

**U.S. Department of Labor**

Administrative Review Board  
200 Constitution Ave. NW  
Washington, DC 20210-0001



**IN THE MATTER OF:**

**ADMINISTRATOR, WAGE AND  
HOUR DIVISION, UNITED STATES  
DEPARTMENT OF LABOR,**

**PROSECUTING PARTY,**

**v.**

**THE GEO GROUP,**

**RESPONDENT.**

**ARB CASE NO. 2022-0048**

**ALJ CASE NO. 2021-SCA-00006  
ALJ HEATHER C. LESLIE**

**DATE: May 30, 2024**

**Appearances:**

***For the Prosecuting Party:***

**Seema Nanda, Esq., Jennifer S. Brand, Esq., Sarah K. Marcus, Esq.,  
Jonathan T. Rees, Esq., and Lindsey Rothfeder, Esq.; U.S.  
Department of Labor, Office of Solicitor; Washington, District of  
Columbia**

***For the Respondent:***

**Jeffrey A. Kimmel, Esq., Ana C. Dowell, Esq., and Cassidy Mara, Esq.;  
Akerman LLP; New York, New York**

**Before HARTHILL, Chief Administrative Appeals Judge, and WARREN  
and THOMPSON, Administrative Appeals Judges**

## DECISION AND ORDER

THOMPSON, Administrative Appeals Judge:

This case arises under the McNamara-O’Hara Service Contract Act of 1965 (SCA), as amended,<sup>1</sup> the Contract Work Hours and Safety Standards Act (CWHSSA), as amended,<sup>2</sup> and their respective implementing regulations.<sup>3</sup> The Administrator (Administrator) of the United States Department of Labor’s Wage and Hour Division (WHD) asserts that Respondent The GEO Group (GEO) violated the SCA and the CWHSSA by failing to pay its corrections officers the local prevailing wage rate. On May 31, 2022, a United States Department of Labor Administrative Law Judge (ALJ) issued an Order Granting Summary Judgment in Favor of Complainant (D. & O.), concluding that GEO violated the SCA and the CWHSSA and ordering GEO to pay the corrections officers back wages. On December 2, 2022, GEO petitioned the Administrative Review Board (ARB or Board) to review the D. & O.<sup>4</sup> On December 1, 2022, GEO also moved to seal certain records. For the reasons set forth below, we affirm the ALJ’s decision and deny GEO’s request for a seal.

### BACKGROUND

#### 1. The SCA and Wage Determinations

The SCA requires contractors on covered government service contracts to pay their service employees specified minimum wages as determined by the Secretary of Labor.<sup>5</sup> To effectuate this requirement, WHD, under delegated authority from the Secretary, issues wage determinations setting forth the minimum monetary wage rates to be paid to each class of service employee working on covered contracts.<sup>6</sup>

WHD generally issues two types of wage determinations. First, WHD issues “prevailing in the locality” determinations, also known as area-wide wage

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<sup>1</sup> 41 U.S.C. §§ 6701-6707.

<sup>2</sup> 40 U.S.C. §§ 3701-3708.

<sup>3</sup> 29 C.F.R. Parts 4 and 8 (2023) (implementing the SCA); 29 C.F.R. Part 5 (2023) (implementing the CWHSSA).

<sup>4</sup> On June 24, 2022, GEO filed a motion requesting an extension of time to file a petition for review, pending the ALJ’s resolution of a motion for reconsideration filed by the Administrator. The Board granted GEO’s motion on July 1, 2022.

<sup>5</sup> 41 U.S.C. § 6703(1); 29 C.F.R. § 4.6(b)(1).

<sup>6</sup> 29 C.F.R. § 4.3(a), (c).

determinations.<sup>7</sup> These determinations set forth the minimum wage rates WHD determines to be prevailing in the locality in which the contract is to be performed.<sup>8</sup>

Second, in limited circumstances, WHD may issue “Collective Bargaining Agreement (Successorship)” determinations, also known as CBA-based wage determinations.<sup>9</sup> CBA-based wage determinations will only apply where: (1) the contract at issue “succeeds a contract subject to the [SCA] and under which substantially the same services as under the predecessor contract are furnished in the same locality;” and (2) the employees working under the predecessor contract were subject to a collective bargaining agreement (CBA).<sup>10</sup> In these circumstances, the successor contractor must pay its employees at least what they would have been paid under the predecessor’s CBA.<sup>11</sup> If there was no predecessor contract in the same locality, a CBA-based wage determination will not apply, even if the contractor and the service employees agree to a CBA. Instead, the contractor must pay the service employees no less than the prevailing local wage rate under the applicable area-wide wage determination.<sup>12</sup>

