

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

January 29, 1963

MEMORANDUM # 48

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

FROM : E. Irving Manger *EIM*
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 enforce-
ment 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.

Enclosure

DB-33

cc: Messrs. Saylor, Saylor, Gregory; Divs. & Dist.; CEPMCO;
D-B Book & Project Files

U.S. DEPARTMENT OF LABOR

308(b)

OFFICE OF THE SOLICITOR

WASHINGTON 25

January 11, 1963

Lt. Colonel John S. Wilson, JAGC
Labor Adviser
Office of Assistant Secretary of the
Army for Logistics
Department of the Army
Washington 25, D. C.

Re: Zirbser Brothers, Inc.
Contracts DA-28-013-AI-2353,
2400, and 2550
Fort Dix, New Jersey
Our files E-62-698-700

Dear Colonel Wilson:

Reference is made to the recent report of your Office, regarding previously alleged labor standards irregularities involving the above contractor under the subject three contracts at Fort Dix, New Jersey. The matter originated in a routine FLSA investigation which indicated apparent violations of the contract labor standards requirements, and the evidence thus developed was referred to your Office for appropriate action.

We have noted the conclusions set forth in your report and, while we agree with your recommendation that, under the circumstances, no further enforcement action be taken, we would like to clarify several matters regarding the subject of unregistered apprentices, to avoid any possible future misunderstandings with respect thereto.

Although the report furnished us describes this Department's position to be that "unregistered apprentice work must be construed to be journeyman work", and although the original investigator's narrative report might have been construed as indicative of such a view, we would like to emphasize that such is not this Department's position regarding

unregistered apprentices. Rather, in the event employees reported as apprentices on a covered job are found to be improperly registered within the meaning of the Regulations and the contract stipulations, they are entitled to be compensated as are any other laborers and mechanics employed on the job (regardless of the work classifications which may be utilized on the submitted payrolls), namely, on the basis of the kind or classification of work they actually performed. In the case of improperly registered apprentices, while the reporting of such on certified payrolls may well give rise to a presumption that they did craft work, such presumptions are rebuttable on a showing that de facto they did work other than the craft work. However, we are sure you will agree that such improperly registered apprentices, who actually performed craft work, would clearly be entitled to the journeyman's rate for such work. Moreover, it is our understanding of the Comptroller General's decision mentioned in your report, inasmuch as it refers in passing to this subject, that it contains nothing which would conflict with the above-stated basic labor standards compliance principle, namely, that a laborer and mechanic employed on a covered job is entitled to receive not less than the contract minimum for the kind of work he actually performed, and that the degree of skill possessed by the worker is not a controlling factor.

While we are sure that your Office is in agreement with ours on the above basic considerations, we deemed it best to restate our position so that no misunderstanding could derive from some of the language used in our investigation report and in the report submitted from Fort Dix through your Office. Meanwhile, as previously mentioned, we fully agree that no useful purpose would be served by seeking at this time to reconstruct the facts here involved. Accordingly, we have closed our files in the case.

Yours sincerely,

Charles Donahue
Solicitor of Labor

By

E. Irving Manger
Associate Administrator