Wage & Labor Rulings

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

FEB 13 1962

MEMORANDUM # 35

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

FROM: Peter F. Martin
Acting Assistant Solicitor

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.

Enclosure

cc to:
Messrs Monyer, Saylor, Gregory, Taylor
D-B Act

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

JAN 3 1 1962

Mr. Gordon M. Freeman, President
International Brotherhood of Electrical
Workers
1200 - 15th Street, N. W.
Washington 5, D. C.

Re: Western Electric Company
Vandenberg AFB, California
E-62-819

Dear Mr. Freeman:

This is in reply to your telegram of December 29, 1961 regarding the award of a contract by the Air Force to the Western Electric Company for the installation of a communications system at Vandenberg Air Force Base, California. You indicated that this contract had been awarded without full coverage of the Davis-Bacon Act provisions on the contract work. On January 5, 1962 we notified you that we had requested the contracting agency to investigate this matter on an expedited basis. We are now in receipt of a report from the Department of the Air Force which reveals the following:

(1) Although the original letter contract failed to include the Davis-Bacon Act provisions, a definitive contract is being prepared and the Western Electric Company will be officially advised as to the coverage of the Davis-Bacon Act on the instant contract.

(2) With the exception of the Bell System standard framework, and cable racks, the work under the subject contract is progressing in accordance with the same standards of applicability of the Davis-Bacon Act as set forth in the I.T.T. - Kellogg decision of the Air Force, dated May 24, 1961 involving similar work, and under which work at the Vandenberg Air Force Base has been performed since that date. The definitive contract referred to in Paragraph (1) above will officially include in the instant contract the standards set forth in that decision except

for the framework and cable racks.

(3) A list of work processes which the Air Force considers covered by the Davis-Bacon Act, except as noted in paragraph (2) above, has been prepared and submitted with the Air Force report. A copy of that list is attached for your information.

(4) The installation of the Bell System standard framework and cable racks secured to the walls and floors by means of simple anchors was considered by the Air Force to be incidental to the furnishing of the equipment and not readily severable from parts of the contract not covered by the Davis-Bacon Act.

(5) A large portion of the contract work will be subcontracted by the Western Electric Company to construction-type contractors who presumably will pay the predetermined contract rates on work covered by their subcontracts.

For many years, the Department of Labor has maintained an established position that, unless more than an incidental amount of construction-type activity is involved, supply and installation contracts as such are not normally considered to be within the coverage of the Davis-Bacon Act. See enclosed copy of Rulings and Interpretations No. 3, Walsh-Healey Public Contracts Act, Section 6(b).

It has also been an established position that where mixed or combination contracts are involved, the Davis-Bacon Act may apply to certain portions of the contract and not to others. For example, incidental construction-type activity directly connected with the furnishing of equipment by a manufacturer in such a mixed or combination contract may or may not be covered, depending on the circumstances under which the contract work is performed.

As you know, this Office recently had occasion to issue a ruling as to coverage on a Department of the Army contract for the installation of equipment at Camp Roberts, California. In that case the contracting agency took the position that its contract with the Bendix Corporation for the supply and installation of equipment for its "Project Advent" was a supply contract, and hence did not require the inclusion of the Davis-Bacon Act provisions. After an examination of the installation work involved,

we issued a ruling that, with some general exceptions, the work could not be considered to be incidental but was clearly and substantially construction subject to the Davis-Bacon Act.

Here, however, the contracting agency has clearly recognized that the Davis-Bacon Act applies, and, in contrast with the Bendix Corporation case, has inserted appropriate clauses in the contract and the contractor is carrying out these clauses on all work admittedly subject to the statute. The only area of dispute relates to installing standard framework and cable racks in pre-existing structures, using simple anchors. Upon examination of this work the contracting agency has determined that it is purely incidental installation, and upon the basis of their report and all of the information available we cannot conclude that this determination is in error.

While the decision of the contracting agency with respect to Davis-Bacon Act coverage in the instant contract may appear to vary in part from criteria previously used by contract administration personnel at Vandenberg Air Force Base on contracts involving generally similar work, it appears to us that the administrative decision made by the contracting agency in this case is not of a nature which would require further enforcement action by this Department.

Your continued cooperation in the labor standards enforcement program is sincerely appreciated.

Yours sincerely,

/s/ Charles Donahue
Solicitor of Labor

Enclosure