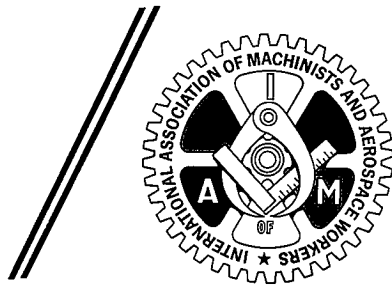


**International  
Association of  
Machinists and  
Aerospace Workers**



9000 Machinists Place  
Upper Marlboro, Maryland 20772-2687

Area Code 301  
967-4500



OFFICE OF THE GENERAL VICE PRESIDENT

GL-2 Legal

August 9, 2007

**BY FAX (202) 693-6220  
& UPS OVERNIGHT DELIVERY**

Madonna Cynthia Douglass, Chair  
Administrative Review Board  
United States Department of Labor  
Room S-4309  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

Re: Petition to Intervene in review of Wage Determination (WD) 2006-0615 (Rev. 1)

Dear Ms. Douglass:

Kindly accept this correspondence as the Petition to Intervene of the International Association of Machinists and Aerospace Workers ("IAM"), a labor organization, and Joe B. Askew, Jr., John Billos, Paul Cahoon, Michael P. Casey, Ronald E. Dawson, Jay Holland, Steve McDaniel, Orville Michelin, Salvador Mugica, Michele Smith, Ralph Villagomez, and Robert S. Ward, individuals who are employed under the contract that will be controlled by Wage Determination (WD) 2006-0615 (Rev. 1). As required by the Board's Rules (codified at 29 CFR § 8.12), Intervenors assert as follows:

**1. Intervenors' Relationship to the WD.** The IAM is a labor organization with 650,000 members in the United States and Canada. The IAM's membership is heavily concentrated in the aerospace and transportation industries, and the IAM also represents more individuals employed in positions funded by federal contracts covered by the Service Contract Act ("SCA") than any other union. In addition, the IAM represents more than 15,000 employees of Lockheed Martin, the contracting party with the Federal Aviation Administration ("FAA") in the contract covered by the WD at issue. The IAM is currently seeking to become the collective-bargaining representative for those employees. The twelve individual Intervenors are currently employed by Lockheed Martin under that contract, and are therefore "interested parties" to this proceeding as defined by 29 CFR § 8.2.

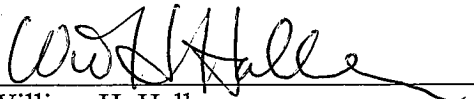
**2. Nature of Intervenors' Proposed Presentation.** Intervenors' request that the Board consider their written statement, which is enclosed herewith. In addition, Intervenors request the opportunity to make an oral presentation to the Board in connection with its review of the WD.

**3. Good Cause for Intervention.** The Petition for Review current pending before the Board was filed by the FAA, the contracting agency, and the Record currently before the Board contains submissions from Lockheed Martin. To date, however, no contribution has been presented on behalf of employees who work under the contract. It is respectfully submitted that Intervenors' participation will benefit the Board in its deliberations by presenting a fuller perspective of the matter.

Wherefore, Intervenors respectfully request the Board to grant this Petition to Intervene and to consider Intervenors' enclosed Statement in their deliberations upon WD 2006-0615 (Rev. 1). Thanking you for your consideration, I remain,

Respectfully,

IAM&AW LEGAL DEPARTMENT

By:   
William H. Haller  
ASSOCIATE GENERAL COUNSEL

WHH/pt  
Enclosure(s)

cc: Paul DeCamp  
Cathleen T. Manual  
Abigail A. Warren, Esq.  
David M. Nadler, Esq.  
Arthur L. Fox, Jr., Esq.

**STATEMENT OF INTERVENORS  
ON REVIEW OF WAGE DETERMINATION 2006-0615 (Rev. 1)**

To: Administrative Review Board  
United States Department of Labor

Currently pending before the Board is a Petition for Review of the above-titled Wage Determination ("WD") filed by the Federal Aviation Administration ("FAA"), the contracting agency. The FAA contends that the actions of the Administrator of the DOL Wage and Hour Division in formulating the WD were "unreasonable" and that the WD should be modified to reduce the wage determinations. Intervenors<sup>1</sup> respectfully assert that the methodology utilized by the Wage and Hour Division was reasonable, that its analysis was supported by the record, and that the resulting WD should be affirmed, with the exception of one modification to the Flight Service Specialist III category.

