

U. S. DEPARTMENT OF LABOR
Office of Solicitor
Washington 25

#2

MAY 28 1956

MEMORANDUM #2

TO: Agencies Administering Statutes Referred to in 29 CFR, Subtitle A,
Part 5.

FROM: Stuart Rothman *S. Rothman*
Solicitor of Labor

SUBJECT: Remarks at:
Joint Enforcement & Apprenticeship Conference, February 1, 1956,
U. S. Department of Labor.

In the interest of promoting a better understanding of the Department's Apprenticeship Program and its relation to Enforcement responsibilities under the Davis-Bacon and related Acts and the Secretary of Labor's Regulations, Part 5, promulgated pursuant to Reorganization Plan 14 of 1950, a joint Apprenticeship & Enforcement Conference was held in this Department. Approximately 50 representatives of the various Contracting Agencies attended.

I am enclosing copies of the remarks made at that session as well as an official ruling issued to the Bureau of Apprenticeship in this regard.

These should prove helpful in standardizing the Agencies' enforcement positions in determining bona fide apprenticeship employment under Regulations, Part 5.

Enclosures

Joint Enforcement and Apprenticeship
Conference

Wednesday, Feb. 1, 1956 Rm. 5223

II. Enforcement

- A. Remarks
- B. Coverage

The Agenda anticipates that Mr. Babe' will cover under Subparagraph I the historical approach to the Davis-Bacon and related Acts, the subsequent passage of the Reorganization Act of 1949, and Reorganization Plan No. 14 of 1950.

Subparagraph II respecting Regulations, Part 5, presents the meat of the conference from the enforcement viewpoint and should include a recitation and explanation of Sections 5.2(c), 5(a), and 5.6(e) as they affect apprentices. Transcripts of these Regulations are set forth as an attachment to the Memorandum from Mr. Babe' to Mr. Deaubien entitled "Apprenticeship Registration Under the Davis-Bacon and Related Acts and Regulations, Part 5," dated January 19, 1956.

C. Apprenticeship Registration

Because of the historical background respecting apprentice employment on Federal or Federally assisted construction, and the strict language of the Davis-Bacon and related Acts concerning the employment of laborers and mechanics, Regulations, Part 5, established permissible employment consistent with the standards outlined therein which are in protection of the Federal and State Apprenticeship programs. Because of the time delays between indenture execution, Committee approval, and State Council or Agency Registration, a standard and consistent enforcement approach to permissible apprentice employment must be achieved in line with the true purposes of Apprenticeship Training.

Individual Agencies have requested specific interpretations concerning effective Apprenticeship Registration for permissible employment pursuant to Regulations, Part 5.11. Their efforts to coordinate their enforcement effort and to correlate the respective problems of Davis-Bacon Enforcement with Bureau of Apprenticeship Training standards brought about situations as to which a system of tolerances was allowed to prevent unjust harshness in vigorous enforcement. These tolerances intended to allow in some instances credit for Apprenticeship Training received prior to the date of actual registration of the individual Apprenticeship indenture.

So that a standardized approach may be established to effectuate the purposes of the Apprenticeship Training program while simultaneously complying with the various Federal labor laws applicable to construction contracts and Regulations, Part 5, the Solicitor's Office has taken the position that since these Regulations require a bona fide apprentice to be employed in a

program registered with the State Council or the Bureau of Apprenticeship, and since an element of each program is the individual Apprenticeship Registration or indenture, we will consider a worker to be a bona fide apprentice from the date of indenture execution provided the Crafts Committee approval date and the State Agency or Council Registration date are within thirty days of indenture execution. If the execution date is not within this period, then the Committee's approval date will be accepted, provided the Committee's date is within thirty days of the State Agencies' or Council Registration date. In the event these periods are not observed, the State Agency or Council Registration date will control.

In instances where State Registration requires individual indenture registration or approval as a prerequisite to the commencement of bona fide Apprenticeship Training, we will consider such approval or registration date by the State official or his duly designated representative as complete and final evidence of the commencement of bona fide Apprenticeship Training.

In instances where individual registration is made directly with a Bureau of Apprenticeship representative who has authority to execute the indenture, and State Agency approval is not required, the Bureau of Apprenticeship date will be accepted as controlling.

