

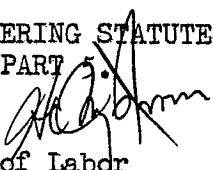
TRUCK OWNER - CRKS

U. S. DEPARTMENT OF LABOR
Office of the Solicitor
Washington 25, D. C.

June 24, 1959

MEMORANDUM # 13

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

From: Harold C. Nystrom 
Deputy Solicitor of Labor

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 June 18, 1959, opinion on this same general subject which we are sure will be of further assistance to you.

Enclosures

U. S. DEPARTMENT OF LABOR
Office of the Solicitor
Washington 25, D. C.

June 18, 1959

Mr. Clifton W. Enfield
General Counsel
Bureau of Public Roads
U. S. Department of Commerce
Washington 25, D. C.

Re: Your file 26-32

Dear Mr. Enfield:

This is in reply to your recent letter in which you request supplemental information on a ruling issued by this Department to the Corps of Engineers, Department of the Army, on the subject of truck owner-operators. This ruling was circularized to all agencies by our memorandum dated February 4, 1959.

In our letter to the Office of the Chief of Engineers, Department of the Army, we notified that agency, pursuant to Section 5.11 of Regulations, Part 5 (29 CFR, Subtitle A), that individual truck owner-operators employed by a contractor or subcontractor on a covered project are employees within the meaning of the Davis-Bacon Act and the Eight Hour Laws and are entitled under the contract provisions to be compensated for all covered hours worked, at the applicable truck drivers' rate. This compensation is exclusive of any amounts due these employees for equipment rental.

We further advised the Corps that where payments for wages and rentals are commingled, it is necessary, in the enforcement of the contract labor standards, to determine what part of the payments constitutes wages and what part rental. We suggested in our letter, that this may be accomplished by determining, through an area practice survey, the reasonable going rate for the rental of such equipment. This amount, computed on a workweek basis, would be deducted from the total weekly payments leaving the difference as wages. The hourly wage would be the quotient of the number of hours worked divided into the difference. In this connection, it should be presumed, in the absence of evidence to the contrary, that the actual rental and a reasonable rental are the same. Cf. Palmer v. Conn. R. Co., 311 U. S. 544 (1940).

Referring to this September 2, 1958, ruling to the Corps of Engineers, you have requested clarification of the mechanics of complying with this decision, asking, for example, whether separate payrolls should be required covering rental only or whether a rental addendum to the certified payrolls should be required.

Since the agency primarily charged with the enforcement responsibility must, in owner-operator situations, be in a position to determine from a review of the submitted payrolls whether the contract labor requirements have been met, it would appear to us that the contractor would be required, in some acceptable manner, to indicate on his submitted payrolls, not only the amounts paid as wages, but also the agreement regarding rental and the total amounts so paid. We would not bind the contractor to any standard form for showing such information, although it would appear best to simply footnote the wage entries and specify in such footnote the information required. If, as we said in our letter to the Corps, the compliance officer determines from his knowledge of the general area practice and from discussion with the contractor and owner-operators that the sum paid as rental represents a reasonable going rental rate, a comparison of the balance shown as wages with the hours worked and applicable hourly rate will readily establish whether the contract labor requirements have been met.

If we can be of further assistance in this matter, please let us know.

Very truly yours,

Stuart Rothman
Solicitor of Labor

/s/

By

Harold C. Nystrom
Deputy Solicitor