



In the Matter of:

**UNITED GOVERNMENT SECURITY
OFFICERS OF AMERICA, LOCAL 78**

ARB CASE NO. 98-154

DATE: October 2, 1998

***In re:* Review and Reconsideration of
a Wage Determination for Court Security
Officers, Contract No. MS-98-D-0005
Dallas, Texas**

ORDER OF DISMISSAL

Pursuant to the McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. §351 *et seq.* (SCA)(1994) and 29 C.F.R. Parts 4 and 8 (1998), the Administrative Review Board, United States Department of Labor, is in receipt of a Petition for Review (petition) filed by United Government Security Officers of America, Local 78 (Petitioner), seeking review of a ruling letter dated August 12, 1997, from the Wage and Hour Division. The petition was filed on August 12, 1998. On August 20, 1998, the Board issued a Notice of Appeal, as well as a briefing schedule. The petition raises questions concerning wage determination rates for court security officers in Dallas, Texas, between September 1993 and September 1997.

On September 4, 1998, the Acting Administrator submitted a motion to dismiss the petition for lack of ripeness, and to suspend the briefing schedule. In support of the motion to dismiss, the Acting Administrator avers that the Division's August 1997 letter did not constitute a final decision of the Administrator under the applicable regulations. *See* 29 C.F.R. §8.1(b).

Under the Secretary's SCA regulations, this Board has the discretion to decline review of petitions for various reasons, including a lack of timeliness or the nature of the relief sought. 29 C.F.R. §8.6(a). In this instance, we find that it would be inappropriate to review the petition, and dismiss it for the following reasons.

First, the petition for review in this case was filed nearly a year after Petitioner received the Wage and Hour Division's August 1997 letter denying its request for review and reconsideration. The regulations clearly require that a petition for review be filed within 20 days after the Wage and Hour Division issues such a letter. 29 C.F.R. §8.3(a). The petition is very untimely.

Second, the primary remedy that the Petitioner seeks is an order from the Board revising the wage determination retroactive to 1993, with an award of backpay to court security officers working in Dallas. The remedy requested is beyond the Board's jurisdiction:

Where a petition for review of a wage determination is filed prior to award, exercise of option, or extension of a contract, the Board may review the wage determination after such award, exercise of option, or extension of a contract if the issue is a significant issue of general applicability. *The Board's decision shall not affect the contract after such award, exercise of option, or extension.*

29 C.F.R. §8.6(d) (emphasis added). Because the service contract (or contracts) at issue in this matter was awarded sometime in the past, the Board would be unable to award the back pay remedy sought. *See, e.g., D.B. Clark III*, ARB Case No. 98-106, Dec. and Order, Sep. 8, 1998; *Fort Hood Barbers Assoc.*, ARB Case No. 96-181, Fin. Dec. and Order, Nov. 12, 1996, *aff'd sub nom. Fort Hood Barbers Assoc. v. Herman*, 137 F. 3d 302 (5th Cir. 1998); *Rams Specialized Security Service, Inc.*, BSCA Case No. 92-25, Dec., Sep. 23, 1992.

The Board declines to review the petition, which is hereby DISMISSED.

SO ORDERED.

PAUL GREENBERG

Member

CYNTHIA L. ATTWOOD

Acting Member