1. Evidence of Bona Fide Apprenticeship

To effect proper enforcement of these labor standards statutes, it is necessary in the first instance to acquire acceptable evidence of bona fide apprenticeship registration. No particular or set method for acquiring it is prescribed. One contracting agency may require its payroll clerk or Labor Review Section to advise the contractor who uses the apprentices to submit evidence of Apprenticeship Registration when the apprentice first appears on a submitted payroll. This evidence can take the form of a copy of the indenture. On the other hand, in certain situations a registration certificate or card may be available in the hands of the apprentice. Interview of the particular apprentice can also establish sufficiently to the trained investigator the bona fides and whether or not the apprentice may be employed. It is suggested that the most practical way would be for the contracting officer's representative to inquire from the local Bureau of Apprenticeship representative in the areas, of the indenture execution date, Committee approval date, and Registration date of the particular apprentice, as well as his period level of training, anticipated completion date and previous work credits allowed. This latter system would serve to finalize the need for acquiring competent evidence of bona fide Apprenticeship Training. Interpretation of the evidence available to determine the presence or absence of violations would be purely a routine matter based upon such evidence.

2. Contracting Officers' Responsibilities and Duties

As you know, the primary enforcement responsibilities of these labor standards rest in the contracting agency. The contracting officer is a representative of that Agency and his representatives in turn are the people most closely connected with the actual conduct of the construction contract.

In determining bona fide apprenticeship employment by any given contractor or subcontractor, the contracting officer or his representative has the same responsibilities as he has with respect to determining the proper craft rate to be paid to employees for craft work. The safeguards against misclassification, falsification and wage underpayments follow along the same lines as those necessary to effectuate proper apprenticeship employment from an enforcement viewpoint.

Apprentices present an additional question as to the extent to which a contracting officer should go in determining bona fide employment. If the contracting officers were to acquire their information from the Federal Bureau of Apprenticeship or the representative State Agency, in a practical sense, they could save time and fulfill their responsibilities and duties under the Act and Regulations, and achieve compliance with the Federal requirements. The duties of the contracting officer do not extend beyond the establishment of bona fide registration. In other words, the contracting officer has no responsibility to determine whether or not the apprentice is receiving the training called for by the program under which he is registered. For example, one of the basic requirements of Apprenticeship Training is the element of related instruction. Related instruction is a requirement and function of the Bureau of Apprenticeship and the duty to oversee compliance with those essential requirements is on the labor-management apprenticeship groups.

Laborers

Helpers

Apprentices

Laborers are generally defined as pick and shovel men.

Helpers assist craftsmen in certain trades by passing tools to them and assisting the journeyman in the unskilled manual phases of his work.

Apprentices in relation to Laborers and Helpers consistent with their period level of training, perform all "bull" or unskilled work, passing tools, etc.; right on thru to the work of the finished mechanic under the supervision of the journeyman.

Certain crafts traditionally have used laborers or helpers for journeyman training before apprenticeship training programs were started. Even today in some geographic areas, some organized crafts such as the boilermakers and tile setters continue to use the sub-classification for journeyman training. The asbestos workers have traditionally utilized "improvers" for this purpose.

From an enforcement viewpoint, however, the problem is resolved by the Secretary's prevailing wage decision. For example, in geographic areas where laborers or helpers are recognized sub-classifications to crafts, they will be included in the applicable wage decision and become part of the contract.

Where apprentices' wages are determined, helpers may not be employed in lieu thereof. The apprentice is recognized as the individual who performs the less skilled craft work of his training period level.

The use of helpers at subminimum wage rates where not pre-determined by the Secretary of Labor or allowed by reclassification conformable to the Secretary's decision in accordance with Regulations, Part 5, or by a system of approved additional classifications is normally a violation of the pay requirements of the Acts.

E. Disproportionate Employment

Regulations, Part 5.6(e) provides for the recognition of disproportionate employment of laborers, helpers and apprentices.

Its purpose is to acquaint enforcement officers with some of the more obvious signs of compliance evasion.

Since the problems affecting all three elements are similar and the apprentice's situation more complex, I shall restrict my treatment here to apprenticeship disproportion.

As you know, apprentices are indentured for training purposes to Committees, which consist of joint labor-management arrangements in organized areas pursuant to collective bargaining, or to individual contractors through collective bargaining, or in the case of non-union contractors through the Bureau of Apprenticeship. These training programs allocate a number of apprentices to be employed and trained in relation to the number of mechanics with whom they may be working. In Committee type programs the number allowed is in direct relation to the number of mechanics within the organized craft. These numbers are set by and controlled by labor and management.

In individual Contractor employment cases pursuant to collective bargaining these amounts are also set by management and labor. In individual non-union programs, the Federal Bureau of Apprenticeship passes on and approves the number any contractor on an individual basis can reasonably justify to train.

In any event, a number of apprentices is always allowed in relation to the number of journeymen.

