

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

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Memorandum # 9

September 2, 1958

Mr. E. Manning Seltzer
Chief, Legal Division
Office of Chief of Engineers
Department of the Army
Washington 25, D. C.

Dear Mr. Seltzer:

This is in reply to your letter and enclosures of July 14, 1958, requesting a ruling under Section 5.11 of Regulations, Part 5 (29 CFR, Subtitle A), in the matter of apparent labor standards violations by X, subcontractor to Y, under Contract No. DA-29-005-CIVENG-56-6 for the construction of Phase III of the Rio Grande Floodway near Albuquerque, New Mexico. The facts reported are described below.

In the course of the contract work, subcontractor X hired a large number of trucks which were owner-operated, and paid both wages and truck rental together on a cubic-yard basis in lieu of paying the specified truck drivers' hourly wage rate for the driving work plus a separate truck rental. Your investigation indicated that at least some, and probably most of the truck drivers were underpaid. In determining the restitution due these owner-operators, a problem has arisen regarding the correct method of determining the restitution due. The subcontractor has disagreed, in part, with the method used by the Contracting Officer.

Upon review of the record submitted, we would like to make clear the following ruling and would appreciate it if you would have your Albuquerque District proceed on these principles. Truck owner-operators such as here involved are employees within the meaning of the Davis-Bacon Act and the Eight Hour Law and are entitled under the provisions of the labor standards stipulations of the contract to be compensated for all covered hours worked at the applicable truck drivers' rate. This compensation is exclusive of and in addition to the amounts due these employees for rental of their trucks based on the going rate for rental of such equipment in the area in question.

Under the above principles, your District will have to make two computations for comparison purposes against the total amount received by the owner-operator covering wages and rental. First, the Contracting Officer should determine, by checking area practice, the

prevailing rate for rental of the type of truck in question and preferably establish the reasonable rental due on a work-week basis. This sum should then be deducted from the total amount received by the employee for that week, to arrive at the amount paid for wages. This balance should then be divided by the covered hours worked to determine the hourly wage rate actually paid. The resultant amount should then be compared with the predetermined hourly wage rate applicable to ascertain whether any underpayments have occurred.

With reference to the determination of the truck rental amount, as informally discussed with representatives of your Office, area practice survey together with discussion with the contractors and owner-operators involved should enable the Contracting Officer to arrive at a reasonable rental rate for computation purposes which will assure compliance with the laws involved. If our Dallas Regional Office or our Enforcement Branch can be of further assistance, please let us know.

At the conclusion of your enforcement action in this case, we would appreciate receiving your report and recommendation.

Very truly yours,

Stuart Rothman
Solicitor of Labor

By _____
James R. Beard
Acting Assistant Solicitor