



Issue Date: 11 January 2019

CASE NO.: 2017-SCA-00008

In the Matter of:

**PRICE GORDON, LLC d/b/a VETERAN NATIONAL
TRANSPORTATION, LLC d/b/a VNT;
LMC MED TRANSPORTATION, LLC; and
NICHOLAS PRICE and TRACEY BEASLEY, individuals,**

Respondents.

DECISION AND ORDER

This case arises under the McNamara-O'Hara Service Contract Act [hereinafter "the Act"], as amended and codified at 41 U.S.C. § 6701 *et seq.*, and implemented at 29 C.F.R. § 4.10; 29 C.F.R. 4, Subpart E; 29 C.F.R. Part 6; and 29 C.F.R. Part 8.

Procedural History

On May 1, 2015, Respondents contracted with the Department of Veterans' Affairs to provide non-emergency medical transportation services on an as-needed basis to veteran beneficiaries of the Southern Arizona VA Health Care System. The Administrator, Wage and Hour Division, U.S. Department of Labor [hereinafter "Administrator"] filed the original complaint in this matter on June 7, 2017, alleging that Respondents had failed to pay certain service employees the wage rate and fringe benefits provided by contract and the Act [hereinafter "SCA pay and benefits"]. On June 13, 2017, the Administrator filed an Amended Complaint that did not alter the substance of the allegations. On July 11, 2017, counsel for Respondent Nicholas Price and the corporate Respondents [hereinafter "Respondents"] filed an Answer denying most but not all of the facts alleged in the Amended Complaint.¹ On July 19, 2017, I issued a

¹ On July 19, 2017, I ordered Respondent Beasley to show cause as to why I should not enter a default judgment for the Administrator against him, adopt as findings of fact the material facts alleged in the

Supplemental Prehearing Order in this matter directing the Parties to file any motions for summary decision in accordance with the schedule laid out in the Order. The Administrator filed a Motion for Partial Summary Decision on August 11, 2017. On August 23, 2017, the Respondents filed a Reply to the Administrator's Motion and a Cross-Motion for Summary Decision. On September 6, 2017, the Administrator filed an Opposition to Respondent's Cross Motion for Summary Decision. On September 8, 2017, the Administrator also filed a Reply Brief in support of its original Motion for Partial Summary Decision. After reviewing the submissions, I issued an Order on September 18, 2017, announcing that I was going to defer ruling on the Summary Decision motions to allow for further discovery, and directed Respondents to answer two interrogatories concerning the existence of other contracts to which Respondents may have been parties during the period at issue.

Counsel for the Administrator renewed its Motion for Summary Decision on January 5, 2018, and filed a new Motion for Summary Decision concerning alleged underpayments that took place subsequent to those alleged in the Amended Complaint and original motion. On January 19, 2018, Respondents filed a Motion to Renew Reply to Administrator's Motion for Partial Summary Decision and Cross Motion for Summary Decision and Supplemental Memorandum in Opposition to the Administrator's Motion for Partial Summary Decision. On January 25, 2018, the Administrator filed an Opposition to Respondent's Motion to Renew Their Cross Motion for Summary Decision and Supplemental Memorandum.

On April 5, 2018, I issued an Order Granting Partial Summary Decision and Order Concerning Hearing Procedure. After the Administrator filed a Motion for Reconsideration, I issued an Order Denying Reconsideration of Partial Summary Decision on April 18, 2018. A hearing in this matter was held by the undersigned on April 24-26, 2018, in Tucson, Arizona. I admitted Joint Exhibits 1-15, Administrator's Exhibits 1-6, and Respondents' Exhibits B, C, D, F, G, and H.² At the hearing, I set the deadline for closing argument briefs for 28 days after receipt of the hearing transcript.³

Amended Complaint, and order the requested relief and/or sanctions. As of the date of this Order, Respondent Beasley has not responded or otherwise participated in this proceeding, and mailings to his known addresses have come back marked "refused."

² Tr. at 225; 333; 455-57.

³ Tr. at 467. As used in this Decision, "Tr." followed by a page number refers to the transcript of the hearing from April 24-26, 2018. "Adm. Br." or "Resp. Br." followed by a page number refers to the Administrator's or the Respondents' closing argument brief, respectively. "JX" refers to the Joint Exhibits, "AX" refers to the Administrator's Exhibits, "RX" refers to the Respondents' Exhibits, and "ALJX" refers to the ALJ Exhibits. "Contract" refers to Contract No. VA258-15-D-0037, which was awarded on May 1, 2015, to the corporate Respondent LMC Med Transportation.

The Administrator and Respondents timely filed their closing argument briefs on July 11, 2018.

Issues in Dispute

1. The date after which Mr. Price is personally liable for the SCA violations and back wages;
2. Whether Respondents owe back wages and benefits for drivers' time awaiting dispatch as a task necessary to the performance of the Contract such that it should have been paid at the SCA rate for drivers;
3. Which employees should have been compensated at the SCA rate for dispatchers and how much additional compensation is due these individuals;
4. Whether Respondents complied with the requirement to provide holiday pay to employees;
5. Whether Respondents provided notice to employees of the compensation and fringe benefits required under the Act; and
6. Whether unusual circumstances relieve one or more Respondents from debarment under the Act.

Findings of Fact

I incorporate by reference the Findings of Fact and Conclusions of Law made in the Order dated April 5, 2018, except as otherwise indicated below. In the interest of judicial economy, those findings are not repeated below except as necessary for this decision. In addition, I make the following additional Findings of Fact based on a thorough review of the evidence presented by the parties:

Responsibility of Mr. Price and Mr. Beasley

In the Order dated April 5, 2018, I found that Respondent Tracy Beasley exercised control and supervision of LMC's employment practices, management policies, and operations in Arizona for the Contract from May 2015 until May 2016. However, Respondents aver that, based on the evidence from the hearing, Mr. Beasley acted "as a saboteur of the operation" through July 2016.⁴ Therefore, Respondents

⁴ Resp. Br. at 5.

propose that Mr. Price cannot be an individual party responsible for the violations until after July 2016.⁵

1. I find that Mr. Price exerted control of LMC as of June 2016.

1.1. On June 8, 2016, Mr. Price filed a Certificate of Amendment for a name change from LMC to Price Gordon, d/b/a VNT, which was part of his process of taking control of the company away from Mr. Beasley.⁶

1.2. In her deposition, Manager Michelle Williams testified that Mr. Price had control over the company in June 2016.⁷

1.3. Mr. Price testified that he believed he “started interacting with the employees and really getting into the operations in meetings” in July 2016.⁸ He also testified that, at the same time, Mr. Beasley “was still sabotaging on his way out, he was still sabotaging the different resources that he had access to.”⁹

1.3.1. However, I give Mr. Price’s testimony less weight because he is equivocal about when he took control of the company, and he indicated in some parts of his testimony that he had control in May or June of 2016.¹⁰ Furthermore, even if Mr. Beasley was “sabotaging” the company in July 2016, the other Respondents have provided no evidence that this sabotage rose to the level of controlling the day-to-day operations after Mr. Price filed the Certificate of Amendment for a name change.

