



**In the Matter of:**

**Wage Rates Under FAA Contract No.  
DTFA-02-01-D-1253 between the  
Federal Aviation Administration  
and the Washington Consulting Group  
for the Furnishing of Air Traffic Control  
Instructional Services.**

**ARB CASE NO. 06-115**

**DATE: February 26, 2007**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Petitioner:*

**James L. Jarrett, et al., *pro se*, Indianapolis, Indiana**

*For Respondent Administrator, Wage and Hour Division:*

**Joan Brenner, Esq., William C. Lesser, Esq., Steven J. Mandel, Esq., Jonathan L. Snare, Esq., *United States Department of Labor, Washington, D.C.***

**FINAL DECISION AND ORDER DISMISSING APPEAL**

On June 2, 2004, the Wage and Hour Administrator issued a final ruling under the McNamara-O’Hara Service Contract Act (SCA)<sup>1</sup> finding that “air traffic control instructors’ employed on [FAA Contract No. DTFA-02-01-D-1253] could satisfy the ‘teachers’ exemption under the [Fair Labor Standards Act] as professional employees pursuant to Part 541, if they meet certain criteria.” The ruling contains the following statement concerning appeal rights:

You may consider this letter to be a final ruling on this matter. Any interested party may appeal this ruling to the Department’s Administrative Review Board pursuant to the Regulations, 29 CFR Part 8, copy enclosed. Any such appeal should be filed within sixty (60) days of the date of

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<sup>1</sup> 41 U.S.C.A. § 351-358 (West 1994).

this letter and forwarded to the Administrative Review Board . . . .

The Part 8 regulations the Administrator referenced in her letter provide that a copy of all documents filed with the Board shall also 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.<sup>2</sup> These regulations also state, “Papers filed with the Board shall 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.”<sup>3</sup>

In a letter dated May 2, 2006, but postmarked May 31, 2006, and received by the Administrative Review Board on June 5, 2006, twelve air traffic control instructors employed under FAA Contract No. DTFA-02-01-D-12 filed an appeal of the Administrator’s ruling. The letter contained no certification that it was served on the Associate Solicitor of Labor, the Administrator, the contracting agency or other interested parties. Moreover, the employees acknowledged that they did not timely file the appeal within the 60-day limitations period. But they asked the Board to accept the appeal because they were not parties to the initial complaint and neither the Department of Labor; the FAA; or their employer, Washington Consulting Group, notified them of the Administrator’s ruling.

Because on its face the Petitioners’ petition for review was untimely, the Board issued an order requiring the Petitioners to explain why the Board should accept the untimely-filed petition. In response, the Petitioners noted that on June 27, 2005, several of the Petitioners had filed a motion for reconsideration with the Administrator to which he did not respond. In reply to the Petitioners’ response, the Administrator stated that the Wage and Hour Division had checked its records and had surveyed its regional offices, but found no indication that a motion for reconsideration was pending. The Administrator also stated that in any event the request for reconsideration would not have been timely.

On November 14, 2006, the Board issued an Order requiring the Petitioners to produce evidence, if any, in support of their allegation that they had requested the Administrator to reconsider his decision. We noted that if such a request for reconsideration was pending, the current appeal was premature. We acknowledged the Administrator’s assertion that any such reconsideration would have been untimely but noted that:

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<sup>2</sup> 29 C.F.R. § 8.10(e) (2005).

<sup>3</sup> 29 C.F.R. § 8.10(d).

The Administrator did not cite to any regulations specifying the limitations period for requesting the Administrator to reconsider a determination, nor did he aver that had he received an untimely request for reconsideration, he would have been absolutely precluded from considering such request.

In response to the order requesting evidence of the alleged request for reconsideration, the Petitioners provided a copy of a letter dated June 27, 2005, addressed to the Wage and Hour Administrator in Washington, D.C. and a Track and Confirm search result from the United States Postal Service indicating that the Postal Service in Plainfield, Indiana accepted a letter on June 28, 2005, and delivered it to Washington, D.C. on July 4, 2005.

On December 1, 2006, the Board issued an Order requesting the Administrator to respond to Petitioners' evidence of a request for reconsideration. On December 11, 2006, the Administrator filed a response indicating that he had not received the Board's Order until the day on which his response was due, and that it would take "a reasonable period until an appropriate response is issued."

Because thirty days elapsed and the Board did not receive "an appropriate response," the Board ordered the Administrator to show cause no later than January 25, 2007, "why the Board should not remand this case to the Administrator to reconsider his determination that regular air traffic control instructors employed under FAA Contract No. DTFA-02-01-D-1253 between the Federal Aviation Administration and the Washington Consulting Group could be exempted from the McNamara-O'Hara Service Contract Act[] as 'teachers.'"

The Administrator responded to the Board's Order stating that his previous response had not "expressed clearly" his intention to indicate that in light of the Petitioners' evidence indicating that they had submitted a request for reconsideration, the Wage and Hour Division would reconsider and, in fact, was already in the process of reconsidering the Administrator's decision. The Administrator concluded, "since such reconsideration is already under way, the Administrator has no objection to the Board's issuing an Order of Remand."

Because the Administrator is currently reconsidering his decision in this case, the Petitioners' appeal is premature. Accordingly, we **DISMISS** the Petitioners' appeal

**WITHOUT PREJUDICE.** Thus, if the Petitioners are not satisfied with the Administrator's decision on reconsideration, they may file a new appeal requesting the Board to review the Administrator's final decision as provided in 29 C.F.R. Part 8.

**SO ORDERED.**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**