



In the Matter of:

D.B. CLARK III

ARB CASE NO. 98-106

***In re: Wage Determination 94-2070, Rev. 7,
for Solano, Napa, and Sonoma Counties, CA,
affecting employees of Raytheon Training, Inc.
(formerly Hughes Training Inc.) at Travis AFB, CA***

DATE: July 20, 1998

**ORDER OF REMAND AND
ORDER ESTABLISHING BRIEFING SCHEDULE**

This case arises under the Service Contract Act, 41 U.S.C. §351 *et seq.*, and the implementing regulations found at 29 C.F.R. Part 4. The Administrative Review Board, United States Department of Labor, is in receipt of a motion filed by the Acting Administrator, Wage and Hour Division, requesting that the Board dismiss the captioned Petition for Review on the ground that there is no decision ripe for review under the Board's rules of practice. *See* 29 C.F.R. Part 8 (1997). Petitioner, D.B. Clark III, has filed a response requesting that the Board deny the Acting Administrator's motion to dismiss and rule on the merits of his petition.

Based on the limited documents that have been filed before the Board thus far, it appears that on July 31, 1997, Clark requested that the Wage and Hour Division review and reconsider the hourly wage rates for two job classifications published in Wage Determination (WD) 94-2070, Rev. 6 (June 30, 1997): Flight Simulator/Instructor and Secretary IV. In response to Clark's request for reconsideration, Wage and Hour issued a revised version of the wage determination, WD 94-2070, Rev. 7 (Feb. 24, 1998). Although the hourly wage rates for the two job classifications that Clark challenged rose under the revised wage determination (when compared with the earlier Revision 6), it is Clark's view that the published wage determination rates of Revision 7 still do not reflect locally prevailing rates for the two job titles. Clark therefore filed this action with the Board, appealing the revised wage determination rates.

The Acting Administrator contends that because neither Clark nor any interested party has asked Wage and Hour to reconsider the latest wage determination (*i.e.*, Revision 7) utilizing the procedures found at 29 C.F.R. §4.56(a), there is no final appealable decision by the Wage and Hour Administrator that is ripe for review by the Board. The Acting Administrator therefore urges the Board to dismiss Clark's Petition, at which point Clark once again could file a request for review and reconsideration. *See generally* Acting Administrator's Motion to Dismiss.

Pursuant to 29 C.F.R. §4.56(a)(2),^{1/} Clark argues that the revised wage determination constitutes the Acting Administrator's final decision with regard to his 1997 request for review and reconsideration, and that he should not be required to file yet another request for review and reconsideration before the Administrator. We agree.

Section 4.56(a)(2) provides that after reviewing the relevant information before the Administrator in a wage determination reconsideration proceeding, the Administrator shall take one of three actions: (1) issue a new wage determination, (2) revise the wage determination, or (3) affirm the existing wage determination. 29 C.F.R. §4.56(a)(2). Section 4.56(b) provides that "any decision of the Administrator under paragraph (a) of this section may be appealed to the Administrative Review Board[.]" 29 C.F.R. §4.56(b). By its terms, this subsection plainly contemplates that a revised wage determination issued in response to a request for review and reconsideration constitutes an appealable decision of the Administrator.^{2/} Clark is not required to repeat the review and reconsideration process yet again.

Although we deny the Acting Administrator's Motion to Dismiss, the Board notes that the Acting Administrator's Motion appears to invite Clark or other interested parties to seek a further interpretation or revision of WD-94-2070 Rev. 7. In order to provide the Acting Administrator with an opportunity to consider the wage rates for the two job classifications challenged by Clark, in light of the arguments advanced by Petitioner, we will remand this matter to the Acting Administrator for further review of the record before him.

Based on the documents before us, it appears that Clark is concerned that the review and reconsideration process, as well as an appeal to this Board, should if possible be completed before a new procurement period is initiated. We share that concern, and it is the Board's view that this matter therefore should receive expedited consideration. Accordingly, this matter is hereby **REMANDED** to the Acting Administrator for further review.

The following briefing schedule is established:

1. The Acting Administrator, Wage and Hour Division, shall issue a supplemental decision affirming or modifying the challenged wage rates **on or before August 6, 1998. A copy of the Acting Administrator's supplemental decision shall be served upon all Parties and Intervening Parties.**

2. The Acting Administrator shall file the administrative record in this case and a brief -- not to exceed 30 double-spaced pages -- in response to the Petition for Review and in support of the

^{1/} Clark's Petitioner's Reply Brief and Response to Acting Administrator's Motion to Dismiss cites to 29 C.F.R. §4.55(2), apparently relying on a pre-1996 edition of the Code of Federal Regulations. Section 4.55 has been renumbered as §4.56. See 61 Fed. Reg. 68664 (1996).

^{2/} We note that in his Motion to Dismiss, the Acting Administrator explicitly states that the revised wage determination was his response to Clark's request for review and reconsideration. See Motion to Dismiss at 3.

Acting Administrator's supplemental decision **on or before August 6, 1998**. **A copy of the administrative record shall be served upon all Parties and Intervening Parties.**

3. Petitioner and all other parties and Interested Persons may file a reply brief -- not to exceed 30 double spaced pages -- **on or before August 21, 1998**.

4. All pleadings and briefs in this matter shall be filed with the Board and served upon all parties and intervening Interested Persons.

5. **All pleadings and briefs are expected to conform to the stated page limitations unless prior approval of the Board has been granted and should be prepared in Courier (or typographic scalable) 12 point, 10 character-per-inch type or larger, double spaced, with minimum one inch left and right margins and minimum 1¼ inch top and bottom margins, printed on 8½ by 11 inch paper. An original and four copies of all pleadings and briefs shall be filed with the Board under the requirements of 29 C.F.R. Part 8.**

6. Docket entries for this matter shall be filed by directing submissions to:

Melissa Jo Joyce, Esq.
Executive Director
Administrative Review Board
200 Constitution Avenue, N.W.
Room S-4309
Washington, D.C. 20210

SO ORDERED.

KARL J. SANDSTROM
Chair

PAUL GREENBERG
Member

CYNTHIA L. ATTWOOD
Acting Member