1.4. Therefore, I give the greatest weight to the Certificate of Amendment showing that Mr. Price was the sole owner of the corporate Respondents as of June 8, 2016.

Wait Time

1. The drivers’ wait time was necessary to the performance of the Contract.

⁵ *Id.* at 6.

⁶ Tr. at 349-53; RX B.

⁷ JX 14 at 4.

⁸ Tr. at 438.

⁹ *Id.* at 440.

¹⁰ See, e.g., Tr. at 361-63.

1.1. The wait time was primarily for the benefit of Respondent VNT's business.

1.1.1. The drivers' schedules would change throughout the day as add-on trips were needed.¹¹ The VA did not permit drivers to wait at the VA hospital for additional trips, but the drivers were required to wait within a five- to seven-minute drive of the VA hospital.¹² This typically meant waiting at a nearby gas station or convenience store.¹³

1.1.1.1. The Contract set time requirements for how quickly VNT would respond to the VA's request for transportation services.¹⁴

1.2. The drivers were not able to use their wait time for personal purposes.

1.2.1. The drivers were required to pick up the phone when the dispatcher called, and they could not schedule anything personal during the wait times.¹⁵ Drivers were required to call into the office every fifteen or twenty minutes during their wait times.¹⁶

1.2.1.1. If a driver failed to call in every fifteen or twenty minutes, the office would call him or her and "start asking questions—what are you doing, where are you at, why are you there, why didn't you call—and in most cases they'd be told to 'gas up'—that's the term we used when we told them that ends your day."¹⁷

1.2.1.2. Similarly, if a dispatcher called, "the requirement was to always answer it, regardless of what you were doing or where you were at, you were required to answer. If you didn't answer, we'd call one or two more times, and then after that, you know, when you did finally call us back, most cases you were either reprimanded or sent home for the day."¹⁸

¹¹ Tr. at 64,

¹² Tr. at 28-30, 67-70, 94-95, 125-27, 141-43, 233-47.

¹³ *Id.*

¹⁴ JX 1 at 37 ("The Contractor shall provide transportation service within 45 minutes of notification of an unscheduled pickup.").

¹⁵ Tr. at 28-30, 67-70, 94-95, 125-27, 141-43, 233-47.

¹⁶ *Id.*

¹⁷ Tr. at 236-238.

¹⁸ *Id.*

1.2.2. The typical wait time lasted ten to twenty minutes, and a driver would have, on average, two hours of wait time over a ten-hour work day.¹⁹

Dispatchers

The Administrator alleges that the following individuals were employed as dispatchers with Respondent VNT: Jeremiah Cook, Gary Beagles, Daniel Hutchins, Sulette Ford, Amber Ramos, and Michael Trent Lowry.²⁰ However, because the Administrator is seeking back wages for only Jeremiah Cook and Gary Beagles, I need not reach the issue of whether the remaining four employees were employed as dispatchers.

As I found in my Order from April 5, 2018, Respondents never paid any employees the SCA rate for dispatchers, which was \$21.33 in 2015 and \$21.58 in 2016. However, the parties stipulated that, “[t]o perform the Contract, Respondents employed service employees as dispatchers to communicate with drivers and perform dispatching services.”²¹ This stipulation is supported by the evidence that Respondents had the employees regularly communicate with drivers to inform them of schedule changes throughout the day.²²

1. I find that Jeremiah Cook and Gary Beagles were dispatchers for Respondents.

1.1. There is no dispute that Jeremiah Cook held the title of Dispatch Manager and performed the duties of a daytime dispatcher.²³ Similarly, there is no dispute that Gary Beagles performed the duties of a nighttime dispatcher.²⁴

Holiday Pay

1. I find that Respondents did not pay a full day’s pay for each holiday to each employee, but instead used a formula to determine how much holiday pay should be received.

¹⁹ Tr. at 28-30, 67-70, 94-95, 125-27, 141-43, 233-47.

²⁰ Adm. Br. at 14.

²¹ ALJX 9; Tr. at 5.

²² Tr. at 30, 69-71, 94-95, 127-28, 144, 236-37.

²³ Tr. at 358, 31, 152, 239; Resp. Br. at 23 (“His role in the office, among general support of management, including the scheduler, ranged from clerical duties, to dispatch, especially during the afternoon.”).

²⁴ Tr. at 31, 237-38; Resp. Br. at 24-25 (noting that Mr. Beagles performed duties “as a night and weekend dispatcher”).

- 1.1. Respondents' Employee Handbook noted that "[p]aid holiday compensation is pro-rated to your scheduled work hours."²⁵
- 1.2. A few drivers testified that he was paid holiday pay according to a formula but that he did not know how the formula worked.²⁶ Another testified that he was paid a maximum of three to four hours of pay for each holiday, even though he worked over fifty hours per week.²⁷ Another testified that holiday pay was "kind of based on the average of the hours that you already had, multiplied by some percentage—00.39—it's some weird percentage rate. If you worked on a holiday, you would usually see a couple of hours extra on your pay period. If you didn't work on that holiday, you would be seeing \$5 extra."²⁸
- 1.3. The General Manager for Respondents testified in a deposition that she brought the holiday pay formulas with her from the company that previously performed the contract.²⁹
2. Respondents have provided neither the formula at issue nor alternative calculations establishing that their holiday pay system complied with the regulation.
 - 2.1. Respondents aver that this formula was provided to WHI Debaugé.³⁰ However, WHI Debaugé testified that he never received the formula, so he "ha[d] no idea of how they calculated holiday pay."³¹
 - 2.2. The General Manager testified that she did not recall the specific formula, but that she "had a notebook that had everything written down in it. I don't know what happened to it, but it was—I brought—I don't know how they got paid prior to me being there. I brought the formulas that [the prior contractor] got with the labor board for holiday pay and just changed the prevailing wage number."³²

Notice to Employees

²⁵ RX C at 13.

