



In the Matter of

**COURT SECURITY OFFICERS
[OF AUSTIN, TEXAS]**

ARB CASE NO. 98-001

DATE: September 23, 1998

FINAL DECISION AND ORDER

This case arises under the McNamara-O’Hara Service Contract Act of 1965, as amended, 41 U.S.C. §351 *et seq.* (1994) (SCA), and the regulations at 29 C.F.R. Parts 4 and 8 (1998). The Court Security Officers in Austin, Texas (CSOs of Austin, or Petitioner) seek review of the September 8, 1997 decision of the Acting Administrator of the Wage and Hour Division (Administrator) denying reconsideration of SCA Wage Determination 94-2503 (Rev. 3)(5/17/96). For the reasons set forth below, the Administrator’s decision is affirmed, and the petition is denied.

BACKGROUND

Court security officers are responsible for courtroom and courthouse security. Pursuant to a contract with the United States Marshal Service, Akal Security, Inc. (Akal) employs court security officers who work at the United States Courthouse in Austin, Texas. Petition for Review (Pet.) at 1. Akal’s contract is subject to the Service Contract Act.

In May, 1996 the Wage and Hour Division issued wage determination WD 94-2503 (Rev. 3) containing minimum wage rates applicable to service contracts in a 15-county area that included Austin, Texas. The wage determination rate for court security officers was \$10.74 per hour. Administrative Record (AR) Tab R.

By letter dated September 27, 1996, petitioner CSOs of Austin requested review and reconsideration of the \$10.74/hr. court security officer wage rate, pursuant to 29 C.F.R. §4.56. Included with Petitioner’s letter was a short tabulation of wage rates paid to other employees in the Austin area who performed security functions allegedly similar to court security officers, including (a) game wardens working for the Texas Parks and Wildlife Department; (b) police officers working for the city of Austin; (c) deputy sheriffs and deputy constables working for Travis County; and (d) employees working in a “Trooper II” job category. The wage rates for these other job titles ranged from \$14.27/hr. to \$16.91/hr. Based on this limited data, Petitioner asserted that the \$10.74/hr. court security officer wage rate in WD 94-2503 (Rev. 3) was below the locally prevailing rate for security work, and asked that a new wage determination be issued.

AR Tab M. The Wage and Hour Division responded to Petitioner by letter of October 18, 1997, issued by Nila Stovall, Chief, Branch of Service Contract Wage Determinations (Stovall). The Division advised CSOs of Austin that the wage data submitted with Petitioner's September 17 request could not form the basis for a new wage determination rate, because the job duties of the positions that Petitioner had surveyed were significantly different from the duties of court security officers. AR Tab L.

The Division further noted that in 1995 it had adopted a uniform methodology for issuing wage rates for all "protective service occupations" that were rated at the GS-6 pay rate, including court security officers. In addition, the Division advised CSOs of Austin that a new wage determination for the Austin area had been issued (Revision 4) with a wage rate of \$11.47/hr. for court security officers, but that the higher wage rate would be effective only prospectively, *i.e.*, for procurement contracts awarded after the date that the modified wage determination had been issued. AR Tab L. The revised wage determination (Revision 4) had been issued on October 15, 1997. AR Tab R.

Additional correspondence was exchanged. CSOs of Austin wrote to Stovall on November 13, 1996, objecting to the earlier assertion that the duties of court security officers were dissimilar to the game wardens, police officers, etc. whose wage rates had been cited in Petitioner's original request for review and reconsideration. In support of this position, CSOs of Austin attached an excerpt from the U.S. Marshal Service's court security officers handbook, indicating that applicants for the court security officer position were required to have three years of experience as a police officer. In addition, Petitioner asserted that court security officers working at the courthouse in the Northern District of Texas were earning over \$15 per hour, and argued that the court security officers in Austin should earn a comparable wage. AR Tab K.

The Wage and Hour Division responded by letter of December 10, 1996, detailing eight criteria used by the Division when evaluating data submitted by a party requesting review and reconsideration of a wage determination. Among the criteria identified in the December 10 letter was a requirement that any survey data developed by the Petitioner would have to cover the same geographic area and the same time period as the Bureau of Labor Statistics (BLS) survey that had been used to develop the challenged wage determination. AR Tab J.

On January 30, 1997, CSOs of Austin again wrote to Stovall asking specifically for information about the BLS survey so that the Petitioner could submit a usable appeal. AR Tab I. Petitioner sent a follow-up letter on February 24. AR Tab H. The Division responded by letter of March 10, 1997, advising Petitioner to contact BLS's Dallas regional office or the BLS headquarters in Washington, D.C. AR Tab F. In addition, the Division sent a follow-up letter to Petitioner on April 4, 1997, suggesting that CSOs of Austin should focus its attention on BLS's

survey techniques, so that any supplemental data that Petitioner developed would track the government's methodology. AR Tab D.

