

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210



July 30, 1974

MEMORANDUM #117

TO: All Government Contracting Agencies of the
Federal Government and the District of
Columbia

SUBJECT: Opinion Letter - July 10, 1974

In line with our policy of keeping all contracting agencies informed of significant interpretative opinions issued by this Department regarding the Davis-Bacon and Related Acts, we are attaching a copy of a recent letter relating to truck owner-operators which will be of assistance to you in carrying out your responsibilities in the administration of these Acts.

A handwritten signature in cursive script, appearing to read "Ray J. Dolan", is written over the typed name.

Ray J. Dolan
Assistant Administrator

Attachment

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

July 10, 1974

Mr. Frank E. Fitzsimmons
General President
International Brotherhood of
Teamsters, Chauffeurs, Warehousemen
& Helpers of America
25 Louisiana Avenue, N.W.
Washington, D.C. 20001

Dear Mr. Fitzsimmons:

Thank you for your letter of June 17, 1974, concerning the policy of this Department with regard to the application of the Davis-Bacon and Related Acts to the truck owner-operators reflected in our letter of September 13, 1961 (Sol. Op. DB-9). You indicate that you have received complaints from local union affiliates and industry associations that contractors employing owner-operators are not paying such operators in accordance with applicable wage determinations.

As you may recall, this policy was adopted pursuant to a number of complaints received, particularly from the contracting agencies, of the practical difficulties in enforcing the predetermined truck drivers wage rates in those situations where the truck is owned by its operator or driver. At that time, as we announced, it was hoped that we could devise a practical method to assist the agencies in more easily enforcing the rates required by the applicable wage determinations.

Unfortunately, no practical solution has been devised and your inquiry is a culmination of a number of complaints lodged with this Department in recent months regarding the administration of this policy. Inasmuch as we have been unable to devise any other workable scheme for the treatment of the wage rates to which these drivers are entitled, and after consulting with the various

agencies within the Department affected by this responsibility, we are hereby rescinding the policy enunciated in the Solicitor's Davis-Bacon opinion letter, dated September 9, 1961, and are advising all the Federal procurement agencies and other interested parties of this action forthwith.

Therefore, in the future the wage rates for truck owner-operators will be treated for wage determination and enforcement purposes under the Davis-Bacon Act no differently than for any other classifications of laborers and mechanics subject to the Davis-Bacon and Related Acts.

Sincerely,

Secretary of Labor

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

September 13, 1961

Mr. E. Irving Manger
Assistant to the General Counsel
Labor Relations Branch
Office of Chief of Engineers
Department of the Army
Washington 25, D. C.

Re: E-62-295 & 296
Oklahoma

Dear Mr. Manger:

This is in further reference to our conference of August 28, 1961, relative to the applicability and enforcement of the contract labor standards provisions to truck owner-operators engaged in hauling activities on Corps of Engineers' construction-type contracts subject to the Davis-Bacon and related Acts. Our conference followed the August 22nd and 23rd investigation and evaluation of this overall problem made jointly by you and representatives of your Tulsa District and of our Coordination of Enforcement Branch, in connection with work being performed under Corps' contracts at Eufala Dam and along the Arkansas River, in Oklahoma.

Corps of Engineers representatives charged with assuring contract labor standards compliance have encountered serious problems in their efforts to determine whether these owner-operators have been properly paid in accordance with the computation procedures previously explained in rulings and interpretations issued by this Department. Despite preconstruction conferences and on-site interviews and investigations, serious doubts have arisen as to compliance, especially since it has been established that generally the owner-operators seek and usually work under payment arrangements rooted in a unit price basis, for example, so much per cubic yard of material hauled, rather than on the basis of an actual truck or equipment rental rate plus the appropriate driver's (or operator's) rate. Moreover, although weekly certified payrolls may be submitted pursuant to contract requirements, substantial difficulties have arisen with respect to securing adequate data on rental arrangements in order to determine whether the contract minimum rates have been in fact paid.

Mr. E. Irving Manger

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Because of these and other related considerations, we have thoroughly reviewed our position with respect to owner-operators of trucks and similar construction equipment and have reached the conclusion that, as a matter of administrative policy, the provisions of the Davis-Bacon and related Acts will not be applied to bona fide owner-operators of trucks or other similar construction equipment who are independent contractors, until such time as it may appear to be practical to devise workable and easily enforceable procedures for obtaining compliance with respect to such owner-operators. The certified payrolls including the names of such bona fide owner-operators need not show hours worked nor rates allegedly paid, but only the notation "Owner-Operator".

In view of the general interest in this area on the part of all contracting agencies and other interested parties, this decision is being made available to the public, with copies being distributed to all Federal contracting agencies, contractor associations, and employee representative organizations.

Yours sincerely,

/s/ Charles Donahue
Solicitor of Labor