For our purposes we can call these allowed training numbers quotas.

In apprentice training these numbers can be used for whatever purpose training dictates. By this we mean that in the event specific work could be of value to all apprentices at one given location or job, all apprentices allowed the contractor within quotas might be sent by that contractor to the particular job.

However, should that same contractor attempt the same practice on a Federal-covered job, he would run smack into the disproportionate employment concept of Regulations, Part 5.6(e).

What we mean is this: the allowable quotas for training by their very nature imply that the ratio of apprentices to journeymen allowed represents the amount that can be adequately trained. So too then must that ratio be observed on Federal jobs.

In most instances that ratio will be observed by the collective bargaining process on non-covered jobs as well. But in non-covered cases whether union or non-union we have no enforcement authority. Abuses allowed to prevail there should not permeate our Government construction contracts. It is intended to prevent the non-payment of mechanics wages for mechanics' work performed. Disproportionate employment of apprentices or employees labeled apprentices would defeat the purposes of prevailing rate legislation, based on a craft classification system required by the Davis-Bacon Act. The case of the unregistered apprentice creates no problem. It clearly presents a violation. The case of the bona fide registered apprentice places on contracting officers the additional responsibility of determining the proper employment ratio.

On its face a submitted payroll which reflects apprentice employment beyond a 1 to 1 ratio, e.e., 4 apprentices to 1 journeyman is patently a violation of the Acts and Regulations, Part 5. Common sense dictates that one journeyman cannot properly train 4 apprentices on modern standards.

However, when a ratio of 1 bona fide apprentice to 1 journeyman or 1 bona fide apprentice to 2 journeymen is presented and evidence of bona fide registration is obtained, there remains the additional duty to determine the proper allowable ratio. In collective bargaining situations by Committee indenture, the ratio can be determined by inquiry of the Committee or from the collective bargaining agreement.

In individual contractors' programs, determine the appropriate craft ratio by considering the total employment of apprentices allowed in relation to the number of journeymen employed. These ratios can then be applied on a project basis.

Computations of Wage Underpayments

In the interest of simplification of reporting labor standards violations, with the able assistance of the Wage-Hour and Public Contracts Divisions of this Department we developed Solicitor's Forms SOL 162, 163 and 164.

We are considering the submission of these, when perfected, to the various agencies as guides in their work. To date we have not had sufficient return on these to determine their real workability and prospects.

Nonetheless, in working with computations it should be helpful to have these before you for determining underpayment computations as they affect apprentices.

I believe we should do this by examples following a brief explanation of some of the problems.

First there is always the problem of determining the applicable apprentice rate. This can be done prospectively from a copy of the indenture or from the information obtainable from the Bureau of Apprenticeship. Normally the work is performed in semiannual stages and by simple arithmetic the period training level can be found.

The second problem presented is one of disproportionate employment of bona fide registered apprentices.

If a 1 to 3 ratio is approved for a program, then on any given day when more than 1 apprentice to 3 journeymen are employed on covered contracts, disproportionate employment within the meaning of Section 5.6(e) of Regulations, Part 5, would occur. Thus, on a day to day basis as to individual contracts, there may be improper and disproportionate employment of bona fide apprentices. In such a situation each apprentice employed in excess of such ratio will be due the journeyman's scale in the absence of a clear showing of the proper employment of apprentices.

On the other hand, where there is a ratio established of 1 to 3, the employment of 2 to 7 is proper as well as any similar proportion such as 2 to 8 until the ratio is again met of 3 to 9.

U. S. DEPARTMENT OF LABOR
Office of the Solicitor
Washington 25

TO: W. F. Patterson, Director
Bureau of Apprenticeship

FROM: John J. Babe'
Assistant Solicitor

SUBJECT: Apprenticeship Registration under the Davis-Bacon
and Related Acts and Regulations, Part 5

January 19, 1956

As you know Regulations, Part 5, affecting Apprentices provide:

Sec. 5.2(c). The term "apprentices" means persons employed in a bona fide apprenticeship program registered with the State Apprenticeship Council which is recognized by the Federal Committee on Apprenticeship, United States Department of Labor or if no such recognized Council exists in a State, in a program registered with the Bureau of Apprenticeship, United States Department of Labor;

Sec. 5.5(a)(4). Apprentices will be permitted to work only under a bona fide apprenticeship program registered with a State Apprenticeship Council which is recognized by the Federal Committee on Apprenticeship, U. S. Department of Labor; or if no such recognized Council exists in a State, under a program registered with the Bureau of Apprenticeship, U. S. Department of Labor.

