In the Matter of:

INTERNATIONAL SERVICES, INCORPORATED AND OUSAMA KARAWIA,

ARB CASE NO. 05-136

ALJ CASE NO. 2003-SCA-018

RESPONDENTS,

DATE: May 30, 2008

In re Contract Nos. GS-02P-94-CID-0141 And GS-02P-94-CID-0001 with the U.S. General Services Administration, covering upstate New York.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Respondents:
Sam Zalman Gdanski, Esq., Suffern, New York

ORDER DENYING RECONSIDERATION

On December 21, 2007, the Administrative Review Board (ARB or Board) issued a Final Decision and Order in this case arising under the McNamara-O'Hara Service Contract Act (SCA or the Act).[1] The Board concluded that the preponderance of the evidence demonstrates that International Services, Incorporated (ISI) and Ousama Karawia (Karawia) violated the Act when they underpaid employees SCA wages and fringe benefits due under the United States General Services Administration contracts listed above. The ARB also determined that the underpayment of wages and fringe benefits was willful, intentional, deliberate, and culpable conduct. The ARB thus affirmed the Administrative Law Judge's decision that the Respondents did not prove

[1] 41 U.S.C.A. §§ 351-358 (West 1994).

"unusual circumstances" warranting relief from the debarment sanction, and ordered that ISI and Karawia be debarred.

On January 9, 2008, the Respondents filed a Motion for Reconsideration And Or [sic] Reconsideration By the Entire Panel of the ARB and for a Stay of the Order of Debarment Pending Reconsideration.[2]

The ARB is authorized to reconsider a decision upon the filing of a motion for reconsideration within a reasonable time of the date on which the decision was issued.[3] Moving for reconsideration of a final administrative decision is analogous to petitioning for panel rehearing under Rule 40 of the Federal Rules of Appellate Procedure.[4] Rule 40 expressly requires that any petition for rehearing "state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended . . . ."[5] A petition for rehearing should not reargue unsuccessful positions or assert an inconsistent position that may prove more successful.[6] Likewise, issues not presented in initial briefs or during oral argument are not appropriate subjects for rehearing.[7] But raising new issues on rehearing may be appropriate if supervening judicial decisions or legislation, not reasonably foreseen during initial argument, would alter the outcome.[8] In considering a motion for reconsideration, the Board has applied a four-part test to determine whether the movant has demonstrated:

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[2] ISI and Karawia have requested that the entire Board review their Motion. But ISI and Karawia have presented no authority requiring the full Board to decide their Motion.

[3] *Macktal v. Chao*, 286 F.3d 822, 826 (5th Cir. 2002), *aff'g Macktal v. Brown & Root, Inc.*, ARB Nos. 98-112/122A, ALJ No. 1986-ERA-023, slip op. at 2-6 (ARB Nov. 20, 1998); *Powers v. Pinnacle Airlines, Inc.*, ARB No. 04-102, ALJ No. 2004-AIR-006, slip op. at 1 (ARB Feb. 17, 2005). *Accord Thomas & Sons Bldg. Contractors*, ARB No. 98-164, ALJ No. 1996-DBA-033, slip op. at 2-4 (ARB June 8, 2001). *See also Henrich v. Ecolab, Inc.*, ARB No. 05-030, ALJ No. 2004-SOX-051, slip op. at 11 (ARB May 30, 2007).

[4] *Powers v. Pinnacle Airlines, Inc.*, ARB No. 06-078, ALJ Nos. 2006-AIR-004, 2006-AIR-005, slip op. at 3 (ARB Jan. 30, 2008).

[5] Fed. R. App. P. 40(a)(2).

[6] *United States v. Smith*, 781 F.2d 184 (10th Cir. 1986).

[7] *Utahns for Better Transp. v. United States Dep't of Transp.*, 319 F.3d 1207, 1210 (10th Cir. 2003); *FDIC v. Massingill*, 30 F.3d 601, 605 (5th Cir. 1994); *American Policyholders Ins. Co. v. Nyacol Prods.*, 989 F.2d 1256, 1264 (1st Cir. 1993).

[8] *Lowry v. Bankers Life & Cas. Ret. Plan*, 871 F.2d 522, 523 n.1, 525-526 (5th Cir. 1989).

> (i) material differences in fact or law from that presented to a court of which the moving party could not have known through reasonable diligence, (ii) new material facts that occurred after the court's decision, (iii) a change in the law after the court's decision, and (iv) failure to consider material facts presented to the court before its decision.[9]

Upon review of the Respondents' Motion, we conclude that the Respondents have failed to meet any of the provisions of the Board's four-part test for reconsideration. Instead, the Respondents' Motion rehashes arguments the Board has already considered and rejected. Accordingly, we **DENY** the Respondents' Motion in its entirety.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

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9 *Powers, supra*; *Chelladurai v. Infinite Solutions, Inc.*, ARB No. 03-072, ALJ No. 2003-LCA-004, slip op. at 2 (ARB July 24, 2006); *Rockefeller v. U.S. Dep't of Energy*, ARB Nos. 03-048, 03-184; ALJ Nos. 2002-CAA-005, 2003-ERA-010, slip op. at 2 (ARB May 17, 2006); *Saban v. Morrison-Knudsen*, ARB No. 03-143, ALJ No. 2003-PSI-001, slip op. at 2 (ARB May 17, 2006); *Halpern v. XL Capital, Ltd.*, ARB No 04-120, ALJ No. 2004-SOX-054, slip op. at 2 (ARB Apr. 4, 2006); *Getman v. Southwest Secs.*, ARB No. 04-059, ALJ No. 2003-SOX-008, slip op. at 1-2 (ARB Mar. 7, 2006); *Knox v. Dep't of the Interior*, ARB No. 03-040, ALJ No. 2001-LCA-003, slip op. at 3 (ARB Oct. 24, 2005).