



**Issue Date: 25 April 2006**

Case No.: **2005-SCA-00007**

In the Matter of:

**RAY'S LAWN AND CLEANING SERVICES, INC.**  
And **HOWARD RAY,**  
Respondents,

## **DECISION AND ORDER**

### **Ordering Debarment**

This case was brought pursuant to the McNamara-O'Hara Service Contract Act ("SCA"), 41 U.S.C. § 351 et seq., and the applicable regulations issued at 29 C.F.R. Parts 4, 6, and 18 and the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges found at 29 C.F.R. Part 18A.

Complainant, the Secretary of Labor, U. S. Department of Labor, seeks debarment of Respondents, Ray's Law and Cleaning Services, Inc., and Howard Ray.

A hearing was held in Savannah, Georgia on November 15, 2005.

Counsel for the Department of Labor alleged that complaints against the Respondents involved

prevailing rate violations and fringe benefits violations under the Service Contract Act, and overtime violations under the Contract Work Hours Safety Standards Act at four different locations in the Savannah area. At the end of the investigation, Mr. Ray paid \$24,875.96 to 39 employees for the alleged violations.

Those violations were CWHSSA overtime violations for 26 employees in the amount of \$11,139.15, and total SCA prevailing rate and fringe benefit violations for 39 employees of \$13,736.81 for a total that Mr. Ray paid to 39 unduplicated employees of \$24,875.96 in prevailing rate fringe benefits and overtime violations<sup>1</sup>. (TR 4).

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<sup>1</sup> The following abbreviations will be used as citations to the record:

TR - Transcript of the Hearings; and  
CX - Complainant's Exhibits.

## **Law and Regulations**

This case arises under the SCA, as amended, 41 U.S.C. § 351 et seq., and the implementing regulations issued thereunder at 29 C.F.R. Parts 4, 6, and 18. The purpose of the SCA is to punish those who have received federal monies via a service contract and have:

1. Failed to pay the minimum wages for each particular position listed in the Dictionary of Occupational Titles, a government compiled list of positions and the preliminary wages for the positions;
2. Failed to award minimum fringe benefits to employees;
3. Failed to maintain adequate records.

41 U.S.C. .§ 351 et seq. The SCA establishes standards for hours of work and overtime pay of laborers and mechanics employed in work performed under contract for, or with the financial aid of, the United States, for any territory and the District of Columbia.

### **Issue**

Whether the Respondent should be debarred from future federal government contracts.

### **Evaluation of the Evidence**

Sharla Revelle, a wage and hour investigator, testified that the Respondent did not pay employees for post-liminary time, which is the period from when work was finished until the employee was allowed to leave. (TR 16). Several years before an investigator named Brock found similar violations.

Ms. Revelle found that Ray did not pay holiday pay for the first 90 days of employment. In addition only one employee had ever received a week of vacation pay. Contracts called for ten holidays a year and two weeks of vacation pay after one year. Ms. Revelle also testified that she found falsification of hours worked and as to payment of the prevailing wage. (TR 23).

Ms. Revelle did not feel that Ray could be relied on to comply in the future as he repeated the violations after the investigation by Brock in 2001. She felt that Ray knew what he was doing and operated in total disregard of his obligations.

He did not have a good compliance history. He paid back wages in the previous investigations for identical violations. (TR 40).

Ray controlled the day-to-day operations of the company and he directly supervised the workers. (TR 44).

Ray testified that some of his “Spanish” workers would work a week or two and then leave. It was difficult to make payments to such workers. (TR 50). The last government contract would end in 2005.

John Bates testified that he was a regional wage specialist for DOL. Bates had reviewed Brock’s records and found that Ray had committed overtime and post liminary violations. (TR 62). Brock had determined that some \$5,600.00 was payable for prevailing rate and overtime pay deficiencies.

After review of Revelle’s file, Bates concluded that Ray had never come into compliance in terms of post liminary work. Bates recommended debarment based on continuing violations after notification of the initial violations.

A letter from Howard Ray in April 2005 stated, in part

I have already paid all charges of unpaid wages to all employees. I have already had to pay to the Dept. of the Army, charges that were accessed because of this. I do not understand why I should be put on the debarment list, when I paid all unpaid wages to all involved.

I am a small business just trying to make a living just like everyone else. I have been paying my employees just like my current contracts wages are listed. I have been paying all employees the current fringe benefits that are listed in my contract. I paid all overtime to my employees.

Debarment will mean that all my employees will not have a job. I beg you to let me continue to work.

### **Discussion**

Under the SCA, debarment is presumed once violations have been established unless the respondent can prove the existence of “unusual circumstances” that warrant relief from debarment. 29 C.F.R. § 4.188(a) and (b); Hugo Reforestation, Inc. ARB Case No. 99-003, 2001 WL 487727 (DOL Adm. Rev. Bd., Apr. 30, 2001). Debarment shall be for three years, without modification. 41 U.S.C. § 354(a).

However, the Secretary’s discretion to relieve a violator from the sanction of debarment is limited, and a contractor seeking such an exemption “must, therefore, run a narrow gauntlet.” 29 C.F.R. § 4.188(b)(1); Sharipoff, dba BSR Co., 1988-SCA-32, slip op. at p.6 (Sec’y Sept. 20, 1991). In order to prove unusual circumstances, a contractor must satisfy all prongs of a three-part test.

1. The contractor must establish that its violations were not willful, deliberate, or of an aggravated nature, and that the violations were not the result of culpable conduct. 29 C.F.R. § 4.188(b)(3)(i). [Part I].