²⁶ Tr. at 36, 128.

²⁷ Tr. at 72-73.

²⁸ Tr. at 145.

²⁹ JX 14 at 20.

³⁰ JX 15 at 22.

³¹ *Id.*

³² JX 14 at 20.

The SCA requires contractors to notify each employee of the compensation and fringe benefits required, either through direct notice to each employee or posting the notice in a prominent and accessible place.³³

1. I find that the Administrator has failed to establish that Respondents did not post the required materials in the workplace.

1.1. Various employees testified that there were many different posters in the workspace, but none were able to specifically identify or remember the SCA notification poster.³⁴

1.2. The Administrator relies entirely on the testimony of WHI Debaugé to establish that there was no SCA poster in a prominent place.³⁵ As Respondents point out, had WHI Debaugé taken a photograph to corroborate this assertion, it would be much more credible.³⁶ In the absence of photographic or other direct evidence establishing that the posters were not posted, I give little weight to the unsupported assertion of WHI Debaugé that he looked for the wage determination poster but never found one.

Conclusions of Law

Responsibility of Mr. Price and Mr. Beasley

A party responsible for violations in section 3(a) of the SCA is an “officer of a corporation who actively directs and supervises the contract performance, including employment policies and practices and the work of the employees working on the contract.”³⁷ Individual liability “attaches to the corporate official who is responsible for, and therefore causes or permits, the violation of the contract stipulations required by the Act, i.e., corporate officers who control the day-to-day operations and management policy are personally liable for underpayments because they cause or permit violations of the Act.”³⁸ A party responsible will be “liable for the violations, individually and jointly with the company.”³⁹

³³ 29 C.F.R. §§ 4.183-4.184.

³⁴ See, e.g., Tr. at 145-46, 152-53, 255-57, 359.

³⁵ Tr. at 183.

³⁶ Resp. Br. at 21.

³⁷ 29 C.F.R. § 4.187(e)(1).

³⁸ *Id.* § 4.187(e)(3).

³⁹ *Id.* § 4.187(e)(1).

I further note that “[f]ailure to file an answer shall constitute grounds for waiver of hearing and entry of a default judgment unless respondent shows good cause for such failure to file.”⁴⁰

1. Because Mr. Price took control of Price Gordon, d/b/a VNT, on June 8, 2016, I conclude that he is jointly and severally liable with the company for the violations after that date.
2. Because Mr. Beasley neither responded to the Show Cause Order nor otherwise participated in this proceeding, I conclude that he is in default concerning this matter and therefore jointly and severally liable with the company for all violations found herein.⁴¹

Wait Time

Under the Act, the contractor, in performing the services contracted for, must pay to its service employees the “specified minimum monetary wages and fringe benefits determined by the Secretary of Labor (based on wage rates and fringe benefits prevailing in the locality or, in specified circumstances, the wage rates and fringe benefits contained in a collective bargaining agreement applicable to employees who performed on a predecessor contract).”⁴² Under the applicable wage determinations, Respondents’ service employees who were classified as Shuttle Bus Drivers are owed the SCA prevailing wage and benefits for all hours worked in the performance of the Contract. Employees are covered by the Act only when performing the specific services called for by the terms of a contract covered by the Act or when performing other duties necessary to the performance of said contract.⁴³

If an employee receives two or more rates of compensation, the employee “must be paid the highest of such rates for all hours worked in the workweek unless it appears from the employer’s records or other affirmative proof which of such hours were included in the periods spent in each class of work.”⁴⁴ Without records “adequately segregating non-covered work from the work performed on or in connection with the

⁴⁰ 29 C.F.R. § 6.16(c).

⁴¹ *See id.*

⁴² *See id.* § 4.104.

⁴³ *See id.* § 4.150.

⁴⁴ *See* 20 C.F.R. § 4.169; 20 C.F.R. § 4.179 (“[I]t is necessary for the contractor to identify accurately in its records, or by other means, those periods in each such workweek when the contractor and each such employee performed work on such contracts.”).

contract, all employees working in the establishment or department where such covered work is performed shall be presumed to have worked on or in connection with the contract during the period of its performance, unless affirmative proof establishing the contrary is presented. Similarly, in the absence of such records, an employee performing any work on or in connection with the contract in a workweek shall be presumed to have continued to perform such work throughout the workweek, unless affirmative proof establishing the contrary is presented.”⁴⁵

Here, Respondents aver that the drivers’ wait time need not be compensated at the SCA rate because waiting time is not necessary to the performance of the contract.⁴⁶ Respondents further aver that their recordkeeping adequately segregated the drivers’ wait time from the work done in performance of the contract.⁴⁷ The Administrator avers that all hours worked by drivers were contract work.⁴⁸ Based on the findings of fact listed previously, I modify my Conclusions of Law from the April 5, 2018, Order regarding wait time as explained below:

1. The Administrator has established that the drivers’ wait time was necessary to the performance of the Contract, and that the wait time must be compensated at the SCA rate.
 - 1.1. The time that an employee spends waiting must be compensated if the time is “primarily for the benefit of the employer and his business.”⁴⁹
 - 1.1.1. The wait time was primarily for the benefit of Respondent VNT, and the wait times were *de minimus*, unpredictable, and closely regulated by Respondent VNT.
 - 1.2. A service employee must be paid for the “principal activities” “which an employee is employed to perform,” including those that are an “integral and indispensable part of the principal activities.”⁵⁰

⁴⁵ *Id.*

⁴⁶ Resp. Br. at 11-12.

⁴⁷ *Id.* at 17-18.

⁴⁸ Adm. Br. at 8-12.

⁴⁹ *Armour & Co. v. Wantock*, 323 U.S. 126, 132 (1944).

⁵⁰ See 29 C.F.R. § 4.178; 29 C.F.R. § 790.8(a)-(b) (FLSA standards for the determination of hours worked).

- 1.2.1. The wait time was an integral and indispensable part of the principal activities of the Contract because it enabled Respondent VNT to timely respond to VA requests for transportation.
2. Accordingly, Respondents violated the Act by not paying drivers the SCA rate during their wait time, and back wages are owed to the drivers for those hours worked.
3. Because of the findings above, I need not reach the issue of whether Respondents' recordkeeping adequately segregated the drivers' wait time from the work done in the performance of the contract.

