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U. S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

August 11, 1961

MEMORANDUM #24

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

FROM: Charles Donahue
Solicitor of Labor

SUBJECT: Employment of apprentices on Federal or Federally-assisted contracts subject to the labor standards provisions of the Davis-Bacon and related Acts.

Under All Agency Memorandum #19 dated November 7, 1960, we transmitted for your information and guidance, copies of two opinions of general interest recently sent to the Public Housing Administration on the subject of proper ratio of apprentices to journeymen on covered construction contracts.

Enclosed herewith is a copy of a July 31, 1961 opinion on additional aspects of the same general subject of proper employment of apprentices on construction work subject to the Davis-Bacon and related Acts, which we are sure will be of interest and assistance.

As you know, these opinions are circulated to contracting agencies and other interested parties with a view to clarifying and emphasizing contract labor standards requirements and thus assisting in the achievement of effective compliance.

Enclosure

Mr Manger
Mr. Saylor
Mr. Gregory
Mr. Saylor

OPTIONAL FORM NO. 10

UNITED STATES GOVERNMENT

Memorandum

TO : A. G. Beaubien, Chief, Review Branch
Bureau of Apprenticeship and Training

DATE: July 31, 1961

FROM : James M. Miller
Assistant Solicitor

SUBJECT: Questions Raised by Division Counsel, North Pacific Division, Corps of Engineers.

This is in reply to your memorandum of July 12th, addressed to Mr. Martin of our Enforcement Branch, in which you requested our comments on certain questions raised by Mr. Andrew Brugger, Division Counsel, North Pacific Division, Corps of Engineers, in an inquiry originally addressed to the Portland, Oregon Office of the Bureau of Apprenticeship and Training.

As a background for his questions, Mr. Brugger indicates that on a hospital project at Glasgow Air Force Base, Montana, a plastering contractor used plasterer and lather apprentices, some of whom were registered in an individual plant program approved by the Montana State Apprenticeship Council on November 16, 1960. Some of each classification of apprentices worked prior to the November 16, 1960 registration date, and also after January 4, 1961 when the program was cancelled, apparently due to the completion of the project. None of the apprentices were residents of Montana, but it appears that at least some of them may have been registered in Oklahoma and in South Dakota prior to coming to Montana to work on the project.

Our replies to these questions are based solely on our interpretation of Regulations, Part 5 as they pertain to this matter. They assume that the apprentices involved were paid, as a minimum, the wage rate for their classification as predetermined by the Secretary of Labor for the Glasgow project, and further that they complied with the applicable standards, including the established ratio, in the area where the project is located.

Mr. Brugger's questions and our replies are as follows:

> (a) If the apprentices who worked on this project prior to the dates that the programs were approved for them by the Montana State Apprenticeship Council (16 November 1960) were properly registered in another State immediately preceding their arrival on the Montana project, may the employer pay them subjourneymen's rates for their work prior to 16 November 1960?

As written, Regulations, Part 5 require that an apprentice be indentured and employed under a bona fide apprenticeship program registered with a recognized State Apprenticeship Council, or in a program registered with the Bureau of Apprenticeship, United States Department of Labor. These regulations neither establish nor recognize geograpical boundaries as such. The fact that an apprentice, qualified in accordance with the above, works on a project in another State, because of a lack of employment at home, or because of unusual training opportunities on the out-of-State project, would not, in our opinion, alter his status as a registered apprentice for the purpose of compliance with Regulations, Part 5. Payment at the proper apprentice wage rate predetermined for the project for work performed prior to November 16, 1960 would not, in our opinion, be a violation of the regulations or of the corresponding contract provision.

> (b) Must the employer pay journeymen's rates for the apprentices' work after 4 January 1961, referred to in Paragraph 3f, above? Two apprentices worked until 11 January 1961.

If the two apprentices who worked until January 11, 1961 were registered by the Montana State Apprenticeship Council, and the program in which they were registered

was cancelled on January 4, 1961 only for the reason that the project was completed, it is our opinion that payment at the journeyman rate for that week should not be required, since there was apparently a mistake of fact concerning the completion date. If they were registered in a program in another State, the completion date and the cancellation of the Montana program would not affect their status as apprentices, or the wage rate to be paid, since they are presumably receiving the rate specified for their classification in the contract. If the two workers involved were not registered by the Montana State Apprenticeship Council, or with their home State Apprenticeship Council, or with the Bureau of Apprenticeship, United States Department of Labor, they should be paid the rate determined by the Secretary of Labor for the classification of the work which they actually performed.

It should be noted at this point that the fact that a worker is listed on the payrolls as an apprentice in a particular craft and paid an apprentice wage rate does not, in itself, mean that he performed only the work of, or used only the tools of a journeyman of the craft in which he is an apprentice, and that therefore, he must be compensated at the contract rate for the journeyman craft classification in the event he is found to be a nonregistered apprentice. This is a question of fact, to be established by adequate proof. A recent decision of the Comptroller General emphasizes this point. He found that since the evidence failed to establish that nonregistered apprentices actually performed journeyman's work under the contract, restitution at the journeyman's rate could not be required by the contracting agency. Moreover, there is no specific provision in Regulations, Part 5, which would necessarily require restitution at the journeyman rate.

The fact that the contractor shows such an employee on his certified payrolls as a specific craft apprentice certainly would give rise to an inference that the employee performed that particular type of craft work. However, in cases involving the use of nonregistered apprentices, supporting factual evidence should be secured. It is necessary for restitution purposes that the contracting agency determine as precisely as possible the amount of journeyman

work actually performed by the nonregistered apprentice, the tools and equipment used, and the number of hours spent on such work as distinguished from work which does not require journeyman skills, and for which another rate is shown in the contract. The burden of proof as to the work actually done by such an employee shown on the certified payrolls as an apprentice craftsman while not properly registered, to establish that such work in fact called for compensation at rates other than the contract rate for the particular craft involved, rests with the contractor.

> (c) Must the employer pay journeymen's rates to the men who were never registered with the Montana State Apprenticeship Council even though they may have been properly registered in another State immediately prior to their arrival on the Montana project?

The answer to this question is covered by our reply to question (a) above.

> (d) Would the possibility that an apprentice may have been employed by some other employer in another State immediately prior to his arrival on the Montana project change the answers to a, b, and c? If so, in what way?

If the apprentice is properly registered in accordance with Regulations, Part 5, his employment by one or more employers would not affect the replies to a, b, and c above. The transfer of apprentices from one employer to another to provide varied work and training opportunities is an accepted construction industry practice, and it is usually recommended to the program sponsors by the State Apprenticeship Councils, and by the Bureau of Apprenticeship, U. S. Department of Labor.

The above replies are made with the realization that, in addition to the application of Regulations, Part 5, there may also be certain State Apprenticeship Council regulations, and reciprocal agreements between States, which may have a bearing on the questions presented. If that is true, it is felt that your office would be in a better

position to advise Mr. Brugger with respect to their application.