

shall act as the authorized representative of the Secretary of Labor and shall act as fully and finally as might the Secretary of Labor concerning such matters.

(d) The Board is an appellate body and shall decide cases properly brought before it on the basis of all relevant matter contained in the entire record before it. Decisions by the Board shall be based upon the preponderance of the evidence before it. It may remand with appropriate instructions any case for the taking of additional evidence and the making of new or modified findings by reason of the additional evidence. However, unless the petition for review cites alleged procedural irregularities in the proceeding below and not the merits of a case, the Board shall not consider a petition for review filed by any party against whom default judgment has been entered pursuant to the provisions of part 6 of this title.

[49 FR 10637, Mar. 21, 1984, as amended at 61 FR 19985, May 3, 1996]

### Subpart B—Review of Wage Determinations

#### § 8.2 Who may file petitions of review.

(a) Any interested party who is seeking a modification of other change in a wage determination under the Service Contract Act and who has requested the Wage-Hour Administrator or authorized representative to make such modification or other change under § 4.55 of part 4 of this title, and the request has been denied, shall have a right to petition of review of the action taken by that officer.

(b) For purposes of this subpart, the term *interested party* shall mean:

(1) Any employee or any labor organization which represents an employee who is likely to be employed or to seek employment under a contract containing a particular wage determination, or any contractor or an association representing a contractor who is likely to seek a contract or to work under a contract containing a particular wage determination;

(2) The Federal agency(s) which will administer a proposed contract containing a particular wage determina-

tion issued pursuant to the Service Contract Act; and

(3) Any other party whom the Board finds to have a sufficient interest in the wage determination.

#### § 8.3 When to file.

(a) Requests for review of wage determinations must be filed within 20 days of issuance of the Wage-Hour Administrator's decision denying a request to make a change in the wage determination.

(b) The Board shall under no circumstances request any administering agency to postpone any contract action because of the filing of a petition.

#### § 8.4 Contents of petition.

(a) A petition for review of a wage determination shall:

(1) Be in writing and signed by the petitioner or his/her counsel (or other authorized representative);

(2) Be addressed to the Administrative Review Board;

(3) Identify clearly the wage determination, location where the contract will be performed, if known, and the agency concerned;

(4) State that the petitioner has requested reconsideration of the wage determination in question pursuant to 29 CFR 4.55 and describe briefly the action taken in response to the request;

(5) Contain a short and plain statement of the grounds for review;

(6) Be accompanied by supporting data, views, or arguments; and

(7) Contain a statement that all data or other evidence submitted have previously been submitted to the Administrator.

(b) A petition shall indicate whether or not the petitioner consents to the disposition of the questions involved by a single member of the Board.

#### § 8.5 Filing of wage determination record.

The Associate Solicitor for Fair Labor Standards shall, promptly after service of the petition, file with the Board the record upon which the wage determination was based. Under no circumstances shall source data obtained by the Bureau of Labor Statistics, U.S. Department of Labor, or the names of

## § 8.6

establishments contacted by the Bureau be filed with the Board or otherwise disclosed. Where the Bureau has conducted a survey, the published summary of the data may be filed.

### § 8.6 Disposition by the Administrative Review Board.

(a) The Board may decline review of any case whenever in its judgment review would be inappropriate because of lack of timeliness, the nature of the relief sought, the case involves only settled issues of law, the appeal is frivolous on its face, or other reasons. A case will be reviewed upon the affirmative vote of one member.

(b) Except as provided in paragraphs (c) and (d) of this section, the Board will not review a wage determination after award, exercise of option, or extension of a contract, unless such procurement action was taken without the wage determination required pursuant to §§ 4.4 and 4.5 of part 4 of this title.

(c) A wage determination may be reviewed after award, exercise of option, or extension of a contract if it is issued after a finding by an Administrative Law Judge or the Board that a substantial variance exists between collectively bargained wage rates and/or fringe benefits otherwise required to be paid pursuant to section 4(c) of the Act and those prevailing for services of a character similar in the locality, or after a finding that such collective bargaining agreement was not reached as a result of arm's length negotiations.

(d) Where a petition for review of a wage determination is filed prior to award, exercise of option, or extension of a contract, the Board may review the wage determination after such award, exercise of option, or extension of a contract if the issue is a significant issue of general applicability. The Board's decision shall not affect the contract after such award, exercise of option, or extension.

(e) In issuing its decision the Board will act expeditiously, taking into consideration procurement deadlines. The Board shall decide the case upon the basis of all relevant matters contained in the entire record before it and shall not consider any data not submitted to the Wage-Hour Administrator with the request for reconsideration. The Board

## 29 CFR Subtitle A (7-1-13 Edition)

in its decision affirming, modifying, or setting aside the wage determination, shall include a statement of reasons or bases for the actions taken. In any remand of a case as provided in § 8.1(d) of this title, the Board shall include appropriate instructions.

### Subpart C—Review of Other Proceedings and Related Matters

#### § 8.7 Review of decisions in other proceedings.

(a) A petition for review of a decision of an Administrative Law Judge pursuant to subparts B, D or E of part 6 of this title may be filed by any aggrieved party in accordance with the provisions therein.

(b) A petition for review of a final written decision (other than a wage determination) of the Administrator or authorized representative may be filed by any aggrieved party within 60 days of the date of the decision of which review is sought. Where a case has been referred directly to the Board pursuant to § 4.11 or § 4.12 of this title, no petition for review shall be necessary; a brief in support of the aggrieved party's position shall be filed within 30 days of filing of the administrative record by the Administrator.

(c) A petition shall state concisely the points relied upon, and shall be accompanied by a statement setting forth supporting reasons. The petition shall also indicate whether or not the petitioner consents to the disposition of the questions involved by a single member.

#### § 8.8 Filing of administrative record.

(a) If a petition for review has been filed concerning a decision pursuant to part 6 of this title, the Chief Administrative Law Judge shall promptly forward the record of the proceeding before the Administrative Law Judge to the Board.

(b) If a petition for review has been filed concerning a final decision of the Wage-Hour Administrator or authorized representative, the Associate Solicitor for Fair Labor Standards shall promptly file with the Board a record upon which the decision was based.