Dispatchers

As noted above, Respondents' service employees who were classified as Dispatchers are owed the SCA prevailing wage and benefits for all hours worked in the performance of the Contract. The same provisions cited above regarding the segregation of non-covered work apply here.⁵¹

1. Regarding Mr. Cook, Respondents aver that he was classified as a "salaried employee that performed primarily administrative duties and was exempt as a SCA service employee."⁵² However, the assertion that Mr. Cook was exempt is unsupported by reference to either legal authority or the evidence of record. For example, when asked whether Mr. Cook had "any kind of managerial responsibilities," Mr. Garber testified, "No. I mean he would dispatch, basically."⁵³ In the absence of further evidence of Mr. Cook's duties beyond dispatching, I give Respondents' argument very little weight.

1.1. A service employee "does not include persons employed in a bona fide executive, administrative, or professional capacity as those terms are defined in 29 C.F.R. Part 541."⁵⁴ An "administrative employee" is defined as an employee whose "primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and . . . [w]hose primary duty includes the exercise of discretion and independent judgment with respect to matters of

⁵¹ 29 C.F.R. § 4.150.

⁵² Resp. Br. at 24.

⁵³ Tr. at 239.

⁵⁴ 29 C.F.R. § 4.156.

significance.”⁵⁵ “Management” “includes, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.”⁵⁶

1.2. Respondents have provided some evidence that the task of receiving calls from the VA and calling the drivers in response was not a full-time requirement.⁵⁷ Based on this evidence, and without further citation to either authority or further evidence, Respondents request that I “infer that either Mr. Cook worked part time or that he had other administrative office duties (i.e. dealing with quality control issues and general clerical issues).”⁵⁸ However, findings must be based on the evidentiary record rather than the mere assertions of counsel, and Respondents have not provided evidence that these “other duties” fit into the definitions listed above, particularly in light of the parties’ stipulation that Respondent employed service employees as dispatchers. The fact Mr. Cook did not spend the full day calling the drivers or the VA does not lead to the conclusion that his remaining time was as an administrative employee or a manager.⁵⁹

1.3. Finally, Respondents have provided no records that segregate Mr. Cook’s time spent dispatching from his time on other duties. Respondents themselves note

⁵⁵ 29 C.F.R. § 541.200(a).

⁵⁶ *Id.* § 541.102.

⁵⁷ See, e.g., Tr. at 233-37 (explaining that most of the calls took place in the late morning or early afternoon), 257-58 (noting that Mr. Beagles received, on average, about three calls each night); Resp. Br. at 24.

⁵⁸ Resp. Br. at 24.

⁵⁹ Furthermore, I note that the act of “dispatching” may include a number of activities beyond direct communications with the drivers or the VA. Respondents have provided neither argument nor evidence regarding whether Mr. Cook’s “other duties” were in support of his dispatching duties or fit into the regulatory definitions of an administrative employee or manager.

that “[i]t remains unclear as to how many hours Mr. Cook worked per week.”⁶⁰ Because no such records have been provided, it is presumed that Mr. Cook was working on or in connection with the contract during all hours.⁶¹ Therefore, Mr. Cook is owed the Dispatcher SCA rate for all hours worked.

2. Regarding Mr. Beagles, Respondents aver that he was compensated “at a rate likely exceeding the prevailing rate in comparison to the duties he performed as night and weekend dispatcher.”⁶² Respondents note that Mr. Beagles was paid the minimum wage for all hours that he was monitoring the phones, and that this amount “likely exceeds” the prevailing wage due for the hours when he was actually calling the VA or the drivers.

2.1. However, as noted above, Respondents have provided no records segregating Mr. Beagles’ time spent dispatching from his waiting or on-call time. Therefore, he is owed the Dispatcher SCA rate for all hours worked.

2.2. Regarding the argument that Mr. Beagles’ pay was sufficient to cover the SCA rate, the regulations provide that “[f]ailure to pay for certain hours at the required rate cannot be transformed into compliance with the Act by reallocating portions of payments made for other hours which are in excess of the specified minimum.”⁶³ Therefore, Respondents may not reallocate the minimum wages paid to compensate for the underpayments to Mr. Beagles.

3. Accordingly, the Administrator has established that Respondents failed to pay Mr. Cook and Mr. Beagles the SCA rate for dispatchers for all hours worked with Respondents.

Holiday Pay

The regulations provide as follows: “A full-time employee who is eligible to receive payment for a named holiday must receive a full day’s pay up to 8 hours unless a different standard is used in the fringe benefit determination, such as one reflecting collectively bargained holiday benefit requirements issued pursuant to section 4(c) of the Act or a different historic practice in an industry or locality. Thus, for example, a contractor must furnish 7 hours of holiday pay to a full-time employee whose scheduled

⁶⁰ Resp. Br. at 24.

⁶¹ See 20 C.F.R. § 4.169; 20 C.F.R. § 4.179 (“[I]t is necessary for the contractor to identify accurately in its records, or by other means, those periods in each such workweek when the contractor and each such employee performed work on such contracts.”).

⁶² Resp. Br. at 24.

⁶³ 29 C.F.R. § 4.166.

workday consists of 7 hours. An employee whose scheduled workday is 10 hours would be entitled to a holiday payment of 8 hours unless a different standard is used in the determination.”⁶⁴ Regarding part-time employees working irregular hours, holiday pay “may be discharged by paying such employees a proportion of the holiday or vacation benefits due full-time employees based on the number of hours each such employee worked in the workweek prior to the workweek in which the holiday occurs.”⁶⁵

Although Respondents aver that they used a formula which complied with 29 C.F.R. § 4.174(c)(1), Respondents have not provided the formula to establish that fact. Respondents have also failed to provide alternative calculations or further explanation of the alleged formula to support its compliance with the regulation. I find that a mere assertion that a formula was used is insufficient to establish compliance with 29 C.F.R. § 4.174(c)(1). Accordingly, the Administrator has established that Respondents owe holiday pay to all employees according to the Act and regulations.

Notice to Employees

For the reasons noted previously, I conclude that the Administrator has not established by a preponderance of the evidence that Respondents have violated the provisions at 29 C.F.R. §§ 4.183-4.184.

Debarment

1. I must now determine whether the circumstances of this case are “unusual” as that term is used in the Act.
 - a. A Federal Government contract may not ordinarily be awarded to a person or firm that has been found to have violated the Act or to any entity in which the person or firm has a substantial interest.⁶⁶
 - b. To effect this prohibition, the Secretary of Labor must forward to the Comptroller General the name of the person or firm found to have violated the Act,⁶⁷ who then adds the person or firm to a published list containing the names of persons

⁶⁴ 29 C.F.R. § 4.174(c)(1).

