

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210



JUL 9 1984

MEMORANDUM NO. 139

TO: ALL CONTRACTING AGENCIES OF THE
FEDERAL GOVERNMENT AND THE DISTRICT
OF COLUMBIA

FROM: WILLIAM M. OTTER
Administrator

SUBJECT: Processing of Contract Work Hours and Safety
Standards Act Violation Cases on Contracts Subject
to the Service Contract Act

On March 21, 1984, Regulations, 29 CFR Part 6, were published in the Federal Register providing revised administrative hearing procedures for resolution of issues arising under the Service Contract Act (SCA) and under the Contract Work Hours and Safety Standards Act (CWHSSA) on contracts subject to SCA. (49 FR10626.) This regulation became effective on March 21, 1984. Revisions to 29 CFR Part 6 were necessitated by changes in 29 CFR 5.11 (see AAM 135). Accordingly, in all investigations involving such labor standards violations no request will be made to the contracting agency for collection of back wages without first affording the contractor an opportunity for a hearing under 29 CFR Part 6. The procedures below will be followed by the Department of Labor in processing SCA/CWHSSA investigations:

Refusal to Pay Cases

At the time the investigation file is referred to our Regional Solicitor's Office for action to initiate an administrative complaint, the Wage and Hour Division Regional Office will advise the contracting officer of the amount computed for CWHSSA back wages and liquidated damages. If the contracting officer had not been requested previously to withhold contract funds in an amount sufficient to satisfy the contractor's potential back

wage liability, such withholding request may be made at the same time. The contracting officer will be advised that the case is being referred for an administrative hearing and that the back wage and liquidated damages findings may be affected by the outcome of the hearing. Accordingly, a final decision by the contracting officer on the assessment of liquidated damages should not be made until the administrative hearing process has been completed.

Once the hearing has been completed and all administrative appeals on the findings of fact have been exhausted or not exercised, the headquarters office of the contracting agency (which presently receives all CWHSSA investigation reports) will be provided with a full report of the CWHSSA findings. This report will include complete and up to date computations and summaries of CWHSSA back wages and liquidated damages, a summary of the investigation report, as well as copies of the Administrative Law Judge's decision, any appeals decision or other settlement agreement. At this time, we will ask for the contracting agency's decision on the assessment of liquidated damages.

Refusal to pay cases which were referred to the contracting agency prior to the June 28, 1983 effective date of revised Regulations, 29 CFR Part 5, may continue to be processed in accordance with the procedures which were applicable at the time the case was transmitted to the contracting agency. However, if any pending case involves back wages and the findings are based on a disputed finding of fact, we would appreciate agency recommendations for hearings under the provisions of revised 29 CFR Part 6.

Agreement to Pay Cases

There will be no change in the procedures for advising contracting agencies of the CWHSSA back wage and liquidated damages findings on contracts subject to the Service Contract Act where the CWHSSA back wages have been paid. Under revised Regulations, 29 CFR 5.8(b), the contracting agency has the authority to make final decisions on adjustments or waivers of liquidated damages if the total liquidated damages computed for a particular contract are \$500 or less. (See AAM 135.)