After reviewing the BLS survey data obtained from the Internet, CSOs of Austin again wrote to Stovall on May 7, 1997, asserting that the BLS survey for the Austin area did not include data on any local law enforcement personnel. In Petitioner's view, the wage rate for court security officers found in the Division's wage determination therefore must be invalid. Arguing that the Division's wage determination was arbitrary and capricious, CSOs of Austin threatened to file suit in the U.S. District Court unless the Division issued a wage determination based on the limited wage survey data that Petitioner had attached to its original September 27, 1996, request for review and reconsideration. AR Tabs C, M.

The Wage and Hour Division issued a final decision denying the request for review and reconsideration by letter of September 8, 1997, over the signature of the Acting Administrator's designee, National Office Program Administrator Corlis Sellers (Administrator). The Division noted that the material submitted by CSOs of Austin did not include any specific wage data on the court security officer classification, nor were there any job descriptions provided for the several other occupations that had been included in Petitioner's limited survey. These job descriptions would be needed in order to confirm that the occupations functioned at the equivalent of a GS-6 level. AR Tab A.

In addition, the Administrator offered the following explanation for the methodology originally used when calculating the court security officer wage determination rate in WD 94-2503 (Rev.3):

[T]he Wage and Hour Division conducted a detailed review in July 1995 of the Protective Service Occupations, including CSOs, to develop a uniform methodology for determining SCA prevailing rates for these occupations. The position of CSO is one of several Protective Service Occupational classifications with a Federal grade equivalency of GS-6. The CSO, however, is not a surveyed occupation for the Bureau of Labor Statistics' Occupational Compensation Survey Program (OCSP), the primary data source used to develop SCA WDs [wage determinations]. Several other Protective Service Occupations (Police Officer, Firefighter, and Corrections Officer) with Federal Grade Equivalencies of GS-6, are standard OCSP survey occupations. In the absence of direct survey data for CSOs, Wage and Hour adopted a methodology of basing the CSO rate on a simple average of the mean survey rates for all of the GS-6s surveyed. If Metropolitan Statistical Area (MSA) data are not available for the GS-6 Protective Service classes, then the rate is based on the average of regional OCSP data GS-6 occupational classes listed under the broad occupational category of Protective Services.

AR Tab A. CSOs of Austin filed its Petition for Review on September 26, 1997.

DISCUSSION

The SCA's primary purpose is to ensure that employees on a federal service contract are paid no less than locally prevailing wage rates. 41 U.S.C. §351(a)(1), (2). The Wage and Hour Administrator is the primary interpreter of the contract labor standards and implementing regulations, with the Board acting in an appellate capacity. 29 C.F.R. §8.1(d)(1998). Although the Board exercises the full authority of the Secretary under the Service Contract Act, 29 C.F.R. §8.1(c), we ordinarily defer to the expertise and experience of the Administrator, and will upset a decision of the Administrator only when the Administrator fails to articulate a reasonable basis for the decision, taking into account the applicable law and the facts of the case.

The Secretary's regulations allow interested parties to challenge the accuracy of a wage determination by submitting a request for review and reconsideration. Any such request must be accompanied by supporting evidence. 29 C.F.R. §4.56(a). Upon receiving such a request, the Administrator reviews the wage determination rate in light of (1) the data originally used for issuing the wage determination, (2) the evidence produced by the party challenging the wage determination, and (3) any additional data found relevant. After completing this evaluation, the Administrator can issue a new wage determination, revise the existing wage determination, or affirm the existing wage determination. 29 C.F.R. §4.56(a)(2).

In this case, the Administrator denied Petitioner's request for review and reconsideration because the very limited wage data submitted by CSOs of Austin was insufficient to justify an adjustment to the wage determination rate for court security officers. The data submitted by CSOs of Austin lacked job descriptions and did not include information that would make it possible for the Wage and Hour Division to determine how the wage data related in time to the period covered by the BLS survey that formed the basis for wage determination WD 94-2503 (Rev. 3). Moreover, it was not possible to determine whether the occupational data covered workers in the same geographic territory covered by BLS. AR Tabs A, J. The Administrator offered adequate guidance to Petitioner regarding the type of data that would be needed to prevail in a request for reconsideration; however, CSOs of Austin simply did not submit the necessary data. Petitioner's failure to provide sufficient reliable and relevant wage data is reason enough for this Board to uphold the Administrator's decision.