⁶⁵ *Id.* § 4.176(a)(3).

⁶⁶ 41 U.S.C. § 6706(b); *see* 29 C.F.R. § 4.188(a).

⁶⁷ *Id.* § 6706(b).

or firms that a Federal agency or the Secretary has found to have violated the Act.⁶⁸

- c. The Secretary may decline to forward this information to the Comptroller General “because of unusual circumstances.”⁶⁹
- d. As I have found that Respondents have violated the Act, I must now include in this decision an order as to whether the Respondents are to be relieved from the prohibition described above, and, if relief is ordered, findings of the “unusual circumstances,” which are the basis therefor.⁷⁰
- e. This task is complicated by the fact that the term “unusual circumstances” is not defined in the Act. Accordingly, the determination must be made on a case-by-case basis in accordance with the particular facts present.⁷¹
 - i. There is no evidence that Respondent has previously violated the Act. Whereas debarment may be in order “where a contractor has a history of similar violations, where a contractor has repeatedly violated the provisions of the Act, or where previous violations were serious in nature,”⁷² none of those particular facts are present in this case.
 - ii. This is also not a situation in which Respondents willfully intended to violate the Act or were culpably neglectful toward their responsibilities under the Act. Respondent Price affirmatively sought to ascertain whether the company’s payroll practices violated the Act by obtaining the advice and assistance of counsel concerning the requirements at issue, and counsel forthrightly and zealously advocated Respondent’s position with the Administrator at all relevant points. There is no evidence that Respondents misrepresented the payroll practices at issue to the Administrator, nor is there evidence that Respondent Price falsified payroll or employment records to conceal the

⁶⁸ *Id.* § 6706(a).

⁶⁹ *Id.* § 6706(b).

⁷⁰ 29 C.F.R. § 6.19(b)(2).

⁷¹ *Id.* § 4.188(b)(1). I am aware that the analytical framework to be pursued is commonly described as a “three-part test.” *E.g., Administrator, Wage and Hour Division vs. Ares Group, Inc.*, ARB Case No. 12-023 (August 30, 2013) (hereinafter *Ares Group*) (applying a three-part test based upon § 4.188 to affirm an ALJ finding of no unusual circumstances). Neither the plain text of the regulation nor the Act supports such an interpretation, and as such I will conduct my analysis by examining the totality of the evidence as described below.

⁷² *Id.* § 4.188(b)(3)(i).

practices. To the contrary, it appears that Respondent Price and the Administrator had a good faith disagreement as to the meaning and effect of the statutory term “in the performance of the contract.”⁷³ While debarment may be appropriate for willful, deliberate, aggravated, or negligent violation of the Act,⁷⁴ no evidence of such unlawful or negligent intent is present in this matter.⁷⁵

- iii. Thus, both factors developed by the Department of Labor for determining when there are unusual circumstances within the meaning of the Act weigh in favor relief from debarment. The Administrator nevertheless points to Respondent’s purported failures to cooperate in the investigation, repay moneys due, or provide sufficient assurances of future compliance as factors militating in favor of debarment in this case.⁷⁶ As noted above, I do not conclude that a good faith disagreement by a represented party about the meaning and reach of the Act and its mandatory contract provisions is

⁷³ In sum, Respondents asserted that the contract provided for reimbursement only when a passenger was being transported (the so-called “per unit basis”), and as such its drivers were entitled to higher wages and benefits in accordance with the applicable wage determination only when in contact with a passenger. The Administrator contended that Respondents’ entitlement to reimbursement on the underlying contract was independent of its obligations under the Act, which provided for compensation for drivers at the higher determined rate whenever performing the specific services called for by the terms of a contract covered by the Act or when performing other duties necessary to the performance of said contract. See 29 C.F.R. § 4.150. While this conflict was resolved against Respondents by partial summary decision rendered by the undersigned before hearing, the issue presented is economically and legally challenging. As I noted in my partial summary decision for the Administrator, “[t]he challenge facing the contractor in such a situation is how to comply with the Act and still remain profitable. The fact that Respondents may have adopted a suboptimal business model in support of their bid on the Contract and its implementation is beyond the power of the undersigned to remedy.”

⁷⁴ *Id.* § 4.188(b)(3)(i).

⁷⁵ I am not insensitive to the regulatory provision that provides “[a] contractor has an affirmative obligation to ensure that its pay practices are in compliance with the Act, and cannot itself resolve questions which arise, but rather must seek advice from the Department of Labor.” 29 C.F.R. § 4.188(b)(4). However, an employer must also be able to contest a “bona fide legal issue of doubtful certainty” before the Administrator and at hearing before an Administrative Law Judge without automatically forfeiting eligibility for future government contracts, without more, even if the Administrator or the Administrative Law Judge is ultimately unpersuaded by employer’s good faith argument. See *id.* § 4.188(b)(3)(ii). That being noted, this decision should not be read as holding that an employer may avoid debarment merely by retaining counsel and raising legal objections to the Administrator’s determinations. The analytical framework suggested by the Act and articulated in regulation remains: a determination that there are “unusual circumstances” in a given case “must be made on a case-by-case basis in accordance with the particular facts present.” *Id.* § 4.188(b)(1).

⁷⁶ *Cf.* 29 C.F.R. § 4.188(b)(3)(ii) (observing that “[a] good compliance history, cooperation in the investigation, repayment of moneys due, and sufficient assurances of future compliance are generally prerequisites to relief.”). By the use of the qualifier “generally,” the plain text of the regulation anticipates that there will be circumstances in which these factors are not “prerequisites to relief,” a point typically not addressed by reviewing boards and courts. For example, the ARB in its Final Decision and Order in *Ares Group* did not address the qualified nature of these factors and instead treated the factors named as requirements for relief. *Ares Group*, 2013 WL 4715033, at *5.

sufficient to constitute a “failure to cooperate” that, without more, would necessitate debarment in every case. There is ample evidence that Respondent Price and counsel met repeatedly with representatives of the Administrator in an effort to resolve this matter through mutual agreement. As to the failure to repay moneys due, this circumstance was due, in no small measure, to the decision by the District Director to order the withholding of 100% of the payments due to Respondents under the contract, notwithstanding the fact that the Administrator was aware that Respondents had no other service contracts or substantial source of income. While the withholding did provide some assets from which employees who had been underpaid might ultimately be reimbursed, it also led, in close succession, to further payroll shortfalls, cessation of work on the contract, contract termination, and unemployment for the 68 employees who were purportedly the object of the Administrator’s concern. As for Respondent’s failure to provide sufficient assurances of future compliance, I decline to hold any failure against Respondent Price under the circumstances described above. Respondents have a regulatory right to contest allegations against them at enforcement proceedings under the Act,⁷⁷ and to conclude that the exercise of that right forecloses the opportunity for relief provided by the Act in the event of “unusual circumstances” would be inconsistent with procedural due process.⁷⁸

⁷⁷ See 29 C.F.R. § 6.16.