The WD was first issued by the Wage and Hour Division on September 29, 2006. The Division had originally analyzed the job classifications at issue under the rubric of "Air Traffic Control Specialists, Station," the most-closely analogous existing job classification in the Service Contract Act ("SCA") Directory of Occupations. In response to comments received from both Lockheed Martin (the employer under the current contract) and the National Association of Air Traffic Specialists' ("NAATS")(the labor organization that had represented FAA employees performing the work at issue before the awarding off the SCA contract to Lockheed Martin), the Division ultimately decided that the existing SCA Directory of Occupations classification was inadequate, as it did not accurately describe the duties of the employees at issue.<sup>2</sup> Consequently, the Division developed a "new occupational job family that specifically tracks the work performed by the more than 1,200 employees working on this contract." (Correspondence of William W. Gross, Office of Wage Determinations Director, accompanying WD of 9/29/06) In addition (again in response to requests from Lockheed Martin and NAATS), the Division established a three-tier set of job classifications to accurately reflect the levels of responsibility held by employees with varying levels of training and experience. Finally, in response to assertions from both Lockheed Martin and NAATS that the existing wage determinations did not accurately reflect the compensation of the employees at issue, the Division established the wage levels by utilizing the Bureau of Labor Statistics' National Compensation Survey ("NCS").

Intervenors strongly believe that the methodology used and the analysis conducted by the Wage and Hour Division were entirely appropriate, and that the

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<sup>1</sup> Intervenors are the International Association of Machinists and Aerospace Workers ("IAM"), a labor organization, as well as Joe B. Askew, Jr., John Billos, Paul Cahoon, Michael P. Casey, Ronald E. Dawson, Jay Holland, Steve McDaniel, Orville Michelin, Salvador Mugica, Michele Smith, Ralph Villagomez, and Robert S. Ward, twelve individuals employed by Lockheed Martin under the contract at issue.

<sup>2</sup> The existing SCA Directory of Occupation classification #29011 "Air Traffic Control Specialist, Station," is most directly applicable to air-traffic control station personnel who are directly involved in the direction and control of live aircraft flights as they are occurring. By contrast, the employees at issue work at automated flight service stations and are involved, *inter alia*, in the preparation of pre-flight plans, meteorological reports, and clearances for pilots.

resulting WD, with one modification, should be affirmed by the Board. With regard to the new classifications promulgated by the Division – Flight Service Specialist I, II, and III – there can be no serious argument but that these classifications are more accurate and appropriate descriptions of the work performed by the employees on this contract than the pre-existing Air Traffic Control Specialist, Station, classification. As the Wage and Hour Administrator noted in issuing his final ruling on this WD, the FAA itself initiated the request for a review of the applicable job classification and only subsequently changed its position to assert that the existing Air Traffic Control Specialist, Station, classification was appropriate. (See correspondence of Paul DeCamp dated 5/21/07) The FAA does not explicate why the new classification family – which was developed specifically for the work being performed under this major contract – is not appropriate. Clearly, the new classification family should be affirmed.

In its Petition for Review, the FAA asserts that the Wage and Hour Division did not act “reasonably” when it utilized the BLS NCS data in determining the applicable wage and benefit rates for the new Flight Service Specialist classifications, arguing instead that the rates should have been “slotted” in between analogous existing traffic control classifications in the federal service. The Division’s utilization of the NCS data, however, was entirely reasonable, both because no existing classification in the SCA Directory of Occupations was analogous to the work performed by the Flight Service Specialists, and because of the need of a private-sector employer to attract and retain a skilled, reliable, and stable workforce. Unlike federal service agencies such as the FAA, private contractors such as Lockheed Martin must operate in the open, private-sector labor market, and must offer competitive compensation in order to attract and retain their personnel. Consequently, the establishment of an appropriate wage determination must take the “real world” (i.e., private-sector) employment market into account. It is respectfully contended that the utilization of NCS data – the most comprehensive compensation data available for the private sector – is therefore entirely appropriate and reasonable.<sup>3</sup> To reject the NCS data, as the FAA urges, would constitute a break with accepted standards for making wage determinations and would run the risk of establishing a wage determination that is inadequate to allow Lockheed Martin to attract a competent workforce and carry out its duties effectively under the contract.<sup>4</sup> In that regard, it is noteworthy that Lockheed Martin supports the WD on the ground that it more accurately reflects the prevailing wages in this industry.

