

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

# 7

July 18, 1958

*Memo #7*

Captain James I. Benson, CEC, U.S.N.  
Director, Contractor Labor Relations  
Bureau of Yards and Docks  
Department of the Navy  
Washington 25, D. C.

Re: Strickland Brothers  
Portsmouth, Virginia  
Contract Nos. NOy-88609,  
NOy-83025 and NBy-3618  
Your File: C-130B/sd P8-1  
Our Files: E-58-472 thru 475

Dear Captain Benson:

Reference is made to your letter of February 25, 1958, transmitting your very thorough status report relative to compliance with the labor standards requirements of the subject contracts. Inasmuch as the evidence does not substantiate any of the numerous violations charged by the complainant, we have closed our files in this matter in accordance with your recommendation.

With reference to paragraph IV of the report, however, it must be borne in mind that there are instances in which work may be performed away from the physical construction site and yet be covered by the Davis-Bacon Act. For example, this Office has long recognized that truck drivers employed by a contractor or subcontractor on a construction job may be engaged in duties which are functionally so closely integrated with the work taking place at the site of the installation that they are regarded as constructively performing work there even though literally they may be elsewhere. This position is based on the nature of the occupation of this class of employees and their continuous relationship with the job site work. This principle does not, of course, apply to truck drivers who are employed by bona fide materialmen since the activities of such employees relate to the supplying of materials by their employers, the materialmen, rather than to the construction required by the contract. In such a situation, the delivery of supplies is considered to be functionally integrated with and incidental to the sale of materials and therefore not subject to the Davis-Bacon Act and related prevailing wage statutes.

A similar situation obtains with respect to sheet metal workers who alternate between the job site and an off-site shop in

the course of their duties. Although such employees are required by the nature of their occupation to perform part of their work away from the geographical location of the installation, they are nevertheless, regarded as being constructively employed on the site of such work since their activities are at all times functionally integrated with the required construction. Consequently, employees who fabricate sheet metal materials which they also install on the project to which the Davis-Bacon Act applies and who in the performance of their duties alternate between the shop and the place where the installation takes place are subject to the applicable predetermined wage rate for the time spent in shop work and in traveling between the shop and the construction site.

We trust that the above discussion will be of assistance to you in connection with future compliance investigations. Your interest in this matter is appreciated and if I can be of assistance to you in regard to this or other problems, please do not hesitate to call on me.

Very truly yours,

Stuart Rothman  
Solicitor of Labor

By \_\_\_\_\_  
James R. Beaird  
Acting Assistant Solicitor