There are two ways to obtain a wage determination from WHD. First, a contracting agency may submit an e98 application to WHD describing the proposed contract and the occupations expected to be employed on the contract.<sup>13</sup> WHD reviews the information supplied by the contracting agency and issues the appropriate wage determination.<sup>14</sup> Given WHD’s review of the e98 application, the regulations specify that the parties “may rely upon” the wage determination “as the correct wage determination(s) for the contract described in the e98.”<sup>15</sup>

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<sup>7</sup> *Id.* §§ 4.3(b), 4.50(a).

<sup>8</sup> *Id.* § 4.50(a)(1).

<sup>9</sup> *Id.* §§ 4.3(b), 4.50(b).

<sup>10</sup> *Id.* § 4.1b(a); *see also* 41 U.S.C. § 6707(c)(1); 29 C.F.R. § 4.50(b).

<sup>11</sup> 29 C.F.R. §§ 4.1b(a), 4.50(b).

<sup>12</sup> *See* 41 U.S.C. § 6703(1) (stating that service employees must be paid “in accordance with prevailing rates in the locality,” unless a CBA-based wage determination applies); 29 C.F.R. §§ 4.1b(a) (identifying the limited conditions under which a CBA-based wage determination may apply), 4.163(d) (“The fact that a successor contractor may have its own collective bargaining agreement does not . . . negate the application of a prevailing wage determination issued pursuant to section 2(a) where there was no applicable predecessor collective bargaining agreement.”).

<sup>13</sup> 29 C.F.R. § 4.4(a)(2).

<sup>14</sup> *Id.* § 4.4(b)(1).

<sup>15</sup> *Id.* § 4.4(a)(2).

Alternatively, a contracting agency may obtain a wage determination through the WDOL website.<sup>16</sup> On the website, the contracting agency must answer questions about the contract and the contracting history, and the system automatically generates a wage determination based on the agency's responses.<sup>17</sup> Given the automated nature of the WDOL process, and in contrast to wage determinations issued via the e98 process, the regulations make clear that contracting agencies remain "fully responsible for selecting the correct wage determination" through the WDOL system.<sup>18</sup>

## 2. The CWHSSA

The CWHSSA applies to certain federal government contracts involving the employment of "watchmen" and "guards," among other positions.<sup>19</sup> Contractors subject to the CWHSSA must pay these employees one and one-half times their basic wage rate for overtime hours.<sup>20</sup> For contracts subject to the SCA and the CWHSSA, this means that contractors must pay the covered employees one and one-half times the rate set forth in the applicable wage determination for overtime hours.

## 3. The North Lake Correctional Facility and the BOP Contract

GEO owns and operates the North Lake Correctional Facility (North Lake) in Baldwin, Michigan.<sup>21</sup> GEO operated North Lake under state contracts from its construction in 1997 to 2005 and from 2015 to 2017.<sup>22</sup> GEO never operated North Lake under a contract with the federal government before 2017.<sup>23</sup>

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<sup>16</sup> *Id.* § 4.4(c).

<sup>17</sup> U.S. Department of Labor Prevailing Wage Resource Book, GEO's Motion for Summary Decision Exhibit (GEO's Ex.) W, at DOL 004213, 004215-004221.

<sup>18</sup> 29 C.F.R. § 4.4(c)(1); *accord id.* § 4.4(a)(2) ("Although the WDOL Web site provides assistance to the agency to select the correct wage determination for the contract, the agency remains responsible for the wage determination selected.").

<sup>19</sup> 40 U.S.C. § 3701(b)(1)(B), (b)(2); *see also* 29 C.F.R. § 4.181(b)(1).

<sup>20</sup> 40 U.S.C. § 3702(a); 29 C.F.R. § 4.181(b)(1).

<sup>21</sup> D. & O. at 3.

<sup>22</sup> *Id.*

<sup>23</sup> Deposition of Amber Martin, Administrator's Motion for Summary Decision Exhibit (Adm'r Ex.) 1, at 14-15; Deposition of Christopher Ryan, Adm'r Ex. 5, at 16.