⁷⁸ Section 4.188(b)(3)(ii) appears to require that I also consider additional factors, including—but apparently not limited to—the following: “whether the contractor has previously been investigated for violations of the Act, whether the contractor has committed recordkeeping violations which impeded the investigation, whether liability was dependent upon resolution of a bona fide legal issue of doubtful certainty, the contractor’s efforts to ensure compliance, the nature, extent, and seriousness of any past or present violations, including the impact of violations on unpaid employees, and whether the sums due were promptly paid.” As a threshold matter, this unbounded provision basically restates the common-sense guidance provided earlier in § 4.188(b)(1): the determination as to whether “unusual circumstances” are present that militate against debarment “must be made on a case-by-case basis in accordance with the particular facts present.” And to the extent that § 4.188(b)(3)(ii) articulates particular relevant factors to be considered among the totality of circumstances in the case, these factors are largely restatements of the criteria already articulated in § 4.188(b)(3)(i) that were considered above: grossly, whether the present violations were willful, deliberate, aggravated, or the result of culpable neglect, whether there were past violations and, if so, were they serious in nature. The only truly unique factor introduced in § 4.188(b)(3)(ii) appears to be “the nature, extent, and seriousness of the . . . present violations, including the impact of violations on unpaid employees.” As noted above, I conclude that these factors were exacerbated by the actions of the District Director, do not prevent a conclusion of “unusual circumstances,” and actually support such a conclusion, i.e., it is an unusual circumstance to withhold 100% of contract moneys due to a single-contract vendor if the object is to ensure that service employees receive proper wages and benefits.

Under these circumstances, I decline to consider these factors to be strict prerequisites to relief under the Act.⁷⁹

- iv. In accordance with the particular facts present, I conclude that Respondent Price has established that the circumstances presented by the record in this matter are “unusual” as provided in section 5(a) of the Act, and relief from debarment is appropriate.⁸⁰

⁷⁹ The discursive nature of § 4.188 weighed heavily in my conclusion. The section is highly unusual as an example of a purportedly legislative rule in that it contains multiple references to legislative reports and decades-old decisions by administrative law judges, the Comptroller General, and Assistant Secretaries of Labor. Frankly, the section reads more like a law review article than a legislative rule, and when viewed in its entirety the section operates like a giant “unless” appended to the portion of the Act that authorizes relief from debarment in “unusual circumstances.” *But cf. Fed. Food Serv., Inc. v. Donovan*, 658 F.2d 830, 833 (D.C. Cir. 1981) (concluding that 4.188 provides “a rational and lawful approach to a determination of whether ‘unusual circumstances’ exist,” a proposition with which I respectfully disagree). Some of the regulatory provisions are consistent with the plain text of the Act and can be helpfully read as examples of “unusual circumstances,” e.g., a good compliance history, cooperation in the investigation, repayment of moneys due, and assurances of future compliance, and these have been considered in my analysis. But more problematic are those provisions in § 4.188(b)(3) that attempt to *prevent* the grant of relief—apparently even when unusual circumstances are present—such as the assertions in § 4.188(b)(3)(i) that “relief from debarment cannot be in order” if the violation was “culpable” or there was a previous violation by the same employer. These factors could operate to bar relief *if* the Act required the absence of aggravating circumstances before relief could be granted, but that is not what the plain text of the Act provides. To the contrary, relief from debarment may be granted merely upon a finding of “unusual circumstances.” 41 U.S.C. § 6706(b). In light of the ambiguity stemming from this apparent inconsistency between the applicable authorities, I will apply a rule of lenity and interpret § 4.188 as providing examples of the various circumstances to be considered by an adjudicator when deciding whether the instant circumstances are “unusual,” rather than adding conditions precedent to the statutory standard for relief or a requisite analytical framework that are not to be found in the Act.

⁸⁰ In reaching this conclusion, I did not rely upon another unusual circumstance of the case that was raised at hearing, i.e., the inception of the investigation. Evidence established that investigation in this matter did not derive from a complaint by an employee of Respondents but rather from a third-party who was engaged in litigation with Respondent Price. This third-party—a law professor representing a party adverse to Respondent Price—complained to Respondent Price and his counsel about actions undertaken in the unrelated litigation and threatened to report Respondents to his former student, WHI DeBauge, who was specifically identified in the threat. (RX H). The report was eventually made as promised and WHI DeBauge personally undertook the investigation. While a third-party report of violations of the Act is not, in and of itself, unusual or unwelcome, the “use” of WHD on behalf of a third-party engaged in litigation with Respondents in this way is, in my common sense assessment, unusual. Assignment of a different investigator and more candor to the tribunal concerning the inception of the investigation would have avoided an unnecessary and intensely disputed digression during the hearing and enhanced the overall legitimacy of both the investigation and the credibility of the investigator’s testimony.

ORDER

Based on the above findings of fact, conclusions of law, and on the entire record, **IT IS HEREBY ORDERED** that:

1. A default judgment concerning all matters at issue under the Act alleged in the Amended Complaint is entered against Respondent Beasley under 29 C.F.R. § 6.16(c);
2. The Department of Veterans' Affairs shall release to the Administrator of the Wage and Hour Division the full amounts withheld under the Contract;
3. Respondents Beasley and LMC Medical Transportation are jointly and severally liable for \$715,599.02 in back wages for violations of the Service Contract Act, less the sum returned to the Administrator of the Wage and Hour Division by the Department of Veterans' Affairs. Because the liability of Respondent Price and the remaining corporate Respondents does not extend to any back wages and benefits due prior to June 8, 2016, Respondent Price and the remaining corporate Respondents are jointly and severally liable for \$431,214.68 as calculated in Appendix B hereto;⁸¹
4. The Administrator of the Wage and Hour Division shall distribute the funds noted under paragraphs 2 and 3 above, less appropriate withholding, to the employees listed and in the amounts listed in Appendix A⁸² hereto;
5. Based on this Order, should this decision become final, within 90 days, the Administrator must forward Respondent Beasley's name along with Respondent LMC Medical Transportation to the Comptroller General for inclusion in the ineligible list as violators of the SCA. 29 C.F.R. § 6.19(b)(2); and
6. Respondent Price and the remaining corporate Respondents are relieved from debarment concerning the violations due to the unusual circumstances noted above.

