**U.S. Department of Labor**

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

**In the Matter of:**

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| **The Applicability of Wage Rates Collectively Bargained by Am-Gard, Incorporated and the United Government Security Officers of America (UGSOA), Local No. 50, Under a Contract for Court Security Officers in Denver, Pueblo, and Colorado Springs, Colorado** | **ARB CASE NOS. 06-049<br>06-050**<br><br>**ALJ CASE NO. 2006-CBV-001**<br><br>**DATE: July 31, 2008** |

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For Petitioner (ARB Case No. 06-049) United Government Security Officers of America Local No. 50:***

**James D. Carney, Senior Vice President, Westminster, Colorado, and John A. Tucker, Esq., and Robert B. Kapitan, Esq., *John A. Tucker Co., L. P. A.*, Akron, Ohio**

***For Respondent (ARB Case No. 06-049) and Petitioner (ARB Case No. 06-050) Am-Gard Incorporated:***

**Charles W. Ahner, Jr., Esq., and Joel Vander Kooi, Esq., *Mountain States Employers Council, Inc.*, Denver, Colorado**

***For Respondent Administrator, Wage and Hour Division:***

**Joan Brenner, Esq., Ford F. Newman, Esq., William C. Lesser, Esq., Steven J. Mandel, Esq., Howard M. Radzely, Esq., *U.S. Department of Labor*, Washington, D.C.**

## ORDER DISMISSING APPEALS

The United Government Security Officers of America (UGSOA), Local No. 50, which represents Federal building security guards in Colorado, appeals from a United States Department of Labor Administrative Law Judge's (ALJ) decision that the union did not prove that the collectively bargained wage rate paid to its members was

substantially less than the local prevailing wage rate paid for similar services. Am-Gard, Inc., the contractor that employs the guards, also appeals.[1] We have jurisdiction to consider appeals from an ALJ's substantial variance decision.[2] But since the applicable collective bargaining agreement has expired, the issue before us is moot. Therefore, we dismiss the appeals.

## BACKGROUND

Am-Gard, Inc. contracted with the United States Department of Homeland Security (DHS) to provide security officer services in Colorado. The McNamara-O'Hara Service Contract Act of 1965, as amended (SCA or Act) governs this Federal service contract.[3] A UGSOA/Am-Gard collective bargaining agreement (CBA) specified the wages and fringe benefits to be paid to the guards. Under the Act and its implementing regulations, the Labor Department's Wage and Hour Division Administrator issues wage determinations that are incorporated into the contract specifications for each Federal service contract. Two different types of wage determinations are issued. For service contracts at worksites where an existing CBA governs employee wage and fringe benefit rates, the Administrator issues wage determination rates based on the rates in the labor agreement.[4] For sites where there is no CBA in effect, the Administrator issues a wage determination that reflects wages and fringe benefits "prevailing . . . for such [service] employees in the locality."[5] The Administrator's "prevailing in the locality" wage determinations are based on wage data, most frequently surveys compiled by the Bureau of Labor Statistics (BLS).[6]

But wages and fringe benefits contained in a CBA shall not apply to a Federal service contract "if the Secretary [of Labor] finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality."[7]

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[1] The Board previously dismissed Am-Gard's apppeal because it failed to demonstrate that it had standing to petition for review of the ALJ's decision. *Am-Gard, Inc.,* ARB No. 06-050, ALJ No. 2006-CBV-001 (ARB Apr. 24, 2006). Am-Gard has filed a motion with the Board to reinstate its appeal.

[2] 29 C.F.R. § 6.57 (2006).

[3] 41 U.S.C.A. §§ 351, 353(c) (West 2008).

[4] 41 U.S.C.A. § 351(a)(1), (2); 29 C.F.R. § 4.53.

[5] 41 U.S.C.A. § 351(a)(1)(2); 20 C.F.R. § 4.52.

[6] 29 C.F.R. § 4.52(a).

[7] 41 U.S.C.A. § 353(c).

On July 29, 2005, UGSOA requested a hearing to determine whether the wages specified in the CBA were substantially at variance with the prevailing wages for similar services in the Colorado area. And, as noted above, after holding a hearing the ALJ dismissed the case because UGSOA did not prove a substantial variance.[8]

## DISCUSSION

The record indicates that the CBA at issue here has expired. UGSOA indicated in its request for a substantial variance hearing that the CBA expired on September 30, 2006.[9] As the ALJ noted, however, the parties supplied copies of a modified CBA which indicates that it expired on March 30, 2007.[10] The record also indicates that the contract between Am-Gard and the DHS has ended.[11]

Therefore, even if we decided that the ALJ erred and we found that a substantial variance existed, we could not retroactively apply such a finding.[12] Regulations that implement the SCA clearly specify that only prospective relief is available, and that relief must be under the same contract or option period at issue.[13] Administrative appeals under the SCA have been dismissed where no practical relief is available and only

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[8] January 19, 2006 Decision and Order (D. & O.).

[9] Order of Reference Attachment Exhibit (AX) 1A and 1B.

[10] AX 1A, 1B and 3; Am-Gard Exhibit 1 at p. 1 and 26; *see also* D. & O. at 2-3, n.4.

[11] *See* AX 32 at pp. 1-2 and 98 (contract entered in March 2000 for one base year and four one-year options) and AX 1A (option on contract in 2005).

[12] *See Ceres Gulf, Inc.*, ARB No. 96-192, ALJ Nos. 1995-CBV -001 and 1993-CBV-001, slip op. at 2 (ARB Jan. 6, 1998); *Canteen Food & Vending Serv.*, BSCA No. 92-34, slip op. at 2 (Nov. 30, 1992).

[13] *See* 29 C.F.R. § 4.163(c).

advisory decisions for future applications could be issued.[14] This Board, however, "disfavors engaging in speculative adjudication of challenges to wage determinations."[15]

## CONCLUSION

Since the CBA between Am-Gard and UGSOA has expired, the matter at issue in this case is moot. Accordingly, we **DISMISS** UGSOA's Petition for Review and Am-Gard's motion to reinstate its appeal.

**SO ORDERED.**

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

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

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[14] *See U.S. Dep't of the Navy*, ARB No. 96-185, slip op. at 2 (May 15, 1997) (citing *In re PHCC Mech. Contractors of Fairbanks, Inc.*, WAB No. 86-20 (Nov. 26, 1986); *In re McGee Creek Project*, WAB No. 81-11 (Dec. 24, 1982) (refusing to "adopt the procedure of issuing advisory decisions as to specific projects"); *In re American Overseas Marine Corp.*, BSCA No. 92-10, 11 (Aug. 10, 1992); *In re Naval Supply Sys. Command*, WAB No. 78-24 (Apr.6, 1979) (finding petitions for review moot because no effective relief available)).

[15] *See Teamsters Local 639*, ARB No. 99-010, slip op. at 4 (May 30, 2002); *see also EG & G Tech. Serv., Inc.*, ARB No. 02-006, slip op. at 7 (June 28, 2002).