On May 25, 2017, the Federal Bureau of Prisons (BOP) issued a request for proposals for the management and operation of a federal correctional institution.<sup>24</sup> On July 10, 2017, GEO responded with a proposal to use North Lake.<sup>25</sup>

As GEO's proposal progressed, GEO entered a Memorandum of Understanding (MOU) with the union representing corrections officers at another facility GEO operated in Georgia.<sup>26</sup> GEO and the union agreed to use the CBA applicable to the Georgia corrections officers (Georgia CBA) for the North Lake corrections officers until the parties could negotiate a separate agreement for North Lake.<sup>27</sup> The Georgia CBA provided that corrections officers would be paid \$15.87 per hour, but GEO and the union agreed in the MOU that the North Lake corrections officers would be paid \$17.00 per hour.<sup>28</sup> GEO provided a final staffing plan to BOP on March 22, 2019.<sup>29</sup> Consistent with the MOU, the staffing plan included a wage rate of \$17.00 per hour for corrections officers.<sup>30</sup>

BOP and GEO ultimately entered into a contract on May 1, 2019 (Contract), which was subject to the SCA and the CWHSSA.<sup>31</sup> Although the Contract referred to GEO's staffing plan, the only wage determination incorporated in and attached to the Contract at the time of execution was the applicable area-wide wage determination for North Lake's locality (Prevailing Wage Determination).<sup>32</sup> The Prevailing Wage Determination included a prevailing wage rate of \$26.21 per hour for corrections officers.<sup>33</sup>

On May 2, 2019, the day after entering into the Contract, BOP used the WDOL website to generate a new wage determination based on the Georgia CBA and the MOU (Georgia-CBA Wage Determination).<sup>34</sup> BOP and GEO subsequently amended the Contract to incorporate the Georgia-CBA Wage Determination and

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<sup>24</sup> D. & O. at 4.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*; Contract, Adm'r Ex. 23, at GEOGROUP-003657 (incorporating provisions of the SCA and CWHSSA).

<sup>32</sup> D. & O. at 4; Contract, Adm'r Ex. 23, at GEOGROUP-003573, -003677-003687.

<sup>33</sup> D. & O. at 4.

<sup>34</sup> *Id.*; Deposition of Jeff Wrona, GEO Ex. L, at 23.

MOU.<sup>35</sup> The Prevailing Wage Determination continued to be part of the Contract post-amendment.<sup>36</sup> When the work under the Contract commenced, GEO paid the North Lake corrections officers \$17.00 per hour under the Georgia-CBA Wage Determination and paid the other service employees in accordance with the Prevailing Wage Determination.<sup>37</sup>

### 3. Enforcement Action and ALJ Decision

On January 19, 2021, the Administrator filed a complaint with the Department of Labor's Office of Administrative Law Judges alleging that GEO violated the SCA and the CWHSSA by underpaying corrections officers at North Lake. The Administrator argued that GEO should have paid the corrections officers a base wage of \$26.21 per hour under the Prevailing Wage Determination, instead of \$17.00 per hour under the Georgia-CBA Wage Determination.<sup>38</sup> Likewise, the Administrator argued that GEO should have paid the corrections officers an overtime premium based on the higher prevailing rate, rather than based on the lower CBA rate.<sup>39</sup>

The parties filed cross-motions for summary decision with the ALJ. The Administrator asserted that there was no covered predecessor contract under the SCA at North Lake. Consequently, the Administrator argued that the Georgia-CBA Wage Determination was not the correct wage determination for the corrections officers there.<sup>40</sup> Instead, the Administrator argued that GEO had to pay the corrections officers the local prevailing rate, and corresponding overtime rate, under the Prevailing Wage Determination.<sup>41</sup>

GEO did not dispute that there was no covered predecessor contract at North Lake. Nevertheless, GEO asserted that the Georgia-CBA Wage Determination was still properly incorporated into the Contract using the WDOL website pursuant to the SCA's implementing regulations.<sup>42</sup> Consequently, GEO argued that the Georgia-

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<sup>35</sup> D. & O. at 4; Contract Amendment, GEO Ex. N, at GEOGROUP-017427.

<sup>36</sup> See Contract Amendment, GEO Ex. N, at GEOGROUP-017427 (incorporating the Georgia-CBA Wage Determination and MOU but stating "[a]ll other terms and conditions remain unchanged").

<sup>37</sup> See Respondent's Second Supplemental Responses and Objections to Complainant's Interrogatories, Adm'r Ex. 29, at Interrogatory 2.

<sup>38</sup> Complaint at ¶ IV.

<sup>39</sup> *Id.* at ¶ V.

<sup>40</sup> Administrator's Motion for Summary Decision at 14-18.

<sup>41</sup> *Id.* at 19.

<sup>42</sup> GEO's Memorandum in Support of Motion for Summary Decision at 12-17.

CBA Wage Determination remained applicable and enforceable, at least until the Administrator directed BOP to amend the Contract to remove it.<sup>43</sup>

The ALJ entered summary decision in the Administrator’s favor on May 31, 2022. The ALJ agreed with the Administrator that it was undisputed that there was no predecessor contract at North Lake and, therefore, the Georgia-CBA Wage Determination did not apply to the corrections officers.<sup>44</sup> The ALJ also determined that, under a plain reading of the regulations, “when there is no applicable predecessor [CBA], the prevailing wage determination is applicable.”<sup>45</sup> Consequently, the ALJ concluded that GEO should have paid the corrections officers a base rate of \$26.21 per hour under the Prevailing Wage Determination, and ordered GEO to pay \$1,279,777.03 in back wages.<sup>46</sup>

On June 24, 2022, GEO petitioned the Administrative Review Board (ARB or Board) to review the ALJ’s decision.

### JURISDICTION AND STANDARD OF REVIEW

Pursuant to 29 C.F.R. § 8.1(b), the Board has jurisdiction to hear and decide appeals of ALJ decisions and orders under the SCA and the CWHSSA.<sup>47</sup> The Board reviews questions of law de novo, but defers to the Administrator’s interpretation of the SCA when it is reasonable and consistent with law.<sup>48</sup> The Board also reviews an ALJ’s grant of summary decision de novo, under the same standard that governs the ALJ.<sup>49</sup> Summary decision is appropriate “if the movant shows that there is no

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<sup>43</sup> *Id.* at 15-16, 18-20.

<sup>44</sup> D. & O. at 7-9.

<sup>45</sup> *Id.* at 9.

<sup>46</sup> The ALJ ordered GEO to pay \$1,270,590.32 in back wages. *Id.* at 11. The ALJ subsequently issued an Order Granting in Part and Denying in Part Motion for Reconsideration on October 24, 2022, amending the back wages award to \$1,279,777.03. Order Granting in Part and Denying in Part Motion for Reconsideration at 2.

<sup>47</sup> 29 C.F.R. § 8.1(b); *see also* Secretary’s Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary’s discretionary review of ARB decisions)), 85 Fed. Reg. 13,186 (Mar. 6, 2020).

<sup>48</sup> *In re the Applicability of Wage Rates Collectively Bargained by Sys. & Res. Techs., Inc.*, ARB No. 2005-0132, ALJ No. 2005-CBV-00002, slip op. at 4-5 (ARB June 30, 2008) (citations omitted); *Forfeiture Support Assocs.*, ARB No. 2006-0028, slip op. at 2 (ARB May 27, 2008) (citations omitted).

<sup>49</sup> *Adm’r, Wage & Hour Div., U.S. Dep’t of Lab. v. Puget Sound Env’t*, ARB No. 2014-0068, ALJ No. 2012-SCA-00014, slip op. at 7 (ARB May 4, 2016) (citation omitted).

genuine dispute as to any material fact and the movant is entitled to decision as a matter of law.”<sup>50</sup>

## DISCUSSION

### 1. Violations of the SCA and CWHSSA

On appeal, GEO maintains that it correctly paid its corrections officers pursuant to the Georgia-CBA Wage Determination. Accordingly, it contends that it did not violate the SCA or the CWHSSA. We disagree and, therefore, affirm the ALJ’s conclusion that GEO owes back wages to the North Lake corrections officers.

As set forth above, CBA-based wage determinations, like the Georgia-CBA Wage Determination, may only be used where the contract at issue “succeeds a contract subject to the [SCA] . . . in the same locality.”<sup>51</sup> It is undisputed that the Contract here did not succeed another SCA-covered contract in North Lake’s locality. GEO never held a federal contract at North Lake before entering into the Contract with BOP in May 2019.<sup>52</sup> GEO’s Vice President of Human Resources testified that there was no SCA-covered predecessor contract at North Lake.<sup>53</sup> And, although GEO and BOP adopted a CBA applicable to corrections officers at one of GEO’s facilities in Georgia, it is undisputed that the Georgia contract was not in the same locality as North Lake in Michigan, several hundred miles away.<sup>54</sup> Indeed, GEO did not attempt to argue to the ALJ or to the Board that the Contract succeeded another SCA-covered contract.<sup>55</sup> Because there was no applicable predecessor contract in North Lake’s locality, it is clear that the Georgia-CBA Wage Determination was not the correct wage determination for the North Lake corrections officers and was inapplicable under the SCA and CWHSSA.<sup>56</sup>

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<sup>50</sup> 29 C.F.R. § 18.72(a).

<sup>51</sup> *Id.* § 4.1b(a).

<sup>52</sup> Deposition of Amber Martin, Adm’r Ex. 1, at 14-15; Deposition of Christopher Ryan, Adm’r Ex. 5, at 16.

<sup>53</sup> Deposition of Christopher Ryan, Adm’r Ex. 5, at 12, 14-15, 31.

<sup>54</sup> *See* 29 C.F.R. § 4.54(a) (“Locality is ordinarily limited geographically to a particular county or cluster of counties comprising a metropolitan area.”).

<sup>55</sup> In fact, GEO appears to concede on appeal that the Georgia-CBA Wage Determination was not the correct wage determination for the corrections officers. GEO Petition for Review (Pet.) at 7 (framing the issue presented as whether GEO remained “contractually obligated to pay corrections officers in accordance with a wage determination that was: (i) **generated in error** . . . .” (emphasis added)).

<sup>56</sup> *See* 41 U.S.C. § 6707(c)(1) (stating the limited successor-contract circumstances under which a CBA-based wage determination may apply); 29 C.F.R. § 4.1b(a) (same). For this reason, we agree with the Administrator that GEO’s reliance on 29 C.F.R. § 4.3(c)



Instead, GEO should have paid the corrections officers the local prevailing rate under the Prevailing Wage Determination. In the absence of a predecessor contract in the same locality, the SCA and its implementing regulations mandate that a contractor must pay its employees the local prevailing rate under the applicable area-wide wage determination.<sup>57</sup> Here, the Prevailing Wage Determination—which was incorporated into the Contract at its inception, and which remained in the Contract even after the CBA-Based Wage Determination was added by amendment—identified the prevailing rates for service employees in North Lake’s locality, including \$26.21 per hour for corrections officers. Consequently, GEO should have paid the corrections officers \$26.21 per hour under the applicable Prevailing Wage Determination, instead of \$17.00 per hour under the inapplicable Georgia-CBA Wage Determination. Under the SCA and the CWHSSA, GEO owes the corrections officers back wages for this underpayment.<sup>58</sup>

Although GEO appears to concede that the Georgia-CBA Wage Determination did not reflect the correct wage rate for its corrections officers, it nevertheless argues, as it did below, that the Georgia-CBA Wage Determination was properly incorporated into the Contract via the WDOL process.<sup>59</sup> GEO argues that, as a result, it remained the effective wage determination for corrections officers, at least until the Administrator compelled GEO and BOP to amend the Contract to remove it.<sup>60</sup> Again, we disagree.

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is misplaced because the Georgia-CBA Wage Determination never applied to the Contract. That regulation provides:

The wage rates . . . set forth in such wage determinations **shall be determined in accordance with the provisions of [the SCA]**. . . The wage rates and fringe benefits **so determined** . . . shall be made applicable by contract to all service employees . . . under any contract subject to [the SCA] which is entered into thereafter and before such determination has been rendered obsolete by a withdrawal, modification, revision, or supersedure.

29 C.F.R. § 4.3(c) (emphasis added). Because the Georgia-CBA Wage Determination was not “so determined” in accordance with the SCA, it was never applicable to the North Lake corrections officers. Accordingly, we agree with the Administrator that Section 4.3(c) does not cloak the inapplicable Georgia-CBA Wage Determination with protection or shield GEO from liability for underpaying employees under the SCA and CWHSSA in this case.

<sup>57</sup> See 41 U.S.C. § 6703(1); 29 C.F.R. § 4.163(b).

<sup>58</sup> 40 U.S.C. § 3702(b)(2)(A); 41 U.S.C. § 6705(a).

<sup>59</sup> Pet. at 22-23.

<sup>60</sup> *Id.* at 23-24.

The fact that GEO and BOP contractually agreed to apply the lower wage rates from the Georgia CBA and incorporated the Georgia-CBA Wage Determination into the Contract does not render it the effective wage determination for the North Lake corrections officers. The SCA and, by extension, the CWHSSA, do not permit the contracting parties to agree to pay a lower, inapplicable CBA-based rate in lieu of a higher, applicable prevailing rate in these circumstances. To the contrary, the SCA's implementing regulations explicitly provide: "The fact that a successor contractor may have its own collective bargaining agreement does not negate . . . the application of a prevailing wage determination issued pursuant to [the SCA] **where there was no applicable predecessor [CBA]**."<sup>61</sup> As we have emphasized, the Georgia CBA was not an "applicable predecessor [CBA]" under the SCA because there was no covered predecessor contract in North Lake's locality. Therefore, the Georgia-CBA Wage Determination cannot negate or supplant the applicable Prevailing Wage Determination as the effective wage determination for the corrections officers.

Likewise, the fact that BOP utilized the WDOL system to generate the Georgia-CBA Wage Determination does not make that wage determination effective or otherwise relieve GEO of its obligation to pay the appropriate prevailing wage rate under the Prevailing Wage Determination. Although contracting agencies have the option to utilize the WDOL process in lieu of the e98 process to obtain wage determinations, the SCA's implementing regulations warn that while the "WDOL site provides assistance to the agency in the selection of the correct wage determination," the contracting agency "is fully responsible for selecting the **correct wage determination**."<sup>62</sup> Again, the Georgia-CBA Wage Determination was, undeniably, not the correct wage determination for corrections officers at North Lake; instead, the SCA and its implementing regulations dictate that the Prevailing Wage Determination was the correct wage determination in this case. The Georgia-CBA Wage Determination was not the effective wage determination merely because it was generated through the WDOL process or incorporated into the Contract.<sup>63</sup>

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<sup>61</sup> 29 C.F.R. § 4.163(d) (emphasis added).

<sup>62</sup> 29 C.F.R. § 4.4(c)(1); *accord id.* § 4.4(a)(2) ("Although the WDOL Web site provides assistance to the agency to select the correct wage determination for the contract, the agency remains responsible for the wage determination selected.").

<sup>63</sup> GEO relies on *Guardian Moving & Storage Co., Inc. v. Hayden*, 421 F.3d 1268 (Fed. Cir. 2005) (*Guardian Moving*) in support of its argument that the Georgia-CBA Wage Determination, though issued in error, remained effective for the corrections officers. *Pet.* at 24-27. As the Administrator observes, *Guardian Moving* was decided in the context of a dispute over the government's contractual reimbursement obligations under the Federal Acquisition Regulations, rather than an SCA and CWHSSA dispute over liability for back wages. *Guardian Moving*, 421 F.3d at 1269. Additionally, two other key facts distinguish *Guardian Moving* from this case. First, the contracting agency in that case used the e98 process to secure the wage determination from WHD. *Id.* at 1270. Consequently, the agency

This is especially true in this case because BOP provided incorrect information about the contracting history at North Lake to generate the Georgia-CBA Wage Determination through the WDOL system.<sup>64</sup> The primary purpose of the SCA is to protect service employees and preserve their wages and benefits.<sup>65</sup> As a result, the SCA mandates that contractors like GEO pay at least the local prevailing rate to protect employees from substandard earnings and to prevent the local market from being undercut through the importation of cheap labor.<sup>66</sup> It would be inconsistent with the purpose of the SCA to permit a contractor to pay less than the local prevailing wage simply because the contracting agency provided incorrect information in the WDOL system to generate an inapplicable wage determination.<sup>67</sup>

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in *Guardian Moving* could rely upon that wage determination as correct under the SCA's regulations. 29 C.F.R. § 4.4(a)(2). Here, in contrast, the regulations make clear that, by opting to use the WDOL system, BOP remained obligated to select the correct wage determination. *Id.* § 4.4(a)(2), (c)(1). Second, there is no indication in *Guardian Moving* that the correct wage determination was also incorporated into the contract, along with the inapplicable wage determination, as is the case here.

