's Regional Investigator is not a final ruling

of the Administrator, and therefore is not appealable to the Administrative Review Board (ARB). 29 C.F.R. §8.1(b) (1998). With respect to Local 63's request for retroactive incorporation of a different wage determination, and an associated order of back pay, the Administrator argues that such a remedy is precluded by the Service Contract Act regulations, which prohibit the Board from considering challenges to wage determinations that are lodged after the award of a contract. 29 C.F.R. §8.6(b). The Administrator therefore moves that this latter aspect of the petition for review be dismissed with prejudice.

In a pleading filed on October 29, 1998, Local 63 concedes that there has been no final agency action on its request for review of the wage rates for East St. Louis, and therefore agrees that the matter should be dismissed without prejudice for lack of ripeness. However, Local 63 disputes the view that a revised wage determination could not be incorporated retroactively into the security services procurement contract, citing 29 C.F.R. §4.05(c), and requests that any dismissal with regard to the retroactivity issue be without prejudice.

Petitioner concedes that its appeal of the letter of the Wage and Hour Division's investigator is not ripe for review. The petition therefore is **DISMISSED** without prejudice. *Damon Insulation Co.*, WAB Case No.93-09, June 18, 1993. In light of this outcome, we do not find it necessary at this time to reach the arguments regarding possible retroactive application of a wage determination. In addition, in view of our rulings on the issues in this case, the briefing schedule is rescinded.

SO ORDERED.

PAUL GREENBERG

Chair

E. COOPER BROWN

Member

CYNTHIA L. ATTWOOD

Member