U. S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

November 7, 1960

MEMORANDUM #19

TO: AGENCIES ADMINISTERING STATUTES REFERRED TO IN 29 CFR, SUBTITLE A, PART 5.

FROM: Harold C. Nystrom
Acting Solicitor of Labor

SUBJECT: Proper ratio of apprentices to journeymen to be employed on projects subject to the labor standards provisions of the Davis-Bacon and related Acts.

For your information and guidance, I am attaching copies of two recent opinions clarifying our position with respect to the allowable ratio of apprentices to journeymen on Federal or Federally-assisted construction work. These opinions are intended to supplement previous copies of coverage opinions distributed to assist you in achieving effective compliance with applicable labor standards in contracts subject to the Davis-Bacon and related Acts.

Attachments

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

October 27 1960

Mr. Fred R. Wolford
Special Assistant to the Commissioner
Labor Relations Branch
Public Housing Administration
Housing and Home Finance Agency
Washington 25, D. C.

Re: Westport Homes
PHA Project Md-2-13
Baltimore, Md.
E-60-298, 299, 899
E-61-302 & 427

Dear Mr. Wolford:

This is in further reference to your letters of July 18 and September 16, 1960, and to the conference of August 11, 1960, with counsel for subcontractor McKewin, and subsequent informal correspondence between our respective Offices, concerning labor standards compliance matters involving various contractors engaged on the above project.

It appears from the limited record available, that two firms who performed construction work on this project, namely, Gordon H. McKewin, Mechanical Contractors, and Landergreen Painting & Decorating Company, Inc., employed apprentices during the construction of the subject project who, although apparently properly registered, and apparently employed within the contractors' overall allowable ratios, could have been found (at least in some workweeks) to have been employed on this job and in relationship to the number of journeymen employed by these contractors on this job, in a ratio disproportionate within the meaning of Regulations, Part 5. When this matter was called to the contractor's attention, his answer was to the effect that his overall ratio was proper and that nothing in the contract or our Regulations, Part 5, required that his overall ratio be maintained on any particular job.

As you and the General Counsel of the Public Housing Administration have called to our attention in connection with the apprentice irregularities here charged, our Regulations and the standard contract provisions do not appear to sufficiently clarify the meaning of the term "disproportionate ratio of apprentices" as contained in Section 5.6(e) of Regulations, Part 5,

although our widely distributed bulletin on "Employment of Apprentices on Federal or Federally Assisted Construction Projects" does define this phrase. In the latter publication, under the heading "Disproportionate Employment - Ratio", it is stated in reference to Section 5.6(c) of Regulations, Part 5:

"To meet the requirements of these Regulations, the allowable ratio of apprentices to skilled workers permitted to work on a covered project or job shall not be greater than the ratio allowed the contractor as to his entire work force."

While we appreciate the fact that neither Regulations, Part 5, nor the standard contract labor provisions, set forth as explicitly as the above-quoted language our traditional views on allowable ratio of apprentices, there is no question that through the years this Department and contracting agencies generally have required contractors' apprentice ratios to be maintained on a job basis when such jobs have been subject to the labor standards provisions of the Davis-Bacon and related Acts. The underlying reasons for this well established position are readily obvious and may be summed up by stating that, although we and the contracting agencies fully appreciate the necessity of promoting bona fide apprenticeship goals, we likewise realize the necessity of achieving the basic objective of the Davis-Bacon and related Acts, namely, the protection of local labor standards. Pursuant to this dual objective, the agencies and we have an obligation to guard against covered jobs being performed substantially by workers paid at substandard wages under the guise of any alleged apprenticeship program which, under these circumstances of utilizing an excessive ratio of apprentices, would not in fact be deemed for enforcement purposes a "bona fide apprenticeship program" within the meaning of Regulations, Part 5, or of the terms of the contract.

In this connection, we recently had occasion to write the Compliance Division of the Housing and Home Finance Agency with respect to a covered project where, although the allowable ratio under the applicable standards provided for one apprentice to two journeymen, the contractor over a sustained period of performance regularly worked an average of up to five apprentices to one journeyman. In that case, we advised that, since the ratio of apprentices bore no resemblance to the allowable ratio, it could not be concluded that the apprentices were employed under a "bona fide apprenticeship program" within the meaning of Section 5.5(a)(4) of Regulations, Part 5,

and, since none of the apprentices in question could be deemed bona fide apprentices whose employment may be permitted under the Regulations and contract terms, all so classified were entitled to restitution at the applicable journeyman's rate for the craft work performed.