2. The contractor must show that it has a good compliance history, cooperated in the investigation, repaid the moneys due, and has made sufficient assurances of future compliance. 29 C.F.R. § 4.188(b)(3)(ii). [Part II].

3. Numerous factors bearing on the Contractor's good faith must be considered before relief from debarment will be granted, e.g., whether the contractor has previously been investigated for SCA violations, whether the contractor has committed recordkeeping violations which impeded the Department's investigation, and whether determination of liability under the SCA was dependent upon resolution of bona fide legal issues of doubtful certainty, and the contractor's efforts to ensure compliance. *Id.* [Part III].

The second and third parts need not be considered if a contractor does not satisfy the first prong. Hugo Reforestation, Inc., *supra*.

Under Part I of the unusual circumstances test, "culpable neglect to ascertain whether practices are in violation, culpable disregard of whether they were in violation or not, or culpable failure to comply with recordkeeping requirements (such as falsification of records)." 29 C.F.R. § 1.1 88(b)(3)(i). Ignorance of the law has constituted "unusual circumstances" in limited circumstances.

#### **-Howard Ray Is a "Party Responsible" under the SCA**

The term "party responsible." as used in the SCA, imposes individual and joint liability with the company for violations by corporate officers who actively direct and supervise performance of a covered contract, including the employment policies and practices of the business and the work of employees working on the contract. 29 C.F.R. § 4.187(e)(1). It further assigns personal liability for violations of any contract stipulation required by the Act on corporate officers who control, or are responsible for control of, the corporate entity based on their obligation to assure compliance with the requirements of the SCA, the regulations, and the contracts. 29 C.F. R. § 4.187(e)(2). "[C]orporate officers who control the day-to-day operations and management policy [of the corporation] are personally liable for underpayments because they cause or permit violations of the Act." 29 C.F.R. § 4.187(e)(3). Personal liability for violations of the SCA is not limited to officers of the company or signatories to the contract, "but includes all person[s], irrespective of proprietary interest, who exercise control, supervision, or management over the performance of the contract, including labor policy or employment conditions regarding the employees engaged in contract performance, and, who, by action or inaction, cause or permit a contract to be breached." 29 C.F.R. § 4.1 87(e)(4).

I find that the Respondent has stipulated to violations of the Act and an independent review of the record shows that after the 2001 investigation, Respondents continued to violate the SCA as they:

1. Failed to pay all wages – to include holiday and vacation pay - for each particular position listed in the Dictionary of Occupational Titles, a government compiled list of positions and the preliminary wages for the positions;

2. Failed to award minimum fringe benefits to employees;
3. Failed to maintain adequate records.

Because Respondents have violated the Act, they should be placed on the debarment list “[u]nless the Secretary otherwise recommends because of unusual circumstances.” Section 5(a), 4 U.S.C. § 354(a) (emphasis in original). Therefore, Respondents bear the burden of proving unusual circumstances.

Mr. Ray has argued that he had difficulty in paying the workers as many were migrants. In addition, contractual payments to him were not always made on time.

However, the Department of Labor argues that Respondents were notified that serious SCA violations were found during the First Investigation. “Despite these prior investigations, and numerous discussions with Wage and Hour investigators, Respondents continued to violate the Act for four contracts studied during the second investigation.

Therefore, after a review of all of the evidence, I find that the Respondents failed to meet their burden to show “unusual circumstances.”

Any person or firm found to have violated the SCA shall be declared ineligible to receive Federal contracts for a period of three years unless the Secretary recommends otherwise because of “unusual circumstances.” 41 U.S.C. § 354(a). In this case, the Department of Labor does not recommend otherwise.

Therefore, I find that “unusual circumstances” or that violations were not willful, deliberate, or of an aggravated nature, and that the violations were not the result of culpable conduct, has not been proved by Respondents. 29 C.F.R. § 4.188(b)(3)(i). [Part I. of test.]

## **ORDER**

It is hereby **ORDERED**:

The Respondents shall be placed on the list of persons who have violated the SCA and associated regulations and who are to be denied the award of any contract with the United States for the three-year period provided in 41 U.S.C. §354.

**A**

RICHARD K. MALAMPHY  
Administrative Law Judge

RKM/ccb  
Newport News, Virginia

NOTICE: To appeal, you must file a written petition for review with the Administrative Review Board (“ARB”) within 40 days after the date of this Decision and Order (or such additional time that the ARB may grant). See 29 C.F.R. § 6.20. The Board’s address is Administrative Review Board, United States Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210.

A copy of any such petition must also be provided to the Chief Administrative Law Judge, Office of Administrative Law Judges, 800 K Street, NW, Washington, DC 20001-8002. Your petition must refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on the ineligibility list shall also state the unusual circumstances or lack thereof under the Service Contract Act, and/or the aggravated or willful violations of the Contract Work Hours and Safety Standards Act or lack thereof, as appropriate.

The ARB’s Rules of Practice further require that the petitioner provide to the ARB an original and four copies of the petition and any other papers submitted to the ARB. 29 C.F.R. § 8.10(b). Service is to be in person or by mail. 29 C.F.R. § 8.10(c). Service by mail is complete on mailing, and the petition is considered filed upon the day of service by mail. 29 C.F.R. § 8.10(c). The petition must 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. 29 C.F.R. § 8.10(d).

A copy of the petition is also required to 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. 29 C.F.R. § 8.10(e).