



In the Matter of:

**UNITED GOVERNMENT SECURITY
OFFICERS OF AMERICA, LOCAL # 52,**

ARB CASE NO. 06-026

DATE: February 24, 2006

PETITIONER,

v.

**ADMINISTRATOR, WAGE AND HOUR
DIVISION, UNITED STATES DEPARTMENT
OF LABOR,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For Petitioner:

***James D. Carney, United Government Security Officers of America,
Westminster, Colorado***

FINAL DECISION AND ORDER

On December 12, 2005, United Government Security Officers of America, Local # 52 filed a Motion for Revoking Dismissal and Renewing It's [sic] Motion for Summary Judgment. Local # 52 averred that on July 15, 2005, in ARB Case No. 05-087, arising under the McNamara-O'Hara Service Contract Act (SCA),¹ the Administrative Review Board had issued a Final Order in which the Board granted the parties' Joint Motion to Dismiss Local # 52's appeal without prejudice. The parties so moved because they reached "an accord under which petitioner may resubmit to the Wage and Hour Division

¹ 41 U.S.C.A. §§ 351-358 (West 1994).

its request for a substantial variance hearing . . . with respect to the prospective contract year”²

In a motion received by the Board on December 19, 2005, Local # 52 moved the Board to revoke its Final Order and to grant its motion for summary judgment based on the Deputy Administrator’s “procedural” default in failing to timely respond to its request for a substantial variance hearing³ before a Department of Labor Administrative Law Judge (ALJ) as provided in 29 C.F.R. § 4.10(b)(2).⁴ The Board recently denied the same claim for relief that Local # 52’s representative⁵ requested in two cases because we do not have authority to grant summary judgment in a case under the SCA in which neither the Administrator nor a Department of Labor Administrative Law Judge has issued a final decision.⁶

Accordingly, we ordered Local # 52 to show cause why we should not dismiss its appeal based on our recent authority. Subsequent to issuing the Order to Show Cause, the Board received Local # 52’s Amended Motions for Revoking Dismissal and for Summary Judgment in which Local # 52 avers that subsequent to its filing of the original motion, the Administrator referred the case for a substantial variance hearing as requested. Therefore, Local # 52 requested that the Board “reserve jurisdiction over the matter until completion of the ALJ’s variance proceedings.”⁷

We have reviewed Local # 52’s response to our order. It reiterates its concerns with the potential adverse effects the Administrator’s delay in determining whether to refer the case for a substantial variance hearing may have on any adjustment to which it is ultimately found to be entitled. But the response does not provide any basis to depart from our recently announced determination that the Secretary of Labor has not delegated to the Board authority to consider the merits of Local # 52’s case in the absence of a final

² *United Gov’t Sec. Officers, Local # 52 v. Administrator, Wage & Hour Div.*, ARB No. 05-087, slip op. at 2 (June 15, 2005).

³ For an overview of the SCA’s wage determination and substantial variance hearing procedures see *United Gov’t Security Officers, Local # 50*, ARB 05-157, slip op. at 2-4.

⁴ This regulation provides that the Administrator will respond within 30 days after receiving such request by “granting or denying the request or advising that additional time is necessary for a decision.” 29 C.F.R. § 4.10(b)(2).

⁵ *United Gov’t Sec. Officers, Local # 50 v. Administrator, Wage & Hour Div.*, ARB No. 05-157 (Dec. 29, 2005); *United Gov’t Sec. Officers, Local # 50 v. Administrator, Wage & Hour Div.*, ARB No. 06-008 (Dec. 29, 2005).

⁶ Secretary’s Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64272 (Oct. 17, 2002).

⁷ Petitioner’s Amended Motion for Revoking Dismissal and its Amended Motion for Summary Judgment at 2.

decision by the Administrator or a Department of Labor Administrative Law Judge. Furthermore, it is not necessary for the Board to reserve jurisdiction over this case. If at the conclusion of the hearing, Local # 52 is dissatisfied with the ALJ's decision, it may file a petition for review as provided in 29 C.F.R. §§ 6.57, 8.7(b). Thus, we **DISMISS** Local # 52's appeal.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge