

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210



MAY 21 2007

Mr. Michael Cirillo
Vice President
System Operations Services
Air Traffic Organization
U.S. Department of Transportation
Federal Aviation Administration
800 Independence Avenue, SW
Washington, D.C. 20591

Dear Mr. Cirillo:

This is in response to requests for review and reconsideration of wage determination (WD) 2006-0615 (Rev. 1), issued September 29, 2006, under the McNamara-O'Hara Service Contract Act (SCA) 41 U.S.C. 351 *et seq.* This WD was issued for the first option year of a Federal Aviation Administration (FAA) contract with Lockheed Martin for the operation of Automated Flight Services Stations at locations throughout the United States. The contract was originally awarded based on an A-76 competition.

WD 2006-0615 (Rev. 1) was issued in response to reconsideration requests from the National Association of Air Traffic Specialists (NAATS) and Lockheed Martin. Based on the information submitted, the Branch of Service Contract Wage Determinations determined that a specialized WD incorporating a new occupational job family that specifically tracked the work performed by more than 1,200 employees working on this FAA contract would more accurately reflect the work performed on this contract. Although the Air Traffic Control Specialist, Station occupation listed in the *SCA Directory of Occupations* encompassed some of the duties performed by employees working on this contract, the classification did not fully describe all of the work performed, and it did not recognize differences in the skill levels of the specialists working on this contract. In order to address these issues, a new WD was issued for a new job family with three distinct levels: Flight Service Specialist I, II, and III. The new WD was tailored specifically for duties and responsibilities of the employees performing work on this contract.

Questions regarding the proper SCA wage rates for Flight Service Specialists were first raised well before this contract was awarded. On September 28, 2004, the FAA requested a formal review of the occupational classification Air Traffic Control Specialist, Station with documentation that illustrated salaries across the United States for Flight Service Specialists operating at full performance level. Subsequently, the FAA changed its position and concluded that a classification already included on all standard SCA WDs, Air Traffic Control Specialist, Station, and the methodology used to issue the

Subsequently, the FAA changed its position and concluded that a classification already included on all standard SCA WDs, Air Traffic Control Specialist, Station, and the methodology used to issue the SCA wage rates for that classification (i.e., adopting the GS-9 step 2 pay rate plus five percent) was appropriate for this contract. As a result, FAA stated that no changes to the existing WDs were needed. After WD 2006-0615 (Rev. 1) was issued for application to the first option year of the contract based upon the reconsideration requests from NAATS and Lockheed Martin, the FAA requested reconsideration asserting that the data and methodology used to issue WD 2006-0615 (Rev. 1) are not appropriate for the work performed on this contract. The FAA challenged not only the use of the Bureau of Labor Statistics (BLS) National Compensation Survey (NCS), White Collar, Excluding Sales data but also the "generic leveling" of factors to determine NCS levels of 08, 10, and 11.

Lockheed Martin has stated that three distinct job descriptions for Flight Service Specialists are clearly needed and that the wage rates and job descriptions on the WDs that included Air Traffic Control Specialist, Station in no way reflected the prevailing rates or described the work outlined in this contract. Lockheed Martin submitted job descriptions of the work being performed and actual wages being paid to employees. They agreed with the methodology used by the Wage and Hour Division (WHD) (BLS' NCS, White Collar, Excluding Sales data, levels 08, 10, and 11). Although they concurred with the new WD, they have requested the following changes, to which the FAA has agreed: nationwide vacation benefits including Hawaii and locality wage rates for Hawaii and Puerto Rico. They also requested a ten percent night pay differential, on which the FAA did not comment.

NAATS sent information prior to the issuance of the specialized WD that outlined the work performed by the Flight Service Specialists, along with requests for review of the Air Traffic Control Specialist, Station wage rates. They outlined the need to issue a new WD and develop three levels of job descriptions that accurately reflect the work performed as well as the need to issue prevailing wage rates that correspond to the level of work in the job descriptions. They contended that the previously issued job description for Air Traffic Control Specialist, Station was incomplete and did not accurately reflect all of the duties performed by the Flight Service Specialists on this contract. During the period in which they were contesting the A-76 action, NAATS withdrew their challenge to the wage rates until the A-76 process had been completed. Once the A-76 process was completed, NAATS reinstated its request for the WHD to review and to reconsider the WD.