As you know, the allowable ratio we here speak of, and which, as we have explained, must be maintained on an individual covered job basis, will be found under apprentice programs supervised by a Joint Apprenticeship Committee representing the participating contractors and local unions in the standards or collective bargaining agreement incorporated by reference into the Apprenticeship Agreement entered into by the apprentice and the Committee. In the case of a non-joint-program, such as is apparently the case here involved, the allowable ratio (here 1 apprentice to 3 journeymen) would be contained in the program written up by the Bureau of Apprenticeship and Training, of this Department.

A review of the record as now constituted, indicates that subcontractor McKewin's performance over the many weeks in which he worked on the Westport Homes project substantially complied with the applicable ratio in that, over the total performance period, his apprentices compared to journeymen ran approximately 1 to 3. Although we have no specific figures on subcontractor Landergreen, it is our understanding from informal discussions with you that he was in approximately the same status, as regards ratio, as was McKewin. Under these circumstances, we would not require further enforcement action as to these subcontractors with respect to the apprenticeship question. In fact, and as a matter of general enforcement guidance, we might here confirm that, although the allowable ratio is determined as explained above, we realize that occasions will arise in the course of a job when the allowable ratio may be exceeded temporarily without necessarily requiring enforcement action in the form of assessing restitution. For example, a contractor under a bona fide program may on a particular day or days be performing a certain type of work on which his apprentices may not be able to otherwise get training for a considerable period of time. In line with basic apprenticeship goals, we would have no objection to the Contracting Officer or his equivalent allowing the contractor to utilize additional apprentices for that

limited period in order that they might profit by this unusual work experience. Likewise, if a contractor who generally has been found in compliance with the apprenticeship requirements, should on an occasion be found temporarily and in apparent good faith to have exceeded the allowable ratio, possibly through circumstances beyond his control, we would have no objection to your representative taking a nonenforcement stand as to restitution provided the contractor promptly corrected his ratio imbalance. However, such variances should be closely scrutinized and, in case of doubt, either our Regional Attorney or this Office should be contacted for guidance or approval of proposed compliance action.

Since according to our files, the only remaining open case involving the subject project is that covering subcontractor Calvert Insulation Company (refer your September 16, 1960, letter to us), we have closed our files on this project with the exception of the Calvert Insulation Company file. We also have advised Mr. Alleck A. Resnick, counsel for Gordon McKewin, that he will hear further from your Office or from the Local Housing Authority regarding the disposition of the matter involving his client.

We have also furnished your General Counsel a copy of this opinion and advised him that clarification of our Regulations with respect to the allowable ratio of apprentices on a job basis has been made one of the items in our program for revision of Regulations, Part 5.

Thank you for your continued cooperation in these labor standards enforcement matters.

Very truly yours,

Harold C. Nystrom
Acting Solicitor of Labor

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

October 27 1960

Mr. Lawrence Davern
General Counsel
Public Housing Administration
Housing and Home Finance Agency
Washington 25, D. C.

Re: E-60-298 etc.
Maryland

Dear Mr. Davern:

This is in reply to your inquiry of July 8, 1960, regarding the proper ratio of apprentices to journeymen to be employed on projects subject to the labor standards provisions of the Davis-Bacon and related Acts. Apparently, the question arose in connection with the construction of a project known as Westport Homes in Baltimore, Maryland, where several contractors, although utilizing properly registered apprentices, did not maintain as to that project their applicable apprentice ratio. When the matter was called to their attention, the reply was made that nothing in Regulations, Part 5 nor in the contract provisions, required their ratio to be maintained on a job basis.

We agree with you that our Regulations and the contract provisions should be amended to clarify our traditional position that the allowable apprenticeship ratio must, as a general rule, be maintained on a job basis when the job involved is one subject to the labor standards requirements. Our views on this subject are set out at length in the enclosed copy of our letter of this date addressed to Mr. Fred Wolford, Special Assistant to the Commissioner, Public Housing Administration.

Clarification of our regulations with respect to this point has been made one of the items in our program for revision of Regulations, Part 5. In the meantime, it is suggested that the apprenticeship paragraph cited in your letter as the one used in your construction contract documents be amended by adding the language contained in our widely distributed pamphlet on "Employment of Apprentices on Federal or Federally Assisted Construction Projects", namely:

"The allowable ratio of apprentices to skilled workers permitted to work on a covered project or job shall not be greater than the ratio allowed the contractor as to his entire work force."

Thank you for having brought this matter to our attention.

Very truly yours,

Harold C. Nystrom
Acting Solicitor of Labor

Enclosure