



In the Matter of:

The Applicability of Wage Rates Collectively Bargained by Am-Gard, Inc. and the United Government Security Officers of America, Local No. 50, Under a Contract for Court Security Officers in Denver, Pueblo, and Colorado Springs, Colorado.

ARB CASE NO. 06-050

ALJ CASE NO. 2006-CBV-1

DATE: April 24, 2006

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For Petitioner:

Charles W. Ahner, Jr., Joel Vander Kooi, *Mountain States Employment 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., *United States Department of Labor, Washington, D.C.*

FINAL DECISION AND ORDER

On January 27, 2006, Am-Gard, Inc. petitioned the Administrative Review Board for review of the January 19, 2006 Decision and Order (D. & O.) of a Department of Labor Administrative Law Judge (ALJ) in this case arising under the “substantial variance” provisions of the McNamara-O’Hara Service Contract Act (SCA).¹ The ALJ dismissed the case after finding that the United Government Security Officers of America, Local 50, which had initially sought the substantial variance hearing, had failed to show the existence of a substantial variance. In its petition for review, Am-Gard claims that Local 50 had no standing to seek relief through a substantial variance hearing in this case and that the ALJ erred in finding that he had the authority to decide this proceeding.

¹ 41 U.S.C.A. § 353(a),(c)(West 1994).

On February 13, 2006, the Acting Administrator of the Wage and Hour Division filed a Motion to Dismiss Am-Gard's petition for review on the grounds that Am-Gard does not have standing to appeal the ALJ's D. & O. The regulations applicable to administrative proceedings under the SCA state that "any party aggrieved [by an ALJ's decision] who desires review thereof shall file a petition for review of the decision with supporting reasons."² The Acting Administrator argues that Am-Gard does not have standing to appeal the ALJ's decision to the Board because it is not an aggrieved party. The Acting Administrator contends that since the ALJ's decision finding no substantial variance results in no changes in the wage determination applicable to Am-Gard's contract, it has suffered no adverse consequences. Accordingly, the Acting Administrator argues that, in effect, Am-Gard is requesting the Board to issue an advisory opinion in a case in which there is no justiciable case or controversy before it and that Board precedent³ reflects its reluctance to issue such opinions.

In response to the Acting Administrator's Motion, the Board ordered Am-Gard to show cause no later than March 8, 2006, why the Board should not dismiss its appeal on the grounds that it is not "any party aggrieved" as provided in 29 C.F.R. § 6.20. Am-Gard failed to file a response to the Board's order. Accordingly, because Am-Gard has failed to demonstrate that it has standing to pursue its appeal, we **DISMISS** it.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

² 29 C.F.R. § 6.20 (2005).

³ *Migliore v. Rhode Island Dep't of Env'tl. Mgmt.*, ARB No. 99-118, ALJ Nos. 98-SWD-3, 99-SWD-1, 99-SWD-2 (ARB Ord. July 11, 2003).