Sec. 5.6(e). In addition to the examination of payrolls and affidavits required by paragraph (d) of this section, the Federal Agency shall cause investigations to be made as may be necessary to assure compliance with the labor standards stipulations required by the regulations contained in this part and the applicable statutes listed in (Sec.) 5.1. Projects where the contract is of short duration (6 months or less) shall be investigated before the work is accepted, if feasible. In the case of contracts which extend over a long period of time, the investigation shall be made with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees and examinations of payroll data to determine the correctness of classifications and disproportionate employment of laborers, helpers or apprentices. Complaints of alleged violations shall be given priority and statements, written or oral, made by an employee shall be treated as confidential and shall not be disclosed to his employer without the consent of the employee.

The employment of bona fide apprentices at wage rates determined for apprentices by the Secretary of Labor is permitted by Regulations, Part 5. Since the Regulations require that for employment an apprentice must be under a bona fide apprenticeship program registered with State Apprenticeship Agencies or the Bureau of Apprenticeship, and since the requirement of each program is individual apprentice registration or indenture, we will consider a worker for enforcement purposes to be a bona fide apprentice from the date of indenture execution provided the date of approval by the craft's Joint Apprenticeship Committee and the State Agency registration date are within thirty (30) days of the indenture's execution and further provided that State law does not require otherwise. If the State Agency's approval or registration is not within 30 days of the date of the execution of the indenture, then the Committee's approval date will be accepted provided the State Agency approves or registers the indenture within 30 days of the Committee's approval date. In the event these periods are not observed the State Agency registration date will control.

In instances where State legislation requires individual indenture registration or approval as a condition precedent to bona fide apprenticeship training, we will consider such approval or registration date by the State official or his duly designated representative as conclusive evidence of bona fide apprenticeship training.

In instances where individual registration is made directly with a Bureau of Apprenticeship representative who has authority to execute the indenture and State Agency approval is not required, the Bureau of Apprenticeship date will be accepted as authoritative.

Backdating of approvals by the Joint Apprenticeship Committee or of registrations by the Registration Agency is not acceptable in determining the actual date of registration controlling permission to employ apprentices at sub-journeyman wages on covered contracts under Regulations, Part 5.

Previous work credit granted in a registration will be accepted in determining the wage rate to be paid to a registered apprentice on a Federal or Federally assisted construction job covered by Regulations, Part 5. However, previous work credit granted an apprentice on the term of apprenticeship will not be recognized for the purpose of backdating the apprenticeship. This is intended to avoid the device of paying sub-journeyman wages on covered jobs for periods of employment prior to registration.

Example: An apprentice is registered on January 1 and given credit at that time for 2 years prior work experience. In determining the wage rate which he must be paid, on covered jobs after January 1st the apprentice is entitled to the wage applicable to the next step following the 2 year level. This gives him credit for his 2 years experience.

The apprentice's employment before January 1, while creditable for previous work credit on the term of apprenticeship can not be considered in determining the proper wage rate to be paid before registration on January 1. The alleged apprentice is in no different position from any other unregistered apprentice on covered jobs prior to January 1. The journeyman's rate would be applicable to such employees doing part of the mechanic's work prior to January 1.

In the employment of apprentices on covered Federal or Federally assisted contracts to conform with Regulations, Part 5.6(e), providing against disproportionate employment, recognition will be given to acceptable prevailing area practices respecting ratios of apprentices to mechanics on individual construction projects. 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.

Example: A contractor has 100 journeymen and is allowed 10 apprentices. The ratio is thus 1 apprentice to 10 journeymen. The contractor, on covered jobs for enforcement purposes, will be allowed to employ 1 apprentice for each 10 journeymen or any fraction thereof. No apprentice will be allowed unless there is at least 1 journeyman on the job. After 10 journeymen are employed, the contractor may use 2 apprentices for 20 journeymen or any fraction thereof. After 20 journeymen are employed, he may use 3 apprentices for 30 journeymen or any fraction thereof, and so on up to his limit of 10 apprentices.

In State Council and Joint Committee arrangements, the craft collective bargaining ratios will be accepted.

In apprenticeship programs where collective bargaining ratios are not determined, the prevailing area practice ratios will be determined by the Office of the Solicitor.

Where bona fide apprentices on covered Government or Government-assisted contracts are employed in excess of the proper ratio, those employed in excess of such ratio will be entitled to the journeyman's rate for each day of disproportionate employment on the project. Allowances will be made for journeyman absenteeism due to circumstances beyond the contractor's control. These matters will be decided on a case to case basis by the Solicitor's Office.