⁸¹ The totals listed in Appendix B are the sum of the entries in Column O of AX 1 which predate June 8, 2016. That total was then subtracted from the overall liability to determine that of Mr. Price and the

⁸² The totals listed in Appendix A are calculated by adding the Administrator's back wage calculations from AX 1-3 for each employee.

SO ORDERED.

WILLIAM T. BARTO⁸³
Administrative Law Judge

WTB/keI

⁸³ Judge Barto took action on this matter before his transfer.

APPENDIX A—WAGES AND FRINGE BENEFITS PER EMPLOYEE

Employee	AX 1	AX 2	AX 3	Total Due
Sualata Aano Jr	\$ -	\$ 679.66	\$ -	\$ 679.66
Luis Acosta	\$ 4,950.11	\$ -	\$ -	\$ 4,950.11
Michael Aguilar	\$ 12,521.96	\$ 5,594.12	\$ 1,721.22	\$ 19,837.30
Aurelio Armenta	\$ 4,892.64	\$ 5,762.91	\$ -	\$ 10,655.55
Jorge Avila	\$ 14,236.82	\$ 6,115.08	\$ -	\$ 20,351.90
Gary Beagles	\$ 21,672.41	\$ 2,052.59	\$ -	\$ 23,725.00
Daniel Blake	\$ 998.00	\$ 1,846.10	\$ -	\$ 2,844.10
Gary Blake	\$ 5,191.10	\$ 3,620.97	\$ 1,214.00	\$ 10,026.07
Ryan Booker	\$ 6,974.51	\$ 499.60	\$ -	\$ 7,474.11
Maricella Bravo	\$ 6,096.75	\$ 2,329.42	\$ -	\$ 8,426.17
Tina Brixen	\$ 5,641.28	\$ -	\$ -	\$ 5,641.28
Alexis Bugbee	\$ 2,095.93	\$ -	\$ -	\$ 2,095.93
Larry Bushong	\$ 6,161.15	\$ 610.36	\$ -	\$ 6,771.51
Michael Casteel	\$ 4,376.65	\$ -	\$ -	\$ 4,376.65
Jose Cedillos	\$ 4,030.53	\$ 5,793.44	\$ 1,255.48	\$ 11,079.45
Dawn Chavez	\$ 2,823.01	\$ 2,813.40	\$ -	\$ 5,636.41
Brian Chestnut	\$ 278.93	\$ -	\$ -	\$ 278.93
Jeremiah Cook	\$ 5,309.84		\$ -	\$ 5,309.84
John Davis	\$ -	\$ 4,248.11	\$ 1,256.20	\$ 5,504.31
Otis Dees	\$ 10,988.49	\$ 3,800.84	\$ -	\$ 14,789.33
Peter DeWolf	\$ 10,990.53	\$ 1,595.73	\$ -	\$ 12,586.26
Mark Douglas	\$ 12,975.90	\$ 6,297.29	\$ 390.36	\$ 19,663.55
Michael Dunlap	\$ 15,831.95	\$ 6,366.63	\$ 1,515.90	\$ 23,714.48
Tracey Escalante	\$ 91.64	\$ -	\$ -	\$ 91.64
Ricardo Escarcega	\$ 7,254.54	\$ -	\$ -	\$ 7,254.54
James Flindt	\$ 6,554.56	\$ 291.65	\$ -	\$ 6,846.21
Leon Ford	\$ 4,858.90	\$ 3,378.75	\$ 1,917.90	\$ 10,155.55
Sulette Ford	\$ 5,010.13	\$ 5,501.92	\$ -	\$ 10,512.05
Carmen Gaff	\$ 1,183.81	\$ -	\$ -	\$ 1,183.81
Kristofer Geuder	\$ -	\$ 796.47	\$ 1,636.02	\$ 2,432.49
Bobby Green	\$ 5,747.95	\$ -	\$ -	\$ 5,747.95
Cesaria Guillen	\$ 7,443.48	\$ -	\$ -	\$ 7,443.48
Steven Harrison	\$ 13,770.49	\$ 3,335.74	\$ -	\$ 17,106.23
James Hartwell	\$ 2,906.34	\$ -	\$ -	\$ 2,906.34
Anita Hawker	\$ 1,899.20	\$ -	\$ -	\$ 1,899.20
Steven Holcomb	\$ 6,606.20	\$ 4,461.21	\$ 1,278.04	\$ 12,345.45
Carleton Holloway	\$ 9,984.61	\$ 5,896.27	\$ 1,108.86	\$ 16,989.74