After reviewing all of the information submitted by the FAA, Lockheed Martin, and NAATS, including information submitted by the FAA and Lockheed Martin in December 2006, I have concluded the issuance of a specialized SCA WD to cover the 1,200 Flight Service Specialists working on this contract is appropriate. In addition, I affirm:

1. Using BLS NCS data to issue prevailing wage rates for Flight Service Specialists on this contract.

2. Issuing three distinct classifications of Flight Service Specialists because a single occupational classification does not adequately differentiate the levels of work required by this contract;
3. Classifying Flight Service Specialists I, II, and III, as NCS levels 08, 10, and 11, respectively, based on the duties and responsibilities described in each occupational definition; and
4. Issuing the wage rates based on NCS' White Collar, Excluding Sales, Levels 08, 10, and 11.

Although the WHD normally does not issue specialized prevailing WDs tailored to the specific needs of an individual contract, the size and scope of this contract warrant special consideration. A specialized WD addresses the concern that Flight Service Specialists have duties and responsibilities that are not directly covered by classifications in the *SCA Directory of Occupations*. Also, in order to provide consistency in the wage rates for the 1,200 employees working on this contract throughout the United States and in keeping with the requirement in Section 2(a)(5) of the SCA to give "due consideration" to the wage and fringe benefit rates paid to Federal employees, the national NCS rate was issued for most areas of the country while locality differentials were applied to the thirty-one locality areas defined by the Office of Personnel Management (OPM). Although Lockheed Martin requested – and the FAA agreed with the request – that the WD reflect locality pay for Hawaii and Puerto Rico, OPM has not issued locality pay schedules for Hawaii and Puerto Rico; therefore, in keeping with due consideration and OPM's policy, the WD continues the inclusion of Hawaii and Puerto Rico under the category of "all other areas."

The BLS NCS is the primary data source for SCA prevailing wage determinations, and the use of the NCS data is appropriate in this case as well. It provides a viable means to issue rates for Flight Service Specialists that are consistent with rates paid in the industry and consistent with the rates paid previously to the Federal employees employed in this occupation. Using NCS data also provides a means for issuing multiple levels of Flight Service Specialists.

The most appropriate method for determining SCA wage rates for the three levels of Flight Service Specialists is to apply the NCS factor evaluation grading system to the job descriptions. The NCS occupational work level is based on the duties and responsibilities of the job; to determine the work levels, each occupation is evaluated using ten factors such as knowledge, complexity, and scope of responsibility. This system also allows for pay comparisons to be made across occupations (for example, comparing architects to accountants with similar levels of responsibility). Although NCS did not report data specifically for Flight Service Specialists, it did report earnings by the three work levels under the following category: White Collar, Excluding Sales, Levels 08, 10, and 11.

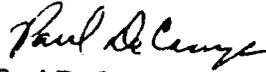
Although most provisions of WD 2006-0615 (Rev. 1) are affirmed, after review of the information and arguments submitted by the FAA, Lockheed Martin, and NAATS, I have concluded that the WD should be revised to adopt:

1. Single nationwide vacation benefit that covers all locations including Hawaii; and
2. Ten percent night shift differential.

These actions were requested by Lockheed Martin; the FAA agreed to the first and did not comment on the second. A single vacation benefit that covers all areas including Hawaii will give consistent benefits to all employees on the contract. Also, adopting a ten percent night shift differential is consistent with the prevailing practice reflected currently on SCA WDs for Air Traffic Controllers.

This letter constitutes our final ruling. You may appeal this ruling pursuant to 29 C.F.R. Part 8, to the Department of Labor's Administrative Review Board. Any petition for review should be filed within twenty (20) days of the date of this letter and forwarded to Ms. Madonna Cynthia Douglass, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S4309, Washington, D.C. 20210.

Sincerely,



Paul DeCamp
Administrator