U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

January 14, 1963

MEMORANDUM # 47

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

FROM : E. Irving Manger
Associate Administrator

SUBJECT: Opinions on application of the Davis-Bacon and related Acts.

Enclosed with previous covering memoranda, copies of opinions on the application of the Davis-Bacon and related Acts were furnished you for information and guidance in your enforcement programs under those Acts.

We are now enclosing a copy of a recent opinion on this same general subject, which we are sure will be of further interest and assistance to you.

47

Enclosure

cc: Messrs. Saylor, Gregory, Taylor, Divs. & Districts.
Contract Work Hours Standards Act

DB-32

15b
415(b)

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

November 13, 1962

J. P. Schelling, Esq.
Vice President and Staff Attorney
Dynalectron Corporation
1510 H Street, N. W.
Washington 5, D. C.

Dear Mr. Schelling:

Please accept my apologies for the delay in answering your inquiry about the application of the Contract Work Hours Standards Act to contract work performed in foreign countries.

While this Act, 76 Stat. 357, which was enacted to replace the prior Eight Hour Laws (40 U.S.C. 321-326), contains no language expressly limiting its geographical application, we think it is clear that its requirements have no application to any work performed under contracts of the kinds described in section 103 which is performed in any place in a foreign country over which the United States has no direct legislative control. This follows from the fact that at the time of its enactment, the settled judicial construction of the statutes which this Act replaces was that they did not apply in any such foreign territory.

In construing the prior statutes, the Supreme Court had made it very clear in Foley Bros. v. Filardo, 336 U. S. 281, that explicit statutory language indicating a legislative intent to make the prescribed labor standards applicable in such areas outside the United States would be necessary to make their provisions effective there, and that it was not enough that the requirements of the statutes were in terms stated to apply to "every" contract of the described character without any express exception of work to be performed in foreign territory.

We think there is little doubt that the courts would construe the provisions of the present Act in like manner, on the basis of the same principles of statutory construction relied on in the Foley case, particularly since the Congress, in replacing the former statutes with the present Act, omitted the type of provision which the Supreme Court had said would be required to make such legislation applicable in foreign territory.

I trust that this will provide a satisfactory answer to your problem. If we can be of further assistance, please feel free to call upon us.

Yours sincerely,

Charles Donahue
Solicitor of Labor

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

November 28, 1962

The Honorable R. F. Keller
General Counsel
U. S. General Accounting Office
Washington 25, D. C.

Re: T. L. James & Co., Inc.
W. R. Aldrich Co.
Contract DA-34-066-ENG-5278
Amarillo AFB, Texas
Your Reference: B-147602
Our File: E-59-465

Dear Mr. Keller:

Reference is made to your letter and to the subsequent discussions between representatives of our respective Offices regarding the contract minimum rates applicable to workers engaged in the installation of electrical (Orangeburg) fiber conduit at Amarillo Air Force Base under the above-captioned contract.

You will recall that, upon receipt of a complaint from IBEW Local Union No. 602 of Amarillo, Texas, an investigation was conducted by the Corps of Engineers, the contracting agency here involved. This investigation, including an extensive area practice survey, established that the work in question was compensable at not less than the minimum wage rate contained in the contract for electricians and their bona fide apprentices.

In your letter, you state that "[i]n the absence of any evidence that the duct installation called for mechanical skills or techniques possessed only by qualified electrical workers, it appears the requirement that the work of loading, hauling, placing, joining and installing be performed by mechanics classified as electricians is predicated

cc: Messrs. Saylor, Gregory, Saylor, Divs. + Districts
D-B Rel.

On the basis of the local labor standards, that is, the practices found to be definitely prevailing for this type of work in the Amarillo area, the Contracting Officer and this Office concluded that the installation of Orangeburg duct fell within the kind of work comprising the contract classifications of electricians and electricians' apprentices.

The question of skill or individual training involved does not appear material to the issue. In any given work classification, the ability of the individual mechanics will vary. Likewise, in any skilled craft, there will be included work items which, viewed apart and by themselves might appear to be of an unskilled labor nature, but which historically and actually are recognized in the industry generally as component elements of the particular trade.

We would like to emphasize, however, that the contract classification and rate applicable to this type of work if done in another area, or even if done in the Amarillo area at a time subsequent to the time involved in the T. L. James case, could well result in a determination that such work would fall within other contract classifications, such as lineman, groundman, pipelayer or laborer, depending on the local labor standards established by the actual area practices.

We appreciate your concern in this matter and trust that the foregoing explanation serves to clarify the problem presented in your correspondence. Meanwhile, you are assured that we shall continue to make every effort to accurately reflect the classifications and corresponding wage rates prevailing in the areas where we are required to make predeterminations, and to assist the contracting agencies in meeting their and our mutual enforcement obligations by requiring payment at the appropriate contract rate for the particular classifications of work performed in those areas by the laborers and mechanics covered by the Davis-Bacon Act.

Yours sincerely,

Charles Donahue
Solicitor of Labor