<sup>64</sup> To have received a CBA-based wage determination through the WDOL system, BOP would have had to, and did, represent that there was a covered predecessor contract in North Lake's locality. See U.S. Department of Labor Prevailing Wage Resource Book, GEO Ex. W, at DOL 004220-004221.

<sup>65</sup> *Lear Siegler Servs., Inc. v. Rumsfeld*, 457 F.3d 1262, 1265 (Fed. Cir. 2006) (stating the SCA "serves generally to protect the wages and fringe benefits of service workers"); *Biospherics, Inc.*, ARB Nos. 1997-0086, 1998-0141, slip op. at 26 (ARB May 28, 1999) ("The SCA was enacted to protect rightful wages of the service workers." (internal quotations and citation omitted)); see also *M1 Support Servs., LP v. Adm'r, Wage & Hour Div., U.S. Dep't of Lab.*, ARB Nos. 2022-0022, -0023, -0067, slip op. at 18 (ARB Feb. 23, 2024) (stating that the SCA protects service employees, not contractors).

<sup>66</sup> *Danielsen v. Burnside-Ott Aviation Training Ctr., Inc.*, 746 F. Supp. 170, 175 (D.D.C. 1990), *aff'd*, 941 F.2d 1220 (D.C. Cir. 1991) ("The purpose of the SCA was to ensure that service employees working on government contracts are not paid wages below the prevailing wages being paid in the locality by non-government contractors."); *CRAssociates, Inc. v. United States*, 95 Fed. Cl. 357, 370 (2010) ("The primary purpose of the SCA is to protect wage standards of employees by preventing federal purchasing power [from] playing a role in suppressing wage rates . . ." (internal citation and quotations omitted)); *In re Applicability of Wage Rates Collectively Bargained by Big Boy Facilities, Inc.*, 1988-CBV-00007, slip op. at 19 (Deputy Sec'y Jan. 3, 1989) (citations omitted) ("An object of the legislation was to ensure that contractors would not undercut the local private labor market by importing cheap labor.")

<sup>67</sup> Below, the parties debated what role, if any, GEO played in causing BOP to provide incorrect information in the WDOL system to generate the Georgia-CBA Wage Determination. Administrator's Motion for Summary Decision at 10, 21; GEO's Memorandum in Opposition to Administrator's Motion for Summary Decision at 2, 5, 11-12. While we appreciate that it was BOP's obligation under the regulations to ensure it selected the correct wage determination through the WDOL system, and although GEO contends

Finally, we reject GEO’s argument that the Administrator’s “sole remedy” in this case was to “instruct BOP to amend the Contract to require GEO to pay the corrections officers in accordance with the correct wage determination going forward.”<sup>68</sup> In support of its argument, GEO cites 29 C.F.R. § 4.4(c)(1), which provides that where the Department of Labor determines that contracting parties applied an incorrect wage determination generated through the WDOL system, “the contracting agency, in accordance with § 4.5, shall amend the contract to **incorporate** the correct wage determination.”<sup>69</sup> Section 4.5, in turn, similarly provides that where the Department of Labor determines that a covered contract “failed to include an appropriate wage determination,” the contracting agency “shall **include** in the contract . . . any applicable wage determination.”<sup>70</sup> GEO contends that these regulations mean that “the only proper remedy in a situation where a contracting agency has incorporated an incorrect wage determination is to amend the underlying contract” to include the correct wage determination prospectively, and not to collect back wages.<sup>71</sup>

These provisions do not apply to the circumstances presented in this case, nor do they restrict the Administrator’s ability to recover back wages from GEO. By their plain terms, these provisions require a contracting agency to amend a contract to “include” or “incorporate” an appropriate wage determination where one was previously omitted. Here, in contrast, the appropriate wage determination—the Prevailing Wage Determination—was included into the Contract at its inception, and remained in the Contract even after the parties amended it to also add the inapplicable Georgia-CBA Wage Determination. Thus, amendment pursuant to Sections 4.4 and 4.5 was not necessary. Additionally, while both provisions require the contracting agency to amend a contract to include an appropriate wage determination where one was previously omitted, neither provision purports to make amendment the sole or exclusive remedy available to the Administrator or limit the Administrator’s ability to also recover back wages. To the contrary, Section