Employee	AX 1	AX 2	AX 3	Total Due
Danial Hutchins	\$ 13,366.11	\$ 6,187.15	\$ 1,437.02	\$ 20,990.28
Cristi Jennerjohn	\$ 13,653.67	\$ 6,317.29	\$ 1,447.20	\$ 21,418.16
Clara Lopez	\$ -	\$ 614.27	\$ 1,368.62	\$ 1,982.89
Jon Lowry	\$ 1,307.72	\$ -	\$ -	\$ 1,307.72
Michael Lowry	\$ 14,139.93	\$ 6,693.75	\$ 1,704.92	\$ 22,538.60
Isidoro Martinez	\$ 3,946.51	\$ 4,089.81	\$ 1,374.80	\$ 9,411.12
Rudy Martinez	\$ 4,972.51	\$ -	\$ -	\$ 4,972.51
Brian McClure	\$ 546.73	\$ -	\$ -	\$ 546.73
Ryan McReynolds	\$ -	\$ 670.52	\$ 1,694.48	\$ 2,365.00
Judith Michlig	\$ -	\$ 437.93	\$ 1,174.72	\$ 1,612.65
Elliott Molina	\$ 14,238.58	\$ 3,839.91	\$ -	\$ 18,078.49
Bender Munn	\$ 35.27	\$ -	\$ -	\$ 35.27
Daniel Multaugh	\$ 717.18	\$ 5,699.37	\$ 1,164.16	\$ 7,580.71
Lellonne Neylon	\$ 2,887.34	\$ -	\$ -	\$ 2,887.34
Steven Nield	\$ 1,561.37	\$ 4,047.89	\$ 876.02	\$ 6,485.28
Oscar Padres	\$ -	\$ 2,380.31	\$ -	\$ 2,380.31
Sonya Palmer	\$ 3,894.90	\$ -	\$ -	\$ 3,894.90
Kirk Penman	\$ 10,569.65	\$ 756.55	\$ -	\$ 11,326.20
Georgia Phillips	\$ -	\$ 376.74	\$ -	\$ 376.74
Robert Pierce	\$ 13,215.87	\$ 6,115.97	\$ 1,499.04	\$ 20,830.88
Regina Pine	\$ 5,815.62	\$ 558.63	\$ 1,447.56	\$ 7,821.81
Jody Prior	\$ 15,201.15	\$ 976.96	\$ -	\$ 16,178.11
Sean Pruitt	\$ -	\$ 2,076.14	\$ -	\$ 2,076.14
Faith Punnoose	\$ 4,431.80	\$ -	\$ -	\$ 4,431.80
Kirk Radtke	\$ 14,182.04	\$ 5,656.18	\$ 1,415.92	\$ 21,254.14
Ambor Ramos	\$ 1,468.20	\$ 7,670.04	\$ 1,518.68	\$ 10,656.92
Uriel Rangel	\$ 5,714.86	\$ 6,563.13	\$ 1,571.72	\$ 13,849.71
Richard Roberts	\$ 10,212.36	\$ 6,671.62	\$ 1,340.24	\$ 18,224.22
Kevin Schudy	\$ -	\$ 32.76	\$ -	\$ 32.76
Wendi Scott	\$ 5,767.69	\$ 5,914.88	\$ 1,513.66	\$ 13,196.23
Jon-Paul Sommerfield	\$ 6,583.27	\$ 3,432.28	\$ -	\$ 10,015.55
Richard Struve	\$ -	\$ 581.62	\$ -	\$ 581.62
Brian Taylor	\$ 2,753.81	\$ -	\$ -	\$ 2,753.81
Dameion Todd	\$ -	\$ 1,156.32	\$ -	\$ 1,156.32
Andrew Urreta	\$ 4,862.32	\$ 2,247.03	\$ -	\$ 7,109.35
Michael VanValkenburg	\$ 8,846.25	\$ 6,751.05	\$ 1,534.54	\$ 17,131.84
Jaime Vargas	\$ 4,479.07	\$ 5,899.69	\$ 1,402.82	\$ 11,781.58
Ernesto Verdugo	\$ 8,281.35	\$ -	\$ -	\$ 8,281.35
Russell Wallace	\$ 5,439.73	\$ 6,187.42	\$ 1,411.92	\$ 13,039.07
Wesley Weaver	\$ 1,403.05	\$ 5,899.76	\$ 1,555.00	\$ 8,857.81
Joseph Wilson	\$ -	\$ 3,112.23	\$ 1,468.56	\$ 4,580.79
Frank Wood	\$ 15,933.99	\$ 5,831.87	\$ 1,697.82	\$ 23,463.68
Roger Zuniga	\$ 6,670.85	\$ 2,099.20	\$ -	\$ 8,770.05

APPENDIX B—WAGES AND BENEFITS DUE AFTER JUNE 6, 2018

Employee	Total Due Prior to June 8, 2016
Luis Acosta	\$ 4,950.11
Michael Aguilar	\$ 8,872.73
Aurelio Armenta	\$ 1,079.17
Jorge Avila	\$ 10,000.10
Gary Beagles	\$ 14,229.38
Daniel Blake	\$ 998.00
Gary Blake	\$ 2,926.78
Ryan Booker	\$ 2,728.66
Maricella Bravo	\$ 1,730.80
Tina Brixen	\$ 5,641.28
Larry Bushong	\$ 1,965.65
Michael Casteel	\$ 4,376.65
Brian Chestnut	\$ 278.93
Jeremiah Cook	\$ 5,309.84
Otis Dees	\$ 7,189.86
Peter DeWolf	\$ 7,025.61
Mark Douglas	\$ 9,363.94
Michael Dunlap	\$ 11,569.41
Tracey Escalante	\$ 91.64
Ricardo Escarcega	\$ 7,254.54
James Flindt	\$ 2,801.73
Leon Ford	\$ 1,160.08
Sulette Ford	\$ 791.13
Carmen Gaff	\$ 1,183.81
Bobby Green	\$ 4,032.00
Cesaria Guillen	\$ 7,443.48
Steven Harrison	\$ 10,186.07
James Hartwell	\$ 2,283.61
Anita Hawker	\$ 1,899.20
Steven Holcomb	\$ 2,943.15
Carleton Holloway	\$ 5,462.95
Danial Hutchins	\$ 8,707.28
Cristi Jennerjohn	\$ 9,407.18
Jon Lowry	\$ 1,307.72
Michael Lowry	\$ 9,666.44
Isidoro Martinez	\$ 3,030.74
Rudy Martinez	\$ 4,972.51
Brian McClure	\$ 546.73
Elliott Molina	\$ 10,025.73
Bender Munn	\$ 35.27
Lellonne Neylon	\$ 2,887.34
Sonya Palmer	\$ 1,509.17
Kirk Penman	\$ 7,906.28
Robert Pierce	\$ 9,200.20
Regina Pine	\$ 5,815.62
Jody Prior	\$ 10,639.04
Faith Punnoose	\$ 1,476.57
Kirk Radtke	\$ 10,098.31
Uriel Rangel	\$ 1,210.58
Richard Roberts	\$ 5,524.84
Wendi Scott	\$ 1,206.98
Jon-Paul Summerfield	\$ 2,323.79
Andrew Urreta	\$ 1,544.81
Michael VanValkenburg	\$ 4,174.31
Jaime Vargas	\$ 823.51
Ernesto Verdugo	\$ 8,281.35
Russell Wallace	\$ 1,069.18
Frank Wood	\$ 10,866.27
Roger Zuniga	\$ 2,356.30
TOTAL	\$ 284,384.34
TOTAL DUE AFTER JUNE 8, 2016	431,214.68

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, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

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). However, if you e-File your petition, only one copy need be uploaded.

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 agency involved; and all other interested parties. 29 C.F.R. § 8.10(e).