Instead of addressing the merits of its case (*i.e.*, the very limited data that it presented to the Wage and Hour Division), CSOs of Austin raise two tangential arguments: first, that the Administrator's methodology for issuing court security officer rates is arbitrary and capricious; and second, that the court security officer rates for Austin, Texas must be erroneous because they are lower than the wage determination rates for the same work in Ft. Worth and Dallas, Texas. Brief in Support of Petition for Review at 4-6. We disagree on both counts.

The Administrator's wage determination methodology -- The process of determining wage rates is dependent on the gathering of statistical data documenting wage payments in different localities. The Wage and Hour Division gathers and considers data from a variety of

sources, although the most frequent sources of information are the wage surveys conducted by the Bureau of Labor Statistics. 29 C.F.R. §4.51(a). However, the SCA regulations recognize that in some situations the Division may not have survey data directly documenting local wage rates for a particular job classification that will be needed on a federal service contract. When this occurs,

[e]stablishment of a prevailing wage rate for certain such classifications may be accomplished through a “slotting” procedure, such as that used under the Federal pay system. Under this procedure, wage rates are derived for a classification based on a comparison of equivalent or similar job duty and skill characteristics between the classifications studied and those for which no survey data is available.

29 C.F.R. §4.51(c). The validity of the “slotting” procedure has been affirmed in prior SCA decisions. See *D.B. Clark III*, ARB Case No. 98-106 (Sept. 8, 1998) *slip op.* at 4-5; *Kord’s Metro Services, Inc.*, BSCA Case No. 94-06 (Aug. 24, 1994) *slip op.* at 5; *Meldick Services, Inc.*, 87-CBV-07, Dep’y Sec’y (Mar. 23, 1990); *Big Boy Facilities, Inc.*, 88-CBV-7, Dep’y Sec’y (Jan. 3, 1989) *slip op.* at 13-14.

Because the court security officer position is not independently surveyed as part of the BLS survey program, the Wage and Hour Division relies on wage data from three other GS-6 equivalent protective services positions: Police Officer, Firefighter and Corrections Officer. When issuing a wage determination rate for the court security officer classification, the Division adopts the simple average of the mean wage rates for each of these three positions as determined by the BLS survey. AR Tab A. We find that this approach, which merges the data from three other GS-6 protective service positions to generate the rate for the court security officer (also a GS-6 equivalent), is a reasonable application of the slotting process. Petitioner’s assertion that the Administrator’s methodology is arbitrary and capricious fails.

Austin wage determination rates vs. rates in Ft. Worth and Dallas -- Petitioner’s argument regarding the alleged disparity between the Austin court security officers’ wage determination rate and wage determination rate for their counterparts in Ft. Worth and Dallas simply is inapposite.^{1/} The prevailing wage rates are locality-based; thus, the wage determination

^{1/} CSOs of Austin assert that the wage determination rate for court security officers is \$16.33/hr. in Ft. Worth, and \$17.28/hr. in Dallas. Brief in Support of Petition for Review at 5. However, according to the Administrator, the correct wage determination rate is \$15.33/hr. in Ft. Worth and \$12.63/hr. in Dallas. Statement of the Acting Administrator in Response to Petition for Review at 8; AR Tabs S, T. The Administrator notes that the wage rates actually paid in Ft. Worth and Dallas rates might be higher than the rates specified in the respective area wage determinations if the court security officers in those locations work under collective bargaining agreements. *Id.* Regardless of the amount, we find the disparity between the Austin, Dallas and Ft. Worth wage determination rates to be irrelevant to the merits of this Petition.

rates for Dallas and Forth Worth, whether higher or lower, generally are not relevant when evaluating the wage determination rate in Austin.

Finally, we disagree with Petitioner's assertion that it has been denied due process of law in violation of the United States Constitution, Fifth Amendment because the Administrator allegedly "fail[ed] ... to follow the relevant statutes and regulations" when issuing the wage determination applicable to court security officers in Austin, Texas. Brief in Support of Petition for Review at 6. As noted above, we find that the Administrator's wage determination was fully in accord with the requirements of the Service Contract Act and its implementing regulations, and represents a reasonable exercise of the Administrator's discretion under the law.^{2/}

For the foregoing reasons, the Petition for Review is **DENIED**.

SO ORDERED.

PAUL GREENBERG

Member

CYNTHIA L. ATTWOOD

Acting Member

^{2/} For an analysis of the Board's authority to address constitutional claims, see *Tom Rob, Inc.*, WAB Case No. 94-03 (June 21, 1994) *slip op.* at 10-11.