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that it did not prompt BOP to provide incorrect information in the WDOL system, BOP’s error—whether prompted or facilitated by GEO or not—does not relieve GEO of liability for back wages. *See* 29 C.F.R. § 4.187(e)(5) (stating that a contractor may not rely on advice from a contracting agency as a defense to liability for back wages); *see also* 41 U.S.C. § 6705(a) (stating that a “party responsible for a violation” is liable for back wages); *Puget Sound*, ARB No. 2014-0068, slip op. at 8 (“There is no question that [the contractor] is a ‘party responsible,’ since the underpaid employees worked for [the contractor].”).

<sup>68</sup> Pet. at 30.

<sup>69</sup> 29 C.F.R. § 4.4(c)(1) (emphasis added).

<sup>70</sup> *Id.* § 4.5(c) (emphasis added).

<sup>71</sup> Pet. at 8 (emphasis original).

4.5 expressly permits the Administrator to recover back wages, even where amendment is necessary.<sup>72</sup>

For these reasons, we agree with the ALJ and the Administrator that GEO violated the SCA and CWHSSA by underpaying corrections officers at North Lake and owes back wages.<sup>73</sup>

## 2. Motion to Seal

On December 1, 2022, GEO filed a Motion for Leave to File Documents in Support of Petition for Review (Motion), requesting permission to file certain exhibits with the Board under seal. GEO supplied redacted versions of the exhibits with the Motion.

GEO failed to establish grounds to seal the exhibits.<sup>74</sup> Nevertheless, GEO's request to seal exhibits is moot. The material facts are undisputed, and the Board was able to decide this case with redacted versions of the exhibits.<sup>75</sup> Accordingly, we deny the Motion.

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<sup>72</sup> 29 C.F.R. § 4.5(c) (giving the Administrator the authority to “require retroactive application of” appropriate wage determinations after amendment). Thus, even if we agreed with GEO that the Administrator was required to compel BOP to amend the Contract, back wages would still be recoverable. *Id.* § 4.5(c); *see id.* § 4.4(c)(1) (stating that amendment shall be made “in accordance with § 4.5”). Furthermore, it would be incongruous if the Administrator could recover back wages under Section 4.5(c) when the correct wage determination was not previously incorporated into the contract but could not recover back wages where the correct wage determination was already incorporated into the contract.

<sup>73</sup> Although GEO challenges its liability under the SCA and the CWHSSA, it does not challenge the Administrator's and the ALJ's calculation of back wages. Accordingly, having found that GEO violated the SCA and the CWHSSA, we summarily affirm the amount awarded by the ALJ in back wages.

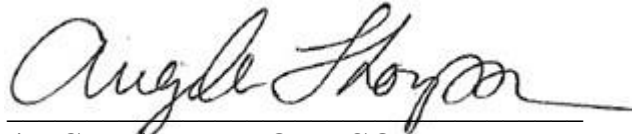
<sup>74</sup> *See Furlong-Newberry v. Exotic Metals Forming Co.*, ARB No. 2022-0017, ALJ No. 2019-TSC-00001, slip op. at 26 (ARB Nov. 9, 2022) (articulating the standard to seal records).

<sup>75</sup> GEO did not submit unredacted versions of the exhibits, and the Board did not receive unredacted versions with the record transmitted from the ALJ.

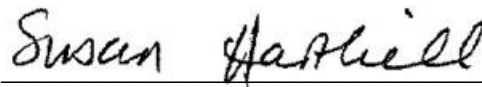
**CONCLUSION**

For the foregoing reasons, we **AFFIRM** the ALJ's conclusion that GEO violated the SCA and the CWHSSA, and order GEO to pay \$1,279,777.03 in back wages. Additionally, we **DENY** GEO's Motion for Leave to File Documents in Support of Petition for Review as moot.

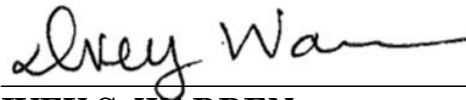
**SO ORDERED.**



**ANGELA W. THOMPSON**  
**Administrative Appeals Judge**



**SUSAN HARTHILL**  
**Chief Administrative Appeals Judge**



**IVEY S. WARREN**  
**Administrative Appeals Judge**