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<sup>3</sup> In his correspondence of 5/21/07 to the FAA, Wage and Hour Division Administrator Paul DeCamp noted that “BLS NCS is the primary data source for SCA prevailing wage determinations . . . .” He also explained that NCS “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 previously paid to the Federal employees employed in this occupation.”

<sup>4</sup> FAA’s contention (raised on page 6 of the FAA’s request for reconsideration of 10/18/06) that the NCS category of “White Collar, Excluding Sales” is inappropriate because it includes “learned professions” such as lawyers, ignores the fact that the Wage and Hour Division, in formulating the WD, utilized the NCS “leveling factor” in the area of “Knowledge” to reflect that the FSS job requires “knowledge of specialized, complicated techniques[,] BA/S degree or experience[,]” thereby according the FSS job only 750 out of a potential total of 1850 leveling points for knowledge – thereby differentiating the FSS jobs from those of professional fields such as law, which require extended graduate study and/or the development of new hypotheses and theories.

The FAA also asserts that the WD is unreasonable because, it contends, the duties performed by the Flight Service Specialists have been simplified by the introduction of new technology and by the reassignment of certain duties. Tellingly, however, the FAA's Petition for Review provides little or no detail to support its contention that the FSS job duties have been significantly "simplified." By contrast, the main components of the FSS job descriptions for all three classifications demonstrate unequivocally that these jobs require a wide ranging technological aptitude as well as proficiency in diverse aeronautical subjects, such as meteorology, necessary to the creation of flights plans and pre-flight advice to pilots. In short, these jobs require constant application of expertise and are in no way routine or rote. The record contains no evidence that the FSS job has been significantly simplified, or that the discretion and aptitude required of FSS incumbents has somehow been reduced or eliminated by technological innovation. In this regard, Intervenor respectfully submit that the opportunity to make an oral presentation would be helpful to the Board, as it would allow employees actually performing these jobs to answer questions about the skills they utilize to carry out their jobs. These are skilled positions with a very high level of responsibility, which the WD formulated by the Wage and Hour Division appropriately recognizes.

\* \* \*

While Intervenor believe that the WD is essentially sound and worthy of affirmation, they respectfully contend that the determination of the appropriate wage rate for the Flight Service Specialist III classification should be revised upward to the NCS White Collar Excluding Sales Level 12, rather than the current Level 11. Significantly, Lockheed Martin (in its correspondence of 10/27/06) stated that its "analysis showed the [FSS III] to be borderline with the NCS . . . Level 12[.]" Similarly, Intervenor application of the FSS III job duties to the NCS leveling factors yields the following:


	Points	
	<u>Intervenor's'</u>	<u>WHD</u>
Knowledge:		
Knowledge of specialized, complicated techniques:	750	750
Supervision Received:		
Supervisor defines mission, employee responsible for all planning:	650	450
Guidelines:		
Guidelines are not always applicable; employee uses judgement in adapting them:	275	275
Complexity:		
Tasks involve broad functions; decision making involves undefined issues:	450	225
Scope and Effect:		
Work affects work of other experts or development of major program aspects:	325	150
Personal contacts:		
Contacts are with high ranking officials in unstructured settings:	110	60
Purpose of contacts:		
The purpose is to justify, defend, negotiate, or settle matters involving significant issues:	220	120

Physical demands: Work is sedentary:	5	5
Work environment: Everday risks, normal safety precautions	5	5
Total:	<u>Intervenors</u> 2,790	<u>WHD</u> 2,040

A total score of 2,790 places the job on level 12 (range of 2,755-3,154) on the NCS Work Level Point Ranges. Consequently, the Wage Determination should be revised to reflect that the FSS III classification falls within the NCS White Collar Excluding Sales Level 12. In all other respects, Intervenors urge the affirmation of the Wage Determination as formulated by the Wage and Hour Division, and the Board's order should expressly direct that the Wage Determination should be applied retroactively.

Respectfully submitted,

IAM&AW LEGAL DEPARTMENT

By: 

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9000 Machinists Place  
Upper Marlboro, MD 20772-2687  
(301) 967-4510

Counsel for Intervenors

Dated: August 9, 2007

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing Petition to Intervene and accompanying Statement of Intervenors have been served, via first-class mail, upon the following interested parties:

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U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division  